BIODIVERSITY CONSERVATION BILL 2015

EXPLANATORY MEMORANDUM

Overview of Bill

The *Biodiversity Conservation Bill 2015* (the proposed Act) has been drafted to provide an Act with a modern and effective approach to biodiversity conservation and the ecologically sustainable use of biodiversity. It has been designed to replace the punitive-based approach of the *Wildlife Conservation Act 1950* with a multi-faceted approach designed to enhance the achievement of biodiversity conservation state-wide through mechanisms covering: promotion, encouragement, assistance, negotiation and, finally, completely revised penalty and defence provisions.

The objects of the proposed Act are to conserve and protect biodiversity and biodiversity components, and to promote the ecologically sustainable use of biodiversity components, throughout the State, while having regard to the principles of ecologically sustainable development. The proposed Act is intended to assist persons undertaking their own biodiversity conservation measures and to not hinder persons whose activities have no significant impact on biodiversity. Where proposed activities may have a significant impact on biodiversity the proposed Act will provide for early identification of this possibility and, facilitation and encouragement for use of measures to avoid or minimise such impact. Strong disincentives are also provided in the proposed Act against significant impacts on biodiversity, particularly those components that are most vulnerable, in the form of significant monetary penalties of up to $500,000 for persons causing major impacts to critically endangered species.

The principles of ecologically sustainable development are in similar terms to those provided in the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act). These principles are derived from the principles of environmental policy agreed to under the *Inter-Governmental Agreement on the Environment* (1992) (the IGAE).

The proposed Act is also consistent with commitments made by the State as a signatory to *Australia's Biodiversity Conservation Strategy 2010-2030*.

Included in the proposed Act are measures for biodiversity conservation that can be considered for accreditation against similar provisions in the EPBC Act, including the development of biodiversity management programmes. Such an accreditation would be put into effect under an agreement with the Commonwealth that would enable identified provisions of the proposed Act, such as those included in a biodiversity management programme, to be recognised as meeting the requirements of the EPBC Act as accredited management arrangements. In such cases, where persons or bodies comply with the accredited management arrangements they would not require any approval under the EPBC Act, essentially giving such persons or bodies an exemption from that Act.

The out-dated *Wildlife Conservation Act 1950* (Wildlife Act), and the notices and regulations made under the Wildlife Act, will be repealed.

The Bill will also provide for the repeal of the out-dated *Sandalwood Act 1929* and associated regulations and will incorporate modern provisions to manage sandalwood harvesting as a very important component of the State's flora. These modern provisions will address concerns raised across the community, including the sandalwood industry, in recent years relating particularly to the need for new legislation to reduce the level of trade in unlawfully obtained sandalwood.

The Bill also provides for consequential amendments to be made to the following twelve Acts; the *Animal Welfare Act 2002*, the *Biosecurity and Agriculture Management Act 2007*, the *Bush Fires Act 1954*, the *Conservation and Land Management Act 1984*, the *Constitution Acts Amendment Act 1899*, the *Environmental Protection Act 1986*, the *Financial Management Act 2006*, the *Firearms Act 1973*, the *Forest Products Act 2000*, the *Land Administration Act 1997*, the *Land Tax Assessment Act 2002*, and the *Soil and Land Conservation Act 1945*.

The long title of the *Biodiversity Conservation Bill 2015* expresses the purpose of the proposed Act in the following terms:

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.

Notes on the content of the proposed Act (Bill) on a clause-by-clause basis follow (clause notes). In the clause notes a brief outline of content is provided at the commencement of the notes for each Part, Division and Subdivision of the Bill.

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BIODIVERSITY CONSERVATION BILL 2015

CLAUSE NOTES

PART 1 — PRELIMINARY

Part 1 contains the title of the proposed Act, the commencement provisions, the proposed Act's objects; the principles of ecologically sustainable development; definitions of terms used in the Bill; explanations of what constitutes lawful activity and lawful authority; a meaning for "native species"; provisions for determinations with regard to species that the proposed Act may apply to; provisions for binding the Crown; and application of the proposed Act in relation to specified aquatic matters.

Clause 1. Short title

Clause 1 provides that the title of the proposed Act is the *Biodiversity Conservation Act 2015*.

Clause 2. Commencement

Clause 2 sets out the commencement provisions.

Clause 2(a) provides that sections 1 and 2 of the proposed Act come into operation on the day on which it receives Royal Assent.

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

Clause 3. Objects of Act

Clause 3 provides the objects of the proposed Act which are: to conserve and protect biodiversity and biodiversity components in the State, and to promote the ecologically sustainable use of biodiversity components in the State, while having regard to the principles of ecologically sustainable development.

Definitions of the terms *biodiversity*, *biodiversity components*, *conserve,* and *ecologically sustainable use* are included in clause 5(1).

The principles of ecologically sustainable development are set out in clause 4.

Clause 4. Principles of ecologically sustainable development

Clause 4 sets out the principles of ecologically sustainable development.

The principles are in similar terms to those provided in the (Commonwealth) *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) section 3A, which are derived from the Intergovernmental Agreement on the Environment (IGAE) section 3 – Principles of Environmental Policy.

A copy of the IGAE is set out in the *National Environment Protection Council (Western Australia) Act 1996* (WA) Schedule 1.

The clause 4 principles of ecologically sustainable development comprise:

- the principle relating to integrated decision-making processes (clause 4(a));
- the precautionary principle (clause 4(b));
- the principle of intergenerational equity (clause 4(c));
- the principle of conservation of biological diversity and ecological integrity (clause 4(d)); and
- the principle relating to improved valuation, pricing and incentive mechanisms (clause 4(e)).

Clause 5. Terms used in this Act

Clause 5(1) provides definitions of terms used in the Bill. Some of the terms defined are self-explanatory, or refer to relevant provisions of the Bill where the meaning of the relevant term can be determined.

Some words and expressions used in the Bill are defined or otherwise explained elsewhere in the Bill, particularly as they are used in specific clauses or parts.

abandoned fauna is defined in such a way as to exclude from its meaning juvenile fauna that is not ordinarily cared for by a parent, and fauna that is no longer a juvenile. This definition is modelled on that provided for *abandoned juvenile fauna* in the *Wildlife Conservation Regulations 1970* regulation 28A(5). Definitions of *fauna* and *species* are also provided in clause 5(1).

animal as defined has similarities to the Wildlife Act section 6(1) definition of this term but it has been expanded for clarity and to avoid doubt as to the breadth of meaning intended to apply to this term. Kingdom Animalia is the taxonomic kingdom that organisms classified as animals belong to. Other definitions in clause 5(1) refer to animals, namely, *class*, *fauna*, *keep* and *part*. The term *carcass* is also defined in clause 5(1).

annual report is the annual report of the Department of Parks and Wildlife required to be submitted under the *Financial Management Act 2006* (WA) Part 5. A definition of *Department* is also provided in clause 5(1).

apply, in relation to an identifier, takes its normal meaning but it is also defined to include to affix, to attach, to implant, and to insert. Clause 5(1) also provides a definition of *identifier*. In clause 5(1) *apply* in relation to an identifier, is also referred to in the definition of *disturb*.

biodiversity is modelled on the definition of this term in the EPBC Act section 528.

The definition encompasses the breadth of meaning of biological diversity (biodiversity) which is the variety of all life forms – the different plants, animals, fungi and microorganisms, the genes they contain, and the ecosystems of which they form a part, with the constraint that the term as used in the Act only relates to species that are native to Australia.

Biodiversity is internationally considered at three levels, namely, genetic diversity, species diversity and ecosystem diversity.

In clause 5(1) a number of terms used in the definition of *biodiversity* are also provided with definitions, namely: *biodiversity components*, *ecosystem*, *native species*, and *organism*.

biodiversity components takes its meaning from the defined term *biodiversity* but for clarity and completeness it is also defined to include species, habitats, ecological communities, genes, ecosystems, and ecological processes. Some of the terms included in this definition are also defined in clause 5(1), namely: *ecological community*, *ecosystem*, *habitat*, and *native species*.

biodiversity conservation is self-explanatory when considered in conjunction with the clause 5(1) definitions of *biodiversity* and *conserve*.

biodiversity conservation agreement is defined by reference to the relevant provision of the Bill (see clause 114(1)). In clause 5(1) the definition of *biodiversity conservation measures* includes biodiversity conservation agreements.

biodiversity conservation covenant is defined by reference to the relevant provision of the Bill (see clause 122(1)). In clause 5(1) the definition of *biodiversity conservation measures* includes biodiversity conservation covenants.

biodiversity conservation measures is defined to include a significant number of matters that beneficially effect or contribute towards the conservation of biodiversity. In clause 5(1) many of the terms referred to in the definition of *biodiversity conservation measures* are also defined or derived from those definitions, namely definitions of: *biodiversity*, *biodiversity components*, *biodiversity conservation*, *biodiversity conservation agreement*, *biodiversity conservation covenant*, *biodiversity*

management programme, *biosecurity measures*, *environmental pest*, *environmental protection policy*, *interim recovery plan*, and *recovery plan*. .

biodiversity management programme is defined by reference to the relevant provision of the Bill (see clause 73(1)). Biodiversity management programmes are one of three categories of strategic document provided for under Part 5. In clause 5(1) the definition of *biodiversity conservation measures* includes biodiversity management programmes.

biological resources takes its normal meaning but it has been expanded for clarity and to avoid doubt as to the breadth of meaning intended to apply to this term. It is defined in similar terms to the definition of *biological resources* in the EPBC Act section 528. Elsewhere in the Bill the term *biological resources* is only referred to in the clause 5(1) definition of *bioprospecting activity*.

The terms *ecosystem*, *genetic resource*, and *organism* are also defined in clause 5(1).

bioprospecting activity is self-explanatory when considered in conjunction with the clause 5(1) definition of *biological resources*. In clause 5(1) the terms *fauna*, *flora*, and *take* are also defined.

biosecurity measures is defined by reference to measures taken under the *Biosecurity and Agriculture Management Act 2007* (BAM Act) to control declared pests. The term *declared pest* is also defined in clause 5(1). In clause 5(1) the definition of *biodiversity conservation measures* includes relevant *biosecurity measures*.

business day is self-explanatory. It excludes Saturday and Sunday, and a *public holiday*, which is a term defined in the *Interpretation Act 1984* section 5.

CALM Act references are references to the *Conservation and Land Management Act 1984* (WA). In clause 5(1) the *CALM Act* is also referred to in the definitions of *CALM Act land*, *CEO*, *Department*, and *wildlife officer*.

CALM Act land is defined to mean all of the land (including waters) that may be held or managed under the CALM Act. In clause 5(1) the terms *CALM Act*, *CEO*, and *land* are also defined.

CALM Act officer refers to the enforcement officer classifications under the CALM Act, being wildlife officer, forest officer, ranger, and conservation and land management officer.

capture, in relation to fauna, takes its normal meaning but is also defined to include to catch, gather, trap, restrain or remove fauna. In clause 5(1) *capture* is an element of the definition of *take* in relation to fauna. The term *fauna* is also defined in clause 5(1).

carcass takes its normal meaning but is also defined to include part of a carcass. It is defined in the same terms as the definition of *carcass* in the Wildlife Act section 6(1). A definition of the term *part*, in relation to an animal or a carcass, is also provided in clause 5(1), as is a definition of the term *animal*.

CEO is the chief executive officer of the Department principally assisting the Minister in the administration of the CALM Act, that is, the chief executive officer (Director General) of the Department of Parks and Wildlife. A similar definition is provided in the Wildlife Act section 6(1). In clause 5(1) the *CEO* is also referred to in the definition of *CALM Act land*.

cetacean is derived from the term *Cetacea*, which is the taxonomic Order that whales, porpoises and dolphins belong to. The definition also refers to the sub-order *Mysticeti* (baleen whales) and the sub-order *Odontoceti* (toothed whales). This definition is based on that provided for *cetacean* in the EPBC Act section 528.

CI Act is the *Criminal Investigation Act 2006* (WA).

class is the common meaning of the term. It is derived from the definition of *class* in the Wildlife Act section 6(1), which applies to any group or grouping of animals. The definition has been included to clarify that the term is not to be constrained in its application to a 'taxonomically defined class'.

The terms *animal* and *plant* are also defined in clause 5(1).

collapsed ecological community is a new term that relates to an identified ecological community that is no longer in existence in its natural form. Further information on the term is provides in clause 32. The term ecological community is also defined in clause 5(1).

commercial purpose is self-explanatory.

Commission means the Conservation and Parks Commission established under the CALM Act.

condition takes its normal meaning but it is also defined to include a limitation or restriction.

In clause 5(1) conditions are referred to in the definitions of *biodiversity conservation measures*, in relation to the *Environmental Protection Act 1986* (EP Act); and *biosecurity measures*, in relation to operation of the BAM Act.

conserve takes its normal meaning but is also defined to include 'to maintain' and 'to restore'.

container is defined in equivalent terms to the definition of *container* in the BAM Act section 6.

In clause 5(1) *container* is also referred to in the definition of *label* (paragraph (b)).

contravene takes its normal meaning and is also defined to include 'to fail to comply'.

control, in relation to an environmental pest or other organism, takes its normal meaning but for clarification is also defined to include to eradicate, destroy, prevent the presence or spread of, manage, examine or test for, survey for or monitor the presence or spread of, and treat. It is derived from the definition of *control* in the BAM Act section 6.

The terms *environmental pest*, *organism*, and *treat* are also defined in clause 5(1).

In clause 5(1) the definition of *biodiversity conservation measures* refers to *control* in paragraph (f) of that definition in relation to environmental pests.

critical habitat is defined by reference to the relevant provision of the Bill (see clause 54(1)). The term *habitat* is also defined in clause 5(1).

critically endangered ecological community is defined by reference to the relevant provision of the Bill. It is a category of threatened ecological community.

The terms *ecological community* and *threatened ecological community* are also defined in clause 5(1).

critically endangered species is defined by reference to the relevant provision of the Bill (see clause 19(1)(a)). It is a category of threatened species.

The terms *species* and *threatened species* are also defined in clause 5(1).

Crown land takes its meaning from the *Land Administration Act 1997* (Land Act) that is, *Crown land* means all land, except for alienated land (see also the definition of *private land* in clause 5(1)).

It has a wider meaning than that provided for *Crown land* in the Wildlife Act section 6(1). The term *land* is also defined in clause 5(1).

In clause 5(1) *Crown land* is referred to in the definition of *owner* in relation to a *public authority*.

cultivated flora is self-explanatory.

declared pest takes its meaning from the BAM Act section 6, that is, a *declared pest* is a prohibited organism declared under section 12 of that Act, or a pest declared under section 22(2) of that Act.

In clause 5(1) *declared pest* is referred to in the definition of *biosecurity measures*.

Department is the Department principally assisting the Minister in the administration of the CALM Act, that is, the Department of Parks and Wildlife. In clause 5(1) *Department* is referred to in the definition of *annual report*.

disturb, in relation to fauna, takes its normal meaning but it has been expanded for clarity and to avoid doubt as to the breadth of meaning intended to apply to this term. This term is an element of the definition of *to take*, in relation to any fauna, under the Wildlife Act section 6(1). The terms *fauna* and *identifier* are also defined in clause 5(1).

ecological community is self-explanatory when considered in conjunction with the clause 5(1) definitions of *organism* and *habitat*. In clause 5(1) *ecological community* is also an element of the definitions of *biodiversity components*, *ecosystem*, and *threatening process*.

ecologically sustainable use is modelled on the definition of this term in the EPBC Act section 528. The term *biodiversity components* is also defined in clause 5(1).

ecosystem is modelled on the definition of this term in the EPBC Act section 528. The term *ecological community* is also defined in clause 5(1). In clause 5(1) *ecosystem* is referred to in the definitions of *biodiversity*, *biodiversity components*, and *biological resources*.

endangered ecological community is defined by reference to the relevant provision of the Bill (see clause 27(1)(b). It is a category of threatened ecological community. The terms *ecological community* and *threatened ecological community* are also defined in clause 5(1).

endangered species is defined by reference to the relevant provision of the Bill (see clause 19(1)(b)). It is a category of threatened species. The terms *species* and *threatened species* are also defined in clause 5(1).

environmental pest is defined by reference to the relevant provision of the Bill (see clause 132(1)). The term *species* is also defined in clause 5(1). In clause 5(1) *environmental pest* is referred to in the definitions of *biodiversity conservation measures*, *control*, *environmental pest notice*, and *potential carrier*.

environmental pest notice is defined by reference to the relevant provisions of the Bill (see clause 135(2)). The term *environmental pest* is also defined in clause 5(1).

environmental protection policy has the meaning given to *approved policy* in the EP Act section 3(1), that is, an environmental protection policy approved under that Act. In clause 5(1) the definition of *biodiversity conservation measures* includes relevant environmental protection policies.

EPBC Act is the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth. In clause 5(1) the *EPBC Act* is referred to in the definition of *self-governing Territory*.

exclusive economic zone is the zone defined in the *Seas and Submerged Lands Act 1973* of the Commonwealth, section 3 and derives from the United Nations Convention on the Law of the Sea.

export takes its normal meaning and is also defined to include to offer to export; to send forward or deliver for export; and to be in possession with a view to export.

external Territory takes its meaning from the *Acts Interpretation Act 1901* of the Commonwealth, section 17. It is referred to in the definition of *coastal sea* in clause 8(1), and the meaning of *native species* in clause 8(2).

extinct species is defined by reference to the relevant provision of the Bill (see clause 23(1)). The term *native species* is defined in clause 8(2), and the term *species* in clause 5(1).

fauna includes all animals that are native species unless they have been determined by the Minister not to be fauna for the purposes of the proposed Act by an order made under clause 9(2). Fauna may also include an animal that is not a native species (clause 9(1)).

A native species or taxonomic grouping of native species that is determined to be fauna under clause 10(1) or (2), as the case requires, is also included within the meaning given to fauna under clause 5(1).

This definition needs to be considered in conjunction with the clause 5(1) definitions provided for the terms *animal* and *native species*.

The definition is similar to that used in the Wildlife Act section 6(1).

The term *fauna* is also referred to in the clause 5(1) definitions of *abandoned fauna*, *capture*, *disturb*, *fauna processing establishment*, *injured fauna*, *process*, and *take* (paragraph (a)).

Narrower definitions of *fauna* are provided in clauses 145 (property in fauna) and 158(1) (processing fauna).

fauna processing establishment is self-explanatory. Definitions of the terms: *commercial purpose*, *fauna*, *fish*, *pearl oyster*, *place*, and *process*, in relation to fauna, are also provided in clause 5(1).

There are similarities between this definition and that provided for *processing establishment* in the Wildlife Act section 6(1).

fish takes its meaning from the *Fish Resources Management Act 1994* (WA) (FRM Act) section 4(1); a *fish* is an aquatic organism of any species (whether alive or dead) and includes the eggs, spat, spawn, seeds, spores, fry, larva or other source of reproduction or offspring of an aquatic organism; and a part only of an aquatic organism (including the shell or tail), but does not include aquatic mammals, aquatic reptiles, aquatic birds, amphibians.

In clause 5(1) the definition of fauna processing establishment refers to the term *fish*. The term *fish* is also referred to in the definitions of *fauna* provided in clauses 145 and 158(1).

flora includes all plants that are native species indigenous to the State unless they have been determined by the Minister not to be flora for the purposes of the proposed Act by an order made under clause 9(4). Flora may also include a plant that is not a native species (clause 9(3)).

A native species or taxonomic grouping of native species that is determined to be flora under clause 10(1) or (2), as the case requires, is also included within the meaning given to flora under clause 5(1). This definition needs to be considered in conjunction with the clause 5(1) definitions provided for the terms *plant* and *native species*.

The definition is similar to that used in the Wildlife Act section 6(1).

The term *flora* is also referred to in the clause 5(1) definitions of *flora processing establishment*, *process* and *take* (paragraph (b)). A narrower definition of *flora* is provided in clause 178(1).

flora processing establishment is self-explanatory. Definitions of the terms: *commercial purpose*, *place*, and *process*, in relation to flora, are also provided in clause 5(1).

genetic resources is defined in similar terms to the definition of *genetic resources* in the EPBC Act section 528. In clause 5(1) genetic resources are included in the definition of *biological resources*.

habitat is defined in equivalent terms to the definition of *habitat* in the EPBC Act section 528. In clause 5(1) the term *habitat* is referred to in the definitions of *biodiversity components*, *critical habitat*, and *ecological community*.

habitat conservation notice is defined by reference to the relevant provision of the Bill (see clause 59(1)). A definition of the term *habitat* is also provided in clause 5(1).

identifier is self-explanatory. It is derived from the definition of *identifier* in the BAM Act section 6. In clause 5(1) *identifier* is also referred to in the definition of *apply*.

import is self-explanatory.

injured fauna is self-explanatory. A definition of the term *fauna* is also provided in clause 5(1).

interim recovery plan is defined by reference to the relevant provision of the Bill (see clause 105). Interim recovery plans are one of three categories of strategic document provided for in Part 5. In clause 5(1) the definition of *biodiversity conservation measures* includes interim recovery plans.

key threatening process is defined by reference to the relevant provision of the Bill (see clause 34). A definition of *threatening process* is also provided in clause 5(1).

label is self-explanatory when considered in conjunction with the clause 5(1) definition of *container*. It is modelled on a similar definition of *label* in the BAM Act section 6.

land takes its meaning from the Land Act section 3(1), that is, *land* means all land within the limits of the State; all marine and other waters within the limits of the State; all coastal waters of the State as defined by section 3(1) of the *Coastal Waters (State Powers) Act 1980* of the Commonwealth; and the sea-bed and subsoil beneath, and all islands and structures within, the waters referred to.

In clause 5(1) *land* is referred to in the definitions of *CALM Act land*, *Crown land*, *occupier*, *owner*, *place*, *private land*, and *Registrar*. Clause 5(2), which limits the application of the clause 5(1) definitions of *occupier* and *owner*, also refers to land.

lawful activity is defined by reference to the provision of the Bill that provides an explanation of this term (clause 6).

lawful authority is defined by reference to the provision of the Bill that provides an explanation of this term (clause 7).

licence takes its ordinary meaning and applies to licences granted under regulations made under the proposed Act. A regulation head power applicable to licensing is provided in clause 256.

A similar definition is provided for *licence* in the Wildlife Act section 6(1).

ministerial guidelines is defined by reference to the relevant provision of the Bill (see clause 260).

mobile home is self-explanatory. It is also referred to in the definition of place under clause 5(1) and is used in clause 201.

native species is defined by reference to the provision of the Bill that provides an explanation of this term (see clause 8(2)). A definition of *species* is also provided in clause 5(1).

obstruct takes its normal meaning but it is also defined to include to delay, to hinder and to resist.

occupier is defined in equivalent terms to the definition of *occupier* in the BAM Act section 6. A definition of *owner* is also provided in clause 5(1). Under clause 5(2) the CEO of the Department, and the CALM Act Executive Body, are excluded from the meaning of *occupier*.

organism is defined broadly to include all forms of life except a human being. In clause 5(1) *organism* is also referred to in the definitions of *biodiversity*, *biological resources*, *control*, *ecological community*, *genetic resources*, *habitat*, *identifier*, and *species*.

owner is defined in relation to both *private land* and *Crown land*. The terms *land*, *Crown land*, *private land*, and *public authority*, are also defined in clause 5(1). Under clause 5(2) the CEO of the Department, and the CALM Act Executive Body, are excluded from the meaning of *owner*.

part relates to part of an animal or carcass and takes its normal meaning but for clarification it is also defined to include the bodily fluid, bone, chitin, exoskeleton, feathers, flesh, fur, hide, organs, pelage, scale, shell, skin, teeth, tissue and viscera of an animal or a carcass. The terms *animal* and *carcass* are also defined in clause 5(1).

pearl oyster takes its meaning from the *Pearling Act 1990* (WA) section 3(1), that is, *pearl oyster* means the species declared as pearl oyster under section 6 of that Act (*Pinctada maxima*). In clause 5(1)

the term *pearl oyster* is also referred to in the definition of *fauna processing establishment*. The term *pearl oyster* is also referred to in the definition of *fauna* provided in clause 158(1).

place is defined in equivalent terms to the definition of *place* in the CI Act section 3(1).

plant is defined for clarity and to avoid doubt as to the breadth of meaning intended to apply to this term. Kingdom Plantae is the traditional name for the taxonomic classification kingdom that organisms classified as plants belong to. Kingdom Fungi is the traditional name for the taxonomic classification kingdom that organisms classified as fungi belong to.

Other definitions in clause 5(1) that refer to plants are *class* and *flora*.

potential carrier is derived from the definition of *potential carrier* in the BAM Act section 6 but it is limited in its application in this proposed Act to an *environmental pest*. The term *environmental pest* is also defined in clause 5(1).

prescribed uses the standard definition of regulations made under the proposed Act.

private land has the meaning given to *alienated land* in the Land Act section 3(1), that is, *land* held in freehold. It has a narrower meaning than that provided for *private land* in the Wildlife Act section 6(1). The term *land* is also defined in clause 5(1). In clause 5(1) the term *private land* is referred to in the definition of *owner* (paragraph (a)).

process, in relation to fauna (paragraph (a)), is self-explanatory when considered in conjunction with the clause 5(1) definition of *fauna*. The definition of *to process*, in relation to any fauna other than fish, in the Wildlife Act section 6(1) is in similar terms. In clause 5(1) *process*, in relation to fauna (paragraph (a)), is applicable to the definition of *fauna processing establishment*.

process, in relation to any flora (paragraph (b)), is self-explanatory when considered in conjunction with the clause 5(1) definition of *flora*. There is no corresponding definition in the Wildlife Act. In clause 5(1) *process*, in relation to flora (paragraph (b)), is applicable to the definition of *flora processing establishment*.

prohibited device has similarities to the defined term *illegal device* provided in the Wildlife Act section 6(1). Under the Wildlife Act, illegal devices in relation to taking fauna have been prescribed in the *Wildlife Conservation Regulations 1970* regulation 54. Under the proposed Act a prohibited device may be prescribed in relation to the taking of fauna (clause 156) or flora (clause 175).

prohibited method has similarities to the defined term *illegal means* provided in the Wildlife Act section 6(1). Under the Wildlife Act, illegal means in relation to taking fauna have been prescribed in the *Wildlife Conservation Regulations 1970* regulation 54. Under the proposed Act a prohibited method could be prescribed in relation to the taking of fauna (clause 156) or flora (clause 175).

public authority is self-explanatory. This definition is similar to that provided for *public authority* under the BAM Act section 6. In clause 5(1) *public authority* is referred to in the definition of *owner* (paragraph (b)). A number of terms used in the definition of *public authority* take their meaning from the *Interpretation Act 1984* section 5, and they are: *Minister*, *the State*, *Public Service*, *local government* and *regional local government*.

record is defined in equivalent terms to the definition of *record* in the CI Act section 3(1).

recovery plan is defined by reference to the relevant provisions of the Bill (see clauses 89(1) and 92(1)). Recovery plans are one of three categories of strategic document provided for under Part 5. In clause 5(1) the definition of *biodiversity conservation measures* includes recovery plans.

Registrar may be either a reference to the Registrar of Titles under the *Transfer of Land Act 1893* (WA); or a reference to the Registrar of Deeds and Transfers under the *Registration of Deeds Act 1856* (WA), as the context requires.

remedial action is defined by reference to the relevant provision of the Bill (see clause 217(1)). Remedial actions are relevant to the contravention of a *biodiversity conservation covenant*; or an *environmental pest notice*; or a *habitat conservation notice*.

sandalwood is self-explanatory and is an update of the definition included in the *Sandalwood Act 1929*.

self-governing Territory takes its meaning from the EPBC Act section 528, where *self-governing Territory* is defined to mean the Australian Capital Territory; the Northern Territory; or Norfolk Island.

specially protected fauna is self-explanatory when considered in conjunction with the clause 5(1) definitions of *fauna*, *native species*, and *specially protected species*.

specially protected flora is self-explanatory when considered in conjunction with the clause 5(1) definitions of *flora*, *native species*, and *specially protected species*.

specially protected species is defined by reference to the relevant provision of the Bill (see clause 13(1)). The term *native species* is defined in clause 8(2), and the term *species* in clause 5(1).

species is similar to the definition of this term in the EPBC Act section 528. The definition of *species* provided in clause 5(1) is inclusive of sub-species, whereas the EPBC Act has a separate definition of *sub-species*. A definition of *organism* is also provided in clause 5(1).

In clause 5(1) *species*, by itself or as part of another term, is also referred to in the terms and/or definitions of the terms *abandoned fauna*, *biodiversity*, *biodiversity components*, *critically endangered species*, *endangered species*, *environmental pest*, *extinct species*, *fauna*, *flora*, *native species*, sandalwood, *specially protected fauna*, *specially protected flora*, *specially protected species*, *threatened fauna*, *threatened flora*, *threatened species*, and *vulnerable species*.

State agreement is self-explanatory. State agreements are referred to in the meaning given to lawful authority under clause 7. An example of a *State agreement* is the *Gorgon Gas Processing and Infrastructure Project Agreement*, which has been ratified and had its implementation authorised under the *Barrow Island Act 2003* (WA).

supply takes its normal meaning and is also defined to include to sell; to send or deliver for sale or on sale; to receive, or have in possession, for sale; to dispose of under a hire-purchase agreement; to give; to cause or permit any of these things to be done; and to offer to do any of these things. This definition is derived from a similar one in the BAM Act section 6. In clause 5(1) *supply* is referred to in the definition of *biosecurity measures* (paragraphs (d) and (e)).

The term *sell*, as defined in the *Interpretation Act 1984* section 5, applies to the definition of *supply*, i.e. *sell* takes its normal meaning but it also includes barter, exchange, offer to sell and expose for sale.

take, in relation to taking fauna (paragraph(a)), has its normal meaning but for clarity it is also defined to include: to kill, injure, harvest or capture fauna by any means or to cause or permit these events to happen. A definition of *capture* is also provided in clause 5(1). There are similarities between *take*, in relation to fauna, and the definition of *to take*, in relation to any fauna in the Wildlife Act section 6(1). In clause 5(1) a definition for the related term *disturb*, in relation to fauna, is also provided.

take, in relation to taking flora (paragraph (b)), has its normal meaning but for clarity is also defined to include: to gather, pluck, cut, pull up, destroy, dig up, remove, harvest or damage flora by any means or to cause or permit these events to happen. The definition of *take*, in relation to flora, is similar to the definition of *to take*, in relation to any flora, in the Wildlife Act section 6(1).

threatened ecological community is defined by reference to the relevant provisions of the Bill (see clauses 27(1) and 33). The term *ecological community* is also defined in clause 5(1).

threatened fauna is self-explanatory when considered in conjunction with the clause 5(1) definitions of *fauna*, *native species*, and *threatened species*.

threatened flora is self-explanatory when considered in conjunction with the clause 5(1) definitions of *flora*, *native species*, and *threatened species*.

threatened species is defined by reference to relevant provisions of the Bill (see clauses 19(1) and 26). The term *native species* is defined in clause 8(2), and the term *species* in clause 5(1). In clause 5(1) *threatened species* are referred to in the definitions of *threatened fauna* and *threatened flora*.

threatening process is derived from, and defined in similar terms to, a description of a threatening process in the EPBC Act section 188(3). In clause 5(1) *threatening process* is referred to in the definition of *key threatening process*.

treat is defined in equivalent terms to the definition of *treat* in the BAM Act section 6. In clause 5(1) *treat* is also an element of the definitions of *control* and *process*.

vehicle is self-explanatory. It is defined broadly to encompass all possible forms of air, road, rail or water vehicle capable of transporting people or things.

vulnerable ecological community is defined by reference to the relevant provision of the Bill (see clause 27(1)(c)). It is a category of threatened ecological community. The terms *ecological community* and *threatened ecological community* are also defined in clause 5(1).

vulnerable species is defined by reference to the relevant provision of the Bill (see clause 19(1)(c)). It is a category of threatened species. The term *native species* is defined in clause 8(2), and the terms *species* and *threatened species* in clause 5(1).

wildlife officer takes its meaning from the definition of *wildlife officer* provided in the CALM Act section 3, that is, an officer of the Department of Parks and Wildlife designated by the CEO as a wildlife officer under CALM Act section 45(1)(a).

The CALM Act also provides for other persons to exercise the functions of a *wildlife officer*, such as a person employed by the Crown or an agency of the Crown [CALM Act section 45(2)]; or a person appointed as an honorary wildlife officer [CALM Act section 46(1)(a)]. A police officer is an *ex officio* wildlife officer under CALM Act section 49. Consequential amendments to CALM Act sections 45 and 46 are provided in clauses 295 and 296, respectively.

Other terms:
Some words and expressions are defined or otherwise explained elsewhere in the Bill because they warrant an explanation in a separate clause, or only apply or are relevant to one Part or provision of the Bill. The terms defined or explained within Parts 2 to 18 of the Bill are listed below.

Term	**Clause(s)**
Aboriginal customary purpose	181
Aboriginal person	181
accessory after the fact to an offence	234
adopted plan	81
agent	240(1)(3)
agreement land	115(1)
agricultural activity	136(1)
application	211(1)
applied provision	202
approved plan	81
aquatic eco-tourism	190
authorisation	41; 46; 247
authorised officer	274(1)
authorised person	252(1)
CALM Act land	181
closed area	164(1)
coastal sea	8(1)
code	257(1)
code of practice	194(1)
commencement day	280, 283
continental shelf	8(1)

commercial operator	190
covenant land	121
covenantor	121
deal with	207(1)
Director General	136(1)
do a forensic examination	209(1)
draft plan	81
draft programme	68
dwelling	195
employer	241(1)(3)
entry warrant	195
environmental damage	242
environmental pest notice	135(2)
exclusive native title	181
exclusive native title holder	181
exemption	247
fauna	145
flora	166
guidelines	274(1)
habitat conservation notice	59(1)
habitat damage	58
information sharing agency	274(1)
inspection purposes	195
instrument	195
joint recovery plan	91(1)
land of conservation value	41(1); 46(1)
lawful activity	6
lawful authority	7
licensed premises	195
listing decision	36
matter	272(1)
minor amendment	68; 81
modify	44
native species	8(2)
nature-based tourism and recreation	190
new plan	102(5); 112(5)
new programme	79(5)
nomination	36; 39
notice	268(1)
NT Act	181
occupier	195
offence	195; 247
officer	237(1); 274(1)
old plan	102(5); 112(5)
old programme	79(5)
other party to the agreement	116(1)
partner A	239(3)
partner B	239(4)
partner C	239(5)
partner D	239(6)
permanent covenant	126(1)
pest control notice	136(1)
photograph	195
principal	240(1)(3)
principal offence	234(3)
proposed plan	81
publication day	284
purposes of sport or recreation	163(5)
reasonably suspects	195; 196

register	121
relevant authorisation	7(1)
relevant commencement day	284
relevant community	46(1)
relevant habitat	41(1); 46(1)
relevant information	274(1)
relevant instrument	216
relevant offence	242
relevant record	204(1)
relevant species	41(1)
remediation measures	242
remediation order	242
remote communication	211(1)
responsible authority	164(1)
responsible Minister	272(1)
sandalwood licence	283(1)
section 50 notice	51
seized thing	230(1)
specified	58(1); 115(1); 187(1); 205(1); 242; 247; 271(1); 284(1)
strategic document	276(1)
subsidiary legislation	257(1)
technical amendment	81
temporarily care for	161(1)
thing relevant to an offence	195; 197
transitional matter	284(1)
transitional regulations	284(1)

Clause 6. Lawful activity

Clause 6 clarifies what constitutes a lawful activity. Express mention is made of clearing in accordance with the EP Act to remove any doubt that the authorised clearing of native vegetation under that Act is to be a lawful activity for the purposes of establishing elements of the defences provided in relation to: modifying a threatened ecological community (clause 48(2)); taking fauna and threatened fauna (clause 151); disturbing fauna (clause 153); and taking flora or threatened flora (clause 174). Subclause (2) provides that other matters that are to be recognised as lawful activity may be prescribed.

Clause 7. Lawful authority

Clause 7(1) provides a definition of ***relevant authorisation*** in terms of the types of authorisation it applies to, e.g. a licence or a permit; and by specifying five Acts that these authorisations may be made under, i.e. the Biodiversity Conservation Act, the CALM Act, the EP Act, the *Fish Resources Management Act 1994*, and the *Pearling Act 1990*. There is also provision for other legislation to be prescribed to include authorisations made under that legislation as relevant authorisations.

The term *relevant authorisation* is only used in clause 7(2). Clause 7(2) describes the scope of what constitutes a lawful authority for an activity to be carried out. Subject to clause 7(2)(b), a relevant authorisation, as defined in clause 7(1), or an activity authorised by or required under a written law or a State agreement are included in the meaning given to lawful authority (clause 7(2)).

A lawful authority to carry out an activity will be of no effect for the purposes of the proposed Act if any relevant requirement or condition of the lawful authority has not been complied with (clause 7(2)(b)).

The other clauses in the Bill that use the term ***lawful authority*** include:
5(1) – Terms used;
146 – Property in fauna;
149 – Taking fauna other than threatened fauna;
152 – Possessing fauna;
153 – Disturbing fauna
155 – Feeding fauna
159 – Importing flora;

160 – Exporting flora;
161 – Injured or abandoned fauna;
162 – Releasing fauna;
167 – Property in flora;
169 – Flora propagated from taken flora;
171 – Taking flora; and
188 – Regulations: charges for fauna and flora.

Clause 8. Native species

Clause 8(1) provides definitions for three terms used in the definition of *native species* provided in clause 8(2). The terms are ***coastal sea***, ***continental shelf***, and ***exclusive economic zone***, which are defined by reference to the relevant provision of a Commonwealth Act.

Clause 8(2) provides a definition of ***native species*** in equivalent terms to the definition of *native species* provided in the EPBC Act section 528. A native species may be listed by order of the Minister as a specially protected species, a threatened species, or an extinct species.
Terms defined in clause 5(1) that are applicable to the meaning of *native species* are *external Territory* and *species*. In clause 5(1) *native species* are referred to in the definitions of: *biodiversity*, *biodiversity components*, *extinct species*, *fauna*, *flora*, *specially protected species*, *threatened species*, and *threatening process*.

Clause 9. Determination as to fauna, flora or species for the purposes of this Act

Clause 9 enables the Minister to determine, by order, that certain animals, plants or populations of organisms are subject to the proposed Act, or not subject to the proposed Act.

Clause 9(1) enables an animal that is not a native species to be dealt with as if it were fauna for the purposes of the proposed Act. This enables the species to be managed under the Act and is a provision carried over from section 6(2) of the Wildlife Act.

Clause 9(2) enables an animal that is a native species to be dealt with as if it is not fauna for the purposes of the proposed Act, e.g. the dingo and its status as a declared pest under the BAM Act.

Clause 9(3) enables a plant that is not a native species indigenous to the State to be dealt with as if it were flora for the purposes of the proposed Act.

Clause 9(4) enables a plant that is a native species indigenous to the State to be dealt with as if it were not flora for the purposes of the proposed Act, e.g. a flora species that is a declared pest under the BAM Act.

Clause 9(5) enables a distinct population of organisms to be dealt with as a species for the purposes of the proposed Act, e.g. a subspecies or variety can be dealt with as separate species.

Clause 9(6) provides that a determination made under clause 9 may be made for the entire State or a specified part of the State.

Clause 9(7) requires the Minister's clause 9 determinations by order to be subject to clause 258 and be subsidiary legislation.

Clause 10. Determination of certain native species or taxonomic groupings as fauna or flora

Clause 10 enables the Minister to determine by order, a native species to be considered to be fauna or flora for the purposes of the proposed Act. This would provide for the Minister to declare stromatolites such as those at Shark Bay, which are actually cyanobacteria, to be fauna or flora and therefore subject to conservation management under the proposed Act.

Clause 11. Crown bound

Clause 11 provides that the Act binds the State, and so far as the legislative power of the State permits, the Crown in all its other capacities. The Wildlife Act is only binding on the Crown in respect of its flora provisions (Wildlife Act section 9(1)).

Clause 12. Application of Act in relation to aquatic matters

Clause 12(1) limits the application of the Act to native species that are not subject to the activities of aquaculture, commercial fishing, and recreational fishing under the *Fish Resources Management Act 1994*; or hatchery or pearling activities under the *Pearling Act 1990*.

Clause 12(2) establishes that clause 12(1) will not affect the application of CALM Act Part II Division 3, which provides for the reservation process for marine reserves, the purpose of each category of marine reserve, and related matters.

PART 2 — LISTING OF NATIVE SPECIES, ECOLOGICAL COMMUNITIES AND THREATENING PROCESSES

Part 2 provides for the listing of native species as: specially protected species; threatened species; or extinct species. It also provides for the listing of ecological communities as threatened ecological communities; or collapsed ecological communities. This Part also provides for the listing of threatening processes as key threatening processes.

The provisions have been prepared to provide for listings that are in keeping with the categories used internationally under the IUCN Red List and those included under the EPBC Act, modified where necessary to be appropriate at a State jurisdictional level.

Division 1 — Native species

Part 2:

Division 1 provides for the Minister to list native species as specially protected species in one of five categories; or as threatened species; or as extinct species. Such listing provides for higher levels of protection for species than for ordinarily protected species.

A definition of *native species* is provided in clause 8(2).

Subdivision 1 — Specially protected species

Part 2 Division 1:

Subdivision 1 provides for the listing of native species as specially protected species. The five categories of specially protected species are: species of special conservation interest; migratory species; cetaceans; species subject to an international agreement; and, species otherwise in need of special protection.

The Minister's decision to list a specially protected species will be subject to specified requirements and further requirements to be explained in ministerial guidelines that will need to be prepared and issued under clause 260(1).

When a native species is listed as a specially protected species other provisions of the proposed Act may or will apply to it:

a. taking a specially protected species of fauna or flora without lawful authority will be an offence subject to a maximum penalty of $200,000 (clauses 149 and 171);

b. other offences involving specially protected species of fauna are similarly subject to a maximum penalty of $200,000, e.g. unauthorised possession (clause 152), disturbance (clause 153), dealing (clause 157), processing (clause 158), importation (clause 159), and export (clause 160);

c. other offences involving specially protected species of flora similarly have a maximum penalty of $200,000, e.g. unauthorised supply (clause 176), dealing (clause 177), processing (clause 178), and export (clause 179);

d. regulations may be made for the conservation, protection and management of specially protected species (Schedule 1).

Clause 13. Listing of specially protected species

Clause 13(1) provides the Minister a discretionary power to list native species as specially protected species and sets out the categories that a specially protected species may be assigned to, i.e. species of special conservation interest; migratory species; cetaceans; species subject to an international agreement; or species otherwise in need of special protection.

Clause 13(2) excludes a native species that is already listed as an extinct species (clause 23) or a threatened species (clause 19) from being eligible for listing as a specially protected species.

Clause 13(3) makes the Minister's order making a listing of a specially protected species subject to clause 258, meaning that a copy of the order will have to be tabled in each House of Parliament under clause 258(3) to ensure that such listings are made available for public scrutiny. (Such an order is not included in the list of orders that will be subject to disallowance as specified in clause 259, as the listing is more a technical than policy matter).

Clause 14. Criteria for categorisation as species of special conservation interest

Clause 14 sets out the eligibility criteria that must be met for a native species to be listed as a specially protected species in the category: species of special conservation interest. This category will provide for the Minister to list a species for special protection where the standard level of protection is determined to be insufficient to ensure the ongoing conservation of the species.

Clause 15. Criteria for categorisation as migratory species

Clause 15 sets out each of the eligibility criteria that must be met for a native species to be listed as a specially protected species in the category: migratory species. This category will provide for the Ministerial listing of species that migrate to and from Australia, including species that are required to be specially protected through the Convention on Migratory Species.

Clause 16. Criteria for categorisation as cetaceans

Clause 16 sets out each of the eligibility criteria that must be met for a native species to be listed as a specially protected species in the category: cetaceans.

The term ***cetacean*** is derived from *Cetacea*, which is the taxonomic Order that whales and dolphins belong to. The definition also refers to the sub-order *Mysticeti* (baleen whales) and the sub-order *Odontoceti* (toothed whales). There is a very high level of community interest in the conservation of whales and dolphins, and the Commonwealth government provides special protection for whales and dolphins within Commonwealth waters. The listing under this proposal will provide a high level of special protection for whales and dolphins in State waters.

Clause 17. Criteria for categorisation as species subject to international agreement

Clause 17 sets out each of the eligibility criteria that must be met for a native species to be listed as a specially protected species in the category: species subject to an international agreement. This category will provide for the Ministerial listing of species that are required to be specially protected through international agreements Australia is a party to, including the Japan-Australia Migratory Birds Agreement, and similar agreements.

Clause 18. Criteria for categorisation as species otherwise in need of special protection

Clause 18 sets out each of the eligibility criteria that must be met for a native species to be listed as a specially protected species in the category: otherwise in need of special protection. This category will allow for the Minister to specially protect a species that is not eligible for special protection in the other categories where the Minister is satisfied that special protection is justified. Ministerial guidelines may provide additional detail as to the circumstances where such a listing may be justified.

Subdivision 2 — Threatened species

Part 2 Division 1:

Subdivision 2 provides for the listing of native species as threatened species. There are three categories of threatened species, namely, critically endangered; endangered; and vulnerable.

When a native species is listed as a threatened species other provisions of the proposed Act may or will apply to it:

a. the criteria for listing a threatening process as a key threatening process include the effects that a threatening process may have on a threatened species (clause 35);

b. the Minister may give an authorisation to take a threatened species, subject to

comprehensive conditions (clauses 40 and 41);

c. an authorisation to take a threatened species that could be expected to lead to its extinction cannot be given unless it has been approved by the Governor (clause 42);

d. a threatened species found during field work for the purposes of an EP Act environmental impact assessment or compliance with an application for an EP Act clearing permit has to be reported (clause 43);

e. if there is reasonable evidence that a threatened species is present on land the Minister may give written notice of its presence to the relevant owners or occupiers of the land (clause 50), providing for the owner to undertake appropriate conservation management;

f. the CEO may lodge a notification document about the presence of a threatened species given to an owner or occupier under clause 50 with the Registrar of Titles or the Registrar of Deeds and Transfers (clause 51);

g. if an owner or occupier has been officially notified of the presence of a threatened species on the land they own or occupy they must notify visitors about the presence of threatened species on that land (clause 53);

h. the criteria for listing a habitat as a critical habitat are relevant to the protection of threatened species (clause 54);

i. significant damage to listed critical habitat relevant to the protection of a threatened species may be the subject of a habitat conservation notice (clause 59);

j. a recovery plan, or an interim recovery plan, may make provision for the conservation, protection and management of one or more threatened species (clauses 89 and 105);

k. a biodiversity conservation agreement may be entered into in respect of land where there is one or more threatened species (clause 114);

l. a biodiversity conservation covenant may be made in respect of land where there is one or more threatened species (clause 122);

m. taking a threatened species of fauna or flora without lawful authority will be an offence subject to a range of maximum penalties, i.e. in respect of a cetacean (fauna) $500,000, a critically endangered species $500,000, an endangered species $400,000, a vulnerable species $300,000 (clauses 150 and 173);

n. other offences involving threatened species of fauna are similarly subject to a range of maximum penalties from $300,000 to $500,000, e.g. unauthorised possession (clause 152), disturbance (clause 153), dealing (clause 157), processing (clause 158), importation (clause 159), and export (clause 160);

o. other offences involving threatened species of flora are similarly subject to a range of maximum penalties from $300,000 to $500,000, e.g. unauthorised supply (clause 176), dealing (clause 177), processing (clause 178), and export (clause 179);

p. regulations may be made for the conservation, protection and management of threatened species (Schedule 1, Item 8);

q. the maximum penalties for taking threatened fauna (and flora) without appropriate authorisation (between $300,000 and $500,000, depending on threat category) are significantly higher than for ordinarily protected species under clauses 149(1)(c) and 171(1)(b) ($50,000);

r. threatened flora is also subject to a range of special protection measures on private property that do not apply to ordinarily protected flora (clause 173).

Clause 19. Listing of threatened species

Clause 19(1) provides the Minister a discretionary power to list native species as threatened species by ministerial order and sets out the categories that a threatened species may be assigned to; i.e. critically endangered species, endangered species, or vulnerable species. A native species may only be listed in one of the three threatened species categories.

Clause 19(2) excludes a native species from being eligible for listing as a threatened species if it is listed as an extinct species (including a species considered to be extinct in the wild) (see clause 23; see also ***extinct species*** in clause 5(1)).

Clause 19(3) requires the Minister to only have regard to matters relating to the survival of the relevant species when deciding whether to list or not list the species as a threatened species, as well as when deciding to amend or repeal such a listing.

Clause 19(4) makes the Minister's listing order subject to clause 258, which requires the order to be published in the Gazette and also a copy of the order to be tabled in each House of Parliament. The tabling is for Parliament's information and the order is not disallowable.

The nomination processes described in Part 2 Division 4 also apply to the listing, etc. of threatened species (clauses 36 to 39).

The criteria for listing a native species as a threatened species will also be subject to guidelines issued by the Minister (clause 260(1)).

Clause 20. Criteria for categorisation as critically endangered species

Clause 20 sets out each of the eligibility criteria that must be met for a native species to be listed as a threatened species in the category: critically endangered species.

The criteria are equivalent to those provided in the EPBC Act for listing a native species as a critically endangered species (EPBC Act section 179(3)).

Further details of the criteria are to be provided in the ministerial guidelines referred to in clause 20(b). It is intended that the guidelines for this purpose will be based on the internationally accepted IUCN Red List of Threatened Species criteria as appropriate for use in the Australian context and will be generally in keeping with any applicable national agreements for standardised species threatened status assessments.

Clause 21. Criteria for categorisation as endangered species

Clause 21 sets out each of the eligibility criteria that must be met for a native species to be listed as a threatened species in the category: endangered species.

The criteria are equivalent to those provided in the EPBC Act for listing a native species as an endangered species (EPBC Act section 179(4)).

Once again, details of the criteria are to be provided in the ministerial guidelines referred to in clause 21(c) and it is intended the guidelines will be based on the IUCN Red list criteria and will be generally in keeping with any applicable national agreements for standardised species threatened status assessments.

Clause 22. Criteria for categorisation as vulnerable species

Clause 22 sets out each of the eligibility criteria that must be met for a native species to be listed as a threatened species in the category: vulnerable species.

The criteria are equivalent to those provided in the EPBC Act for listing a native species as a vulnerable species (EPBC Act section 179(5)). Again, details of the criteria are to be provided in the ministerial guidelines referred to in clause 22(c) and it is intended the guidelines will be based on the IUCN Red list criteria and will be generally in keeping with any applicable national agreements for standardised species threatened status assessments.

Subdivision 3 — Extinct species

Part 2 Division 1:

Subdivision 3 provides for the listing of native species as extinct species or extinct in the wild species. Provision is also made to establish the status of a listed extinct species or extinct in the wild species that has been rediscovered.

Clause 23. Listing of extinct species

Clause 23(1) provides the Minister a discretionary power to list a native species in one of two categories of extinct species: extinct, or extinct in the wild.

Clause 23(2) makes the Minister's listing order subject to clause 258, which requires the order to be published in the Gazette and also a copy of the order to be tabled in each House of Parliament under clause 258(3). The tabling is for Parliament's information and the order is not disallowable, however anyone may seek an amendment to a threatened species listing as provided for by clause 38.

Clause 24. Criteria for categorisation as extinct species

Clause 24 sets out the eligibility criteria that must be met for a native species to be listed as an extinct species; i.e. there is no reasonable doubt that the last member of the species has died.

The criteria are equivalent to those provided in the EPBC Act for listing a native species as an extinct species (EPBC Act section 179(1)). .

Clause 25. Criteria for categorisation as extinct in the wild species

Clause 25 sets out each of the eligibility criteria that must be met for a native species to be listed as an extinct in the wild species.

The criteria are equivalent to those provided in the EPBC Act for listing a native species as an extinct in the wild species (EPBC Act section 179(2)).

Clause 26. Rediscovered species

Clause 26 enables a species that is listed in either of the 'extinct' or 'extinct in the wild' categories and subsequently found to be living in the wild or captivity to be regarded as a threatened species until such time that it is either listed as a threatened species, or a specially protected species, or the Minister declares by instrument published in the *Gazette* that it is not to be so listed.

The intent of this provision is to provide a high level of conservation protection for newly re-discovered species until a further assessment of their status can be undertaken.

Division 2 — Ecological communities

Part 2:

Division 2 provides for the listing of ecological communities as threatened ecological communities; or collapsed ecological communities. Such a listing will raise awareness about the importance of these communities and also provide an opportunity for their protection in situations where related provisions of the Act are also invoked.

Subdivision 1 — Threatened ecological communities

Part 2 Division 2: Subdivision 1 provides for the listing of ecological communities as threatened ecological communities. There are three categories of threatened ecological community, namely, critically endangered, endangered and vulnerable.

When an ecological community is listed as a threatened ecological community other provisions of the proposed Act may or will become operable or apply to it:

a. the criteria for listing a threatening process as a key threatening process include the effects that a threatening process may have on a threatened ecological community (clause 35);
b. the Minister may give an authorisation to make significant permanent impacts on (modify) a threatened ecological community, subject to comprehensive conditions (clauses 40 and 41);
c. an authorisation to modify a threatened ecological community to the extent that it may result in the community being collapsed cannot be given unless it has been approved by the Governor (clause 42);
d. an occurrence of a community that appears to be an example of a listed threatened ecological community found during field work for the purposes of an EP Act environmental impact assessment or compliance with an application for an EP Act clearing permit has to be reported (clause 43);
e. if there is reasonable evidence that a threatened ecological community is present on land the Minister may give written notice of its presence to the relevant owners or occupiers of the land (clause 50);
f. the CEO may lodge a notification document about the presence of a threatened ecological community given to an owner or occupier under clause 50 with the Registrar of Titles or the

Registrar of Deeds and Transfers (clause 51);

g. an owner or occupier must notify visitors about the presence of a threatened ecological community on the land they own or occupy after they have been officially notified of the species or community presence (clause 53)
h. the Minister may make a Ministerial listing of specific areas of a threatened ecological community as critical habitat where such a listing is required to further the conservation of the threatened ecological community (clause 54);
i. damage to any part of a threatened ecological community that has been listed as critical habitat may be the subject of a habitat conservation notice where this is required to ensure conservation of the ecological community (clause 59);
j. a recovery plan, or an interim recovery plan, may be prepared to help coordinate the conservation, protection and management of one or more threatened ecological communities (clauses 89 and 105);
k. the Minister may enter into a voluntary biodiversity conservation agreement with a landowner in respect of land where there is one or more threatened ecological communities (clause 114);
l. a biodiversity conservation covenant may be made in respect of land where there is one or more threatened ecological communities (clause 122);
m. significant permanent impacts to (modifying) a threatened ecological community without lawful authority will be an offence subject to a range of maximum penalties, i.e. in respect of a critically endangered ecological community $500,000, an endangered ecological community $400,000, a vulnerable ecological community $300,000 (clause 48);
n. courts may impose a remediation order after successful prosecution for certain offences involving significant damage to a threatened ecological community (clauses 242 and 243);
o. regulations may be made for the conservation, protection and management of threatened ecological communities (Schedule 1, Item 8)

Clause 27. Listing of threatened ecological communities

Clause 27(1) provides the Minister a discretionary power to list an ecological community as a threatened ecological community and sets out the categories that a threatened ecological community may be assigned to, i.e. critically endangered ecological community, endangered ecological community, or vulnerable ecological community.

Listing a threatened ecological community provides a means to raise public and landowner/manager awareness of the special conservation value of the community to facilitate conservation management and also invokes requirements for Ministerial authorisation of actions that will have a severe and permanent impact on the listed ecological community (clause 45).

A threatened ecological community may only be listed in one of the three threatened ecological community categories.

Clause 27(2) excludes an ecological community from being eligible for listing as threatened (in the categories of critically endangered, endangered or vulnerable) if it is listed as a collapsed ecological community (clause 31).

Clause 27(3) requires the Minister to only have regard to matters relating to the ongoing conservation (survival) of the relevant ecological community when deciding whether to list or not list the ecological community as a threatened ecological community, as well as when deciding whether to amend or repeal such a listing.

Clause 27(4) provides that a listing of a threatened ecological community may identify the ecological community by reference to a map or plan held in the Department of Parks and Wildlife. It is often more accurate to describe or identify such a community graphically on a map or plan, rather than to attempt to describe or identify it by words alone. It is intended that the Minister will routinely identify threatened ecological community occurrences by mapping them in order to assist efforts by landholders and others for their ongoing conservation.

Clause 27(5) makes the Minister's listing order subject to clause 258, which makes the listing order subsidiary legislation for the purposes of the *Interpretation Act 1984*, with a copy of the order to be tabled in each House of Parliament for information. The order will not be disallowable, however anyone may seek an amendment to a threatened ecological community listing as provided by clause 38.

The criteria for listing an ecological community as a threatened ecological community will also be subject to guidelines issued by the Minister (clause 260(1)).

Clause 28. Criteria for categorisation as critically endangered ecological community
Clause 28 sets out each of the eligibility criteria that must be met for an ecological community to be listed by the Minister as a threatened ecological community in the category: critically endangered ecological community.

The criteria are similar to those provided in the EPBC Act for listing an ecological community as a critically endangered ecological community (EPBC Act section 182(1)). Further explanation of the precise requirements for listing under this category will be provided in ministerial guidelines referred to in clause 28(b) to be prepared under clause 260(1)(b).

Clause 29. Criteria for categorisation as endangered ecological community
Clause 29 sets out each of the eligibility criteria that must be met for an ecological community to be listed by the Minister as a threatened ecological community in the category: endangered ecological community.

The criteria are similar to those provided in the EPBC Act for listing an ecological community as an endangered ecological community (EPBC Act section 182(2)).

Clause 29(c) provides that a listing in the endangered ecological community category is to be otherwise in accordance with the Ministerial guidelines to be prepared under clause 260(1), which will provide further explanation of the precise requirements for listing under this category.

Clause 30. Criteria for categorisation as vulnerable ecological community
Clause 30 sets out each of the eligibility criteria that must be met for an ecological community to be listed by the Minister as a threatened ecological community in the category: vulnerable ecological community.

The criteria are similar to those provided in the EPBC Act for listing an ecological community as a vulnerable ecological community (EPBC Act section 182(3)).

Clause 30(c) provides that a listing in the vulnerable ecological community category is to be otherwise in accordance with the Ministerial guidelines to be prepared under clause 260(1), which will provide further explanation of the precise requirements for listing under this category.

Subdivision 2 — Collapsed ecological communities

Part 2 Division 2:

Subdivision 2 provides for the listing of ecological communities as collapsed ecological communities. Provision is made to establish the status of a listed collapsed ecological community that has been rediscovered.

Clause 31. Listing of collapsed ecological communities
Clause 31(1) provides the Minister a discretionary power to list an ecological community as a collapsed ecological community. This provides recognition that some ecological communities may be destroyed or collapse over time to the extent that there is no special conservation value from maintaining their listing as threatened ecological communities.

Clause 31(2) makes the Minister's listing order subject to clause 258, which makes the listing order subsidiary legislation for the purposes of the *Interpretation Act 1984*, with a copy of the order will have to be tabled in each House of Parliament for information. The order will not be disallowable.

Clause 32. Criteria for listing as collapsed ecological community
Clause 32 sets out the eligibility criteria that must be met for an ecological community to be listed as a collapsed ecological community. These are self-explanatory and generally require that there is no reasonable hope of known occurrences recovering or new occurrences being found.

Clause 33. Rediscovered ecological communities
Clause 33 recognises the special conservation significance of the discovery of an occurrence of an ecological community that has been listed as a collapsed ecological community. This special conservation significance is provided for by the occurrence being regarded as a threatened ecological

community until such time that it is either specifically listed as a threatened ecological community, or until the Minister declares by instrument published in the *Gazette* that it is not to be so listed.

The intent of this provision is to provide protection to re-discovered ecological communities that have been considered collapsed until a further assessment of their status is undertaken. It is likely that such a discovered ecological community will meet the requirements to be listed as a threatened ecological community in one of the categories: critically endangered; endangered; or vulnerable following the requirements of clause 33(a).

It is, however, also possible that the community may be so widespread after review as to not justify listing as threatened, in which case it would no longer be listed under any ecological community category at which point the Minister would publish advice in the Gazette under clause 33(b)

Division 3 — Threatening processes

Part 2:

Division 3 provides for the listing of threatening processes as key threatening processes. Recognition of key threatening processes can be important in developing conservation actions for the recovery of threatened species and threatened ecological communities and in preventing other species and communities becoming threatened. Listing of a key threatening process does not automatically provide any special controls on listed processes and is primarily for awareness raising purposes.

Listing of a threatening process as a key threatening process may provide for measures to limit the impact of that process on species or communities to be identified or put in place for conservation action, i.e:

a. a recovery plan for a threatened species or a threatened ecological community must identify any relevant key threatening processes and specify proposed means of preventing, eradicating, reducing or containing those processes (clause 82(3)(g));

b. regulations may be made for the prevention, eradication, reduction and containment of key threatening processes (Schedule 1, Item 9).

Clause 34. Listing of key threatening processes

Clause 34(1) provides the Minister a discretionary power to list a threatening process as a key threatening process.

Clause 34(2) makes the Minister's listing order subject to clause 258 which makes the listing order subsidiary legislation for the purposes of the *Interpretation Act 1984,* with a copy of the order to be tabled in each House of Parliament for information. The order will not be disallowable, however, the public nomination processes described in Part 2 Division 4 also apply to the listing, delisting or amendment of a listing of key threatening processes (clause 38).

For the purposes of the EPBC Act the Commonwealth Minister is empowered to list key threatening processes (EPBC Act section 183).

Clause 35. Criteria for listing as key threatening process

Clause 35 sets out the eligibility criteria that must be met for a threatening process to be listed by the Minister as a key threatening process. These are self-explanatory and may be further explained through ministerial guidelines pursuant to clause 260 or other guidance material.

Only one of the criteria listed has to be met for listing of a threatening process as a key threatening process to be considered.

The term ***threatening process*** is defined in clause 5(1).

Division 4 — Listing process

Part 2:

Division 4 provides details of listing and nomination processes and notifications related to listings, amendments to listings, or repeal of listings, of species, ecological communities, or threatening

processes. It also identifies that the Minister may obtain expert advice ahead of making or changing, or repealing listings.

Clause 36. Terms used
Clause 36 defines the terms ***listing decision*** and ***nomination*** for the purposes of the listing process by reference to the relevant provision.

Clause 37. Minister may obtain advice on listing decision
Clause 37(1) provides that the Minister may seek specialist technical advice on nominations and proposed changes to the lists from people considered by the Minister to have relevant technical expertise.

Clause 37(2) provides that the Minister is not bound to accept any such advice received.

Clause 38. Nominations in respect of certain listings
Clause 38(1) enables any person to make a nomination for native species, ecological communities or key threatening processes to be listed, a listing to be amended or for the repeal of a listing.

Clause 38(2) provides that a nomination may be made at any time.

Clause 38(3) provides that the Minister may reject a nomination if satisfied that the nomination is vexatious, frivolous, or not made in good faith, or has not been made in accordance with a nomination requirement prescribed in regulations made under the Act. If the Minister rejects a nomination on these grounds he must provide written advice to the nominator of his rejection of the nomination.

Clause 38(4) provides that the Minister may seek public nominations by advertising as prescribed.

Clause 38(5) provides that the regulations may further regulate the way nominations may be made and the form of a nomination.

Clause 39 Notification of Minister's decision
Clause 39 relates to the Minister notifying the nominator of the Minister's decision.

Clause 39(1) identifies that this requirement is not relevant to a nomination that has been rejected under clause 38(3).

Clause 39(2) provides that the Minister must advise a nominator of his decision in relation to the nomination.

Clause 39(3) provides that, if the Minister's decision is that the listing, amendment or repeal is not to be made, the CEO must provide the nominator with the reasons for this decision.

PART 3 — THREATENED SPECIES AND THREATENED ECOLOGICAL COMMUNITIES

Part 3 provides for Ministerial authorisation of the taking of threatened species, or significant impacts to threatened ecological communities, and for related matters.

Division 1 — Threatened species

Part 3:

Division 1 provides for the taking of threatened species to be authorised, and for related matters.

Clause 40. Minister may authorise taking or disturbance of threatened species
Clause 40(1) enables the Minister to authorise, by instrument, a person (including a public authority) to take or disturb a threatened species, where the terms 'take' and 'disturb' have the meanings assigned by the Act under clause 5.

Clause 40(2) provides that applications for authorisation must be in a form approved by the CEO.

Clause 40(3) provides that the Minister may amend or revoke such an authorisation.

Clause 41. Conditions of authorisation

Clause 41 provides a power for the Minister to include conditions with an authorisation to take or disturb a threatened species.

Clause 41(1) provides self-explanatory definitions for the terms: ***land of conservation value***, ***relevant habitat***, and ***relevant species***.

Clause 41(2) provides that conditions may be imposed on an authorisation to take or disturb threatened species.

Clause 41(3) provides that the conditions of an authorisation may require the holder of the authorisation to do something or several things as identified in subclauses (a) through (i). These include making monetary contributions to land purchase, land exchanges, agreed conservation management of land, specific land management measures, conduct or fund relevant research or other things prescribed in regulations. It is intended that these conditions will be administered to be similar to matters that may be determined as environmental offsets under the *Environmental Protection Act 1986*.

Clause 41(4) provides that a condition must be considered by the Minister to be necessary to mitigate or offset the likely impact of the authorised taking or disturbance on the total known population of the species in the State and the relevant habitat.

Clause 41(5) provides that land transferred to the CEO as a condition on an authorisation to take or disturb a threatened species is to be managed for the conservation and protection of the relevant species and habitat.

Clause 41(6) provides that the authorisation given under clause 40 must detail the conditions that have been imposed on the authorisation pursuant to clause 41.

Clause 42. Governor's approval required in certain cases

Clause 42 provides a constraint on the Minister's power to give an authorisation for a person to take a threatened species (clause 42(1)).

The constraint applies if, in the Minister's opinion, the proposed taking could be expected to result in the threatened species becoming listed as an extinct species in the near future. Under these circumstances the Minister will need to obtain the approval of the Governor before the authorisation can be given.

Approval of the Governor will not be required if a proposed taking of a threatened species is for the purpose of captive breeding for its later reintroduction into the wild (clause 42(2)).

Notification of a decision of the Governor to approve the Minister giving an authorisation to take a threatened species that may result in the species being listed as extinct, will be made by tabling a copy of the approval in each House of Parliament, with details of the approval being included in the Department of Parks and Wildlife annual report (clause 42(3)).

Clause 43. Duty of certain people to report occurrence of threatened species

Clause 43 establishes that it is a duty of any person who carries out field work (in relation to the EP Act) who finds threatened species in the course of their work to report its presence, orally or in writing, to the CEO (clauses 43(1), (2) and (3)).

It will be an offence under clause 43(2) to fail to report such an occurrence, which is subject to a maximum penalty of a fine of $50,000.

Clause 43(4) provides a defence to a charge under clause 43(2), if it can be proven that a person charged did not know, and could not reasonably have known that the species found was a threatened species.

Division 2 — Threatened ecological communities

Part 3: Division 2 provides for permanent significant modification of threatened ecological communities to be authorised with conditions, and for related matters.

Clause 44. Term used: modify

Clause 44 defines ***modify*** which applies to use of this term in relation to threatened ecological communities. The definition is self-explanatory with the important features that for a modification to require Ministerial authorisation it must be of such an extent and impact that the threatened ecological community:

- will be unlikely to recover its species composition or structure (i.e. essentially that a species or the role it has in the ecological community will be permanently lost); or,
- will be destroyed (collapse).

There will be no requirement for a Ministerial authorisation for modifications of a threatened ecological community that are not sufficiently severe and permanent to meet the specified requirements. For example, burning of a threatened ecological community at an intensity and severity that the ecological community is considered likely to fully recover from over time would not require a ministerial authorisation.

Clause 45. Minister may authorise modification of occurrence of threatened ecological community

Clause 45(1) enables the Minister to authorise, by instrument, a person (including a public authority) to make a permanent significant impact on a listed threatened ecological community.

Clause 45(2) provides that applications for authorisation must be in a form approved by the CEO.

Clause 45(3) provides that the Minister may also amend, or revoke such an authorisation.

Clause 46. Conditions of authorisation

Clause 46 enables the Minister to give a conditional authorisation for the significant and permanent modification of a threatened ecological community.

Clause 46(1) provides self-explanatory definitions for the terms: ***authorisation, land of conservation value***, ***relevant community***, and ***relevant habitat***, that are relevant to the condition making power.

Clause 46(2) provides that the Minister may impose conditions in his authorisation to modify a threatened ecological community.

Clause 46(3) provides that the conditions on an authorisation may require the holder of the authorisation to do something or several things as identified in subclauses (a) through (i). These include making monetary contributions to land purchase, land exchanges, agreed conservation management of land, specific land management measures, conduct or fund relevant research or other things prescribed in regulations. It is intended that these conditions will be administered to be similar to matters that may be determined as environmental offsets under the *Environmental Protection Act 1986*.

Clause 46(4) provides that a condition imposed in an authorisation must be considered by the Minister to be necessary to mitigate or offset the impact the authorised activity on the total known occurrences of the relevant community in the State and on relevant habitat.

Clause 46(5) provides that land transferred to the CEO as a condition on an authorisation to modify a threatened ecological community is to be managed for the conservation and protection of the relevant community or habitat.

Clause 46(6) provides that the authorisation given under clause 45 must detail the conditions that have been imposed on the authorisation pursuant to clause 46.

Clause 47. Governor's approval required in certain cases

Clause 47 provides a special process for situations where an authorisation for a person to modify a threatened ecological community (clause 54(1)) could be expected to result in the community becoming eligible to be listed as a collapsed ecological community in the near future.

Under these circumstances the Minister will need to obtain the approval of the Governor before a Ministerial authorisation under clause 45 can be given.

Furthermore, to ensure that such a decision becomes public, notification of a decision of the Governor to approve the Minister giving an authorisation to modify a threatened ecological community that may result in the community being listed as collapsed, will be required to be made by:

- tabling a copy of the approval in each House of Parliament under clause 47(2)(a); and,
- details of the approval being given in the Department's annual report under clause 47(2)(b).

Clause 48. Modifying occurrence of a threatened ecological community

Clause 48(1) establishes that it is an offence for a person to modify a threatened ecological community unless they have been given a clause 45 authorisation to modify it. The term modify here has the same meaning as described in clause 44.

The maximum penalties prescribed for a conviction against this offence are the fines set out at in clause 48(1), i.e.

(a) $300,000, if the offence involves a listed vulnerable ecological community;

(b) $400,000, if the offence involves a listed endangered ecological community;

(c) $500,000, if the offence involves a listed critically endangered ecological community.

Clause 48(2) provides a series of defences against a charge of unlawfully modifying a threatened ecological community.

Clause 48(2)(a) and (b) provides for a defence in a situation where all of the following three criteria are met at the same time:

- the modification of a threatened ecological community occurred in the course of a 'lawful activity' the purpose of which was not to modify the community; and,
- the modification could not reasonably have been avoided; and,
- the person charged did not know, and could not reasonably have known that the community was present.

The term 'lawful activity' is the term as defined under clause 6.

Clause 48(3) restricts this defence so that it is not available if the modification resulted in the community becoming eligible for listing as a collapsed ecological community.

Clause 49. Duty of certain people to report occurrence of threatened ecological community

Clause 49 establishes that it is a duty of any person who carries out field work (in relation to the EP Act) who finds a threatened ecological community in the course of their work or studies to report its presence, orally or in writing, to the CEO (clauses 49(1) and (3)).

Clause 49(2) provides a penalty of a fine of $50,000 in situations where a relevant person fails to make such a report.

Clause 49(4) provides a defence against a charge of failing to report an occurrence of a threatened ecological community under clause 49(1) and (2) if it can be proved that a person charged did not know, and could not reasonably have known that the community found was a threatened ecological community.

Division 3 — General Provisions

Division 3 covers a series of provisions relating to the known presence of threatened species or threatened ecological communities. The provisions include formal advice to landowners and occupiers, the possibility of formal notification on land title and a requirement for owners and occupiers who have been informed of the presence of the species or community to advise visitors to their property of the presence of the threatened species or community.

The concept is that landholders, occupiers and visitors should be better placed to provide for the conservation of threatened species and threatened ecological communities on properties they are managing or accessing when they are made aware of their presence and need for conservation.

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

Subject to the Minister having reasonable evidence that a threatened species or a threatened ecological community is present on a particular land holding, clause 50 provides that the Minister may give a written notice to each owner and occupier of that land advising of the presence of the species or ecological community. Such a written notice is to include the other information identified in clause 50(1) (a) through (e), including:

- identifying the relevant species or community;
- information to help the owner or occupier to identify the species or community;
- specifying the part of the land where the species or community is believed to be present;
- specifying the assistance that may be available for the protection of the species or community (could possibly include, financial assistance opportunities, advisory services, references to management material, physical assistance and other means of technical or non-technical protection assistance); and,
- informs the owner of the requirement to inform visitors to the property of the presence of the threatened species or threatened community under clause 61, and also of the opportunity to seek an exemption from provisions of the Act under clause 278.

Clause 50(2) provides that such a written notice will remain in effect until the Minister cancels or amends the notice.

Clause 50(3) provides that the amendment or cancellation of a notice of the presence of a threatened species or threatened community must be given in writing and must be provided to each owner and occupier of the land.

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

This clause provides a definition for ***section 50 notice*** which applies only to this section.

This clause gives the CEO the discretionary power to lodge a notification on title with respect to the land that is subject to a section 50 notice. It also provides for the withdrawal of a notification if the relevant section 50 notice is cancelled.

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

Clause 52 provides that an owner of land has been given a section 50 notice and the ownership or occupation of the land changes, the owner is required to notify the CEO. This is to help provide for the CEO to ensure that owners and occupiers remain aware of the special conservation values of the land and to provide an opportunity for encouragement for private conservation actions. A penalty of $20,000 is included to encourage landowners to provide the information to the CEO.

Clause 53. Certain visitors to be informed of threatened species or threatened ecological community

This clause requires owners or occupiers of land (who have received a written notice from the Minister advising of the presence of a threatened species or threatened ecological community on their land, or who manage land subject to a notification on title relating to the presence of a threatened species or threatened ecological community on the land) to inform visitors who may impact the threatened species or ecological community of the presence of the species or community. The intent is that the owner or occupier will thereby help to ensure that visitors (including contractors and workers) do not detrimentally impact the conservation of the threatened species or community.

The maximum penalty for the owner or occupier failing to provide this advice to another person who negatively impacts the threatened species or community is a fine of $20,000.

PART 4 — CRITICAL HABITAT

Part 4 provides for the Ministerial listing of habitat as critical habitat, and a public register of critical habitat.

Landholders and occupiers will be consulted over proposals to register habitat on their land as critical habitat through formal processes which provide encouragement for their conservation management of the habitat.

This part also provides for habitat conservation notices which provide specific protection measures for critical habitat that is identified as being under threat of significant damage.

Listing of habitat on the public register of critical habitat includes provisions for landholders and occupiers to be advised of the conservation management of that habitat, including the possibility of their eligibility for assistance with conservation efforts. Areas of critical habitat can be voluntarily conserved, including through mechanisms such as biodiversity conservation agreements (clause 114) and biodiversity conservation covenants (clause 122).

The term ***habitat*** has been defined in clause 5(1).

Division 1 — Determination of critical habitat

Part 4: Division 1 provides for the listing of habitat as critical habitat, establishes criteria for listing, sets out consultation requirements, and provides for a public register of critical habitats.

Clause 54. Listing of critical habitat

Clause 54(1) provides the Minister a discretionary power to issue an order to list identified habitat as critical habitat.

Clause 54(2) provides that before making a listing, amending or repealing a listing under 54(1), the Minister must (under 54(2)(a)) give regard to any submissions made under clause 56(1) by the owner or occupier of the land. Clause 54(2)(b) provides that, in the case of aquatic habitat, the Minister must first obtain the concurrence of the Minister for the *Fish Resources Management Act 1994* before making, amending or repealing such a listing.

Clause 54(3) provides that the critical habitat listing order may describe or identify habitat that is depicted in a map or plan held by the Department.

Clause 54(4) provides that critical habitat order is an order to which clause 258 applies, meaning the order is subsidiary legislation for the purposes of the *Interpretation Act 1984*.

Clause 55. Criteria for listing as critical habitat

This clause describes the eligibility criteria for listing critical habitat. An identified habitat must be critical to the survival of a threatened species or threatened ecological community, with further detail of the criteria to be provided in ministerial guidelines (clause 260).

Clause 56. Consultation

This clause requires the CEO to undertake consultation before listing, amending a listing or repealing the listing of critical habitat.

Clause 56(1) provides that the CEO must take reasonable steps to give written notice of the proposed listing, amendment or repeal to the owner or occupier of the land where the habitat is located.

Clause 56(2) provides details of the advice that must be included in the written notice referred to in clause 56(1).

Clause 56(2)(a) provides that the notice must include sufficient information to enable the location and extent of the habitat to be identified. This is in most cases envisaged to be by inclusion of a map identifying the proposed critical habitat area.

Clause 56(2)(b) provides that the notice must contain information as to the legal effect of the proposed listing under the Act.

Clause 56(2)(c) provides that the notice must specify a period within which the landowner or occupier may make submissions regarding the listing proposal to the Minister.

Clause 57. Register

Clause 57(1) requires the CEO to maintain a register of critical habitats listed under clause 54(1).

Clause 57(2) provides that the regulations may specify the form and content of the register.

Clause 57(3) requires that the register maintained under clause 57(1) must be available for public inspection in accordance with specifications contained in the regulations.

Division 2 — Habitat conservation notices

Part 4: Division 2 provides for habitat conservation notices to be issued to provide protection of specifically identified areas of listed critical habitat that are under identified threat of damage. The operation of habitat conservation notices has been modelled on vegetation conservation notices under EP Act section 70.

Clause 58. Terms used

Clause 58 provides a self-explanatory definition for the term ***habitat damage*** as it relates to critical habitat, including damage to, removal of, or destruction of, the listed critical habitat identified in the habitat conservation notice. The term ***specified*** for the purposes of habitat conservation notices is also defined in a self-explanatory way to relate only to the habitat specified in the particular habitat conservation notice.

Clause 59. Habitat conservation notice

This clause gives the CEO the discretionary power to issue a habitat conservation notice to a person where the identified requirements have been met. The habitat conservation notice has the purpose of preventing habitat damage or further habitat damage occurring to the listed critical habitat.

Clause 59(1) requires that the CEO must reasonably believe that habitat damage is likely to occur to the critical habitat, is occurring to the critical habitat, or has occurred to the critical habitat, before he may issue a habitat conservation notice.

Clause 59(2) provides that a habitat conservation notice may be given to one or more of the following people: an owner of the land; an occupier of the land; or, another person, where the CEO considers that it is practicable for the other person to comply with, and give effect to the notice. It is envisaged that the other person in this provision may be a person who is undertaking a development or activity on the land that is damaging, has damaged or is likely to damage the critical habitat.

Clause 59(3) requires that a habitat conservation notice must specify the name of the person it is given to, the reason why it is given and also to inform the person that contravention could result in a fine, or the CEO taking remedial action, or both.

Clause 59(4) provides that a habitat conservation notice may require the recipient to do one or more of the following:

(a) repair any habitat damage that has occurred;

(b) re-establish and maintain an identified area of critical habitat to as near as possible to the condition it was in before the damage occurred;

(c) prevent the erosion, drift or movement of sand, soil, dust or water;

(d) ensure that the specified land (including where relevant a watercourse or wetland) where critical habitat will not be damaged or detrimentally affected or further damaged or detrimentally affected.

Clause 59(5) provides that the CEO must, before giving a habitat conservation notice to a person, give written notice to the person inviting them to make submissions to the CEO within a period specified in the notice about the proposed habitat conservation notice. The submission may propose whether or not the person should have to take the measures that the CEO intends to specify in the habitat conservation notice. This provides the person with an opportunity to argue against any of the proposals the CEO intends to include in the habitat conservation notice, including whether a habitat conservation notice should be given. The relevant person may avoid being issued with a habitat conservation notice if they voluntarily agree to adequately conserve the relevant critical habitat.

Clause 59(6) provides that the CEO must consider any submissions from the intended recipient of an intended habitat conservation notice he/she receives within the time period specified in the consultation advice provided under subclause (5).

Clause 60. Persons bound by habitat conservation notice
This clause specifies that the persons bound by a habitat conservation notice (or an amended notice) are each person to whom the notice is given, and, where a habitat conservation notice is notified on the land title under clause 63, to successive owners and occupiers of the land, as specified under clause 64.

Clause 61. Amendment of habitat conservation notice
This clause gives the CEO a discretionary power to amend, by written notice, a habitat conservation notice by either extending its period of application (subject to the CEO's satisfaction that such an extension is justified) or by removing or amending any requirement in the notice.

Clause 61(2) provides that, before amending a habitat conservation notice, the CEO must give each person bound by the habitat conservation notice 21 days to show cause in writing why the proposed amendment should not be issued.

Clause 62. Cancellation of habitat conservation notice
This clause gives the CEO discretionary power to cancel the habitat conservation notice by written notice to each person that has been given the respective habitat conservation notice.

Clause 63. Lodgment of notification with Registrar and withdrawal of notification
This clause gives the CEO a discretionary power to lodge a notification on the land title where the land is subject to a habitat conservation notice. It also provides for the withdrawal of notifications if the habitat conservation notice is cancelled. Copies of such notifications must be provided to the Western Australian Planning Commission under clause 63(5). The lodgement has been made discretionary because it is considered likely that in many instances the habitat conservation can be completed with the current landowner.

Clause 64. Habitat conservation notice binding on successive owners and occupiers
This clause provides that, where a notification on title has been made in relation to a habitat conservation notice under clause 63 and remains in effect, the habitat conservation notice is binding on each successive owner or occupier of the land.

Clause 65. Contravention of habitat conservation notice
Clause 65(1) establishes that it is an offence for any person bound by habitat conservation notice to contravene the notice (see also clause 60).

The maximum penalty prescribed for a conviction against this offence is a fine equivalent to the maximum penalty applying to the category of threatened species or threatened ecological community the critical habitat conserves.

Where an owner and occupier of land are both bound by a notice, a defence applies to any charge of failing to comply with the notice if one can prove the other has complied with the notice.

Clause 66. Duty to notify CEO of change in ownership or occupation
Clause 66(1) creates an offence for a situation where an owner or occupier of land subject to a notification under clause 63(2) fails to give written notice to the CEO that they, or another owner or occupier have ceased to be an owner or occupier of the land. The penalty for failing to provide this written notice is a fine of $20,000.

Clause 66(2) provides that the written notice required in clause 66(1) must include the name and address, if known, of the next owner or occupier of the land. The written notice must be provided within 60 days from the date of the change of ownership.

Clause 67. Apportionment of costs of complying with habitat conservation notice
This clause provides for the apportioning, between an owner and occupier or successive owners and occupiers of land, of costs of taking measures on the land in order to comply with a relevant habitat conservation notice.

Clause 67(1) provides that the costs are to be apportioned as is prescribed in regulations, or where no apportionment is prescribed, as determined by the CEO. This apportionment will apply regardless of whether it is the owner, the occupier or the CEO who undertake the measures and has effect subject to the provisions of any agreement between current or successive owners or occupiers relating to the apportionment of such costs.

Part 5 — Biodiversity management programmes

Part 5 provides for the preparation of, consultation on, approval and operation of biodiversity management programmes. Biodiversity management programmes will provide a strategic framework, linking together legislated and policy instruments in a manner to best achieve the desired outcome of conservation or sustainable use of biodiversity. The biodiversity management programme will not be subsidiary legislation. It is considered that a biodiversity management programme may be prepared to be considered as an accredited management arrangement under the Commonwealth EPBC Act 1999, allowing for operations covered by that programme to be exempt from approval requirements of the EPBC Act.

Clause 68. Terms used
This clause provides a definition for **draft programme** which states that in this Division, it applies to draft biodiversity management programmes made under section 70. It also defines **minor amendment**, being a clerical mistake, unintentional minor error or mis-description that needs to be corrected in the view of the CEO.

Clause 69. Content of biodiversity management programmes
Clause 69(1) provides that biodiversity management programmes are documents which may cover: the conservation, protection and management of native species and ecological communities (not including threatened species or communities); one or more critical habitats or a combination of species, communities and habitats.

Clause 69(2) provides for the scope of biodiversity management programmes to include the listed matters (a) through (j) relating to the conservation or sustainable use of biodiversity. It is envisaged that biodiversity management programmes under the Act will replace management plans currently prepared as policy instruments covering sustainable harvesting of kangaroos and flora as well as providing for new management programmes that may be prepared from time to time to guide conservation efforts against threatening processes, invasive species, or to promote the appreciation and study of biodiversity, or community understanding of biodiversity conservation.

Clause 70. Preparation of draft biodiversity programme
This clause gives the CEO the power to prepare draft biodiversity management programmes which are a precursor to finalisation of Ministerially approved biodiversity management programmes.

Clause 71. Consultation on draft programme
This clause requires the CEO to consult with relevant persons or bodies when preparing a draft biodiversity management programme.

Clause 71(a) provides that the CEO must consult the Commission if the draft management programme relates to land (including waters) vested in it, or the subject matter is otherwise relevant to its functions.

Clause 71(b) also identifies that the CEO may consult with any other person or body that may be materially affected by the programme.

Clause 72. Submission to Minister
This clause gives the CEO the discretion to submit a draft programme to the Minister (clause 72(1)), accompanied with any submissions made following consultation (clause 72(2)) undertaken in keeping with clause 71.

Clause 72(3) provides the Minister with the option of referring a draft biodiversity management programme back to the CEO for modification and its subsequent re-submission to the Minister for further consideration.

Clause 73. Approval of biodiversity management programme
Clause 73(1) gives the Minister a discretionary power to approve or not approve a draft programme subject to the requirements specified in clause 73(2).

Clause 73(2) requires that the Minister must not approve the management programme unless the Minister is satisfied that it is consistent with any recovery plan or interim recovery plan (see Part 6, clauses 81 to 113) that also relates to matters dealt with in the management programme, and has taken into account submissions made during the consultation referred to in clause 72(2).

Clause 74. Notice of biodiversity management programme
This clause specifies the notification requirements for biodiversity management programmes that have been approved by the Minister under Clause 83.

Clause 74(1) requires the CEO to publish advice of the programme approval in the Gazette.

Clause 74(2) requires that the publication of advice of management programme approval must include advice as to where copies of the management programme may be inspected or obtained. Management programmes will be available through the Department's website under Clause 76.

Clause 75. Operation of biodiversity management programme
This clause provides for the approved programme to take effect either on the day of the publication of the notice of Ministerial approval in the *Gazette*, or on a later day specified in that Gazette notice.

Clause 76. Publication of biodiversity management programme
Clause 76(1) requires the CEO to publish management programmes on the Department's website. The CEO also has the option of publishing programmes in any other way considered appropriate.

Clause 76(2) provides the CEO with the option of fixing and charging a fee for providing a copy biodiversity management programme.

Clause 77. Review of biodiversity management programme
Clause 77(1) enables the CEO to undertake a review of a biodiversity management programme at any time.

Clause 77(2) requires the CEO to review each biodiversity management programme at intervals of not longer than 5 years from the time they come into effect. This is to help ensure that management programmes remain reasonably current.

Clause 78. Amendment of biodiversity management programme
Clause 78(1) enables the CEO to prepare a draft amendment to an approved management programme.

Clause 78(2) requires that the draft amendment is to be prepared and provided to the Minister for approval and subsequent publication following all the consultation, approval and publication requirements for draft and approved management programmes details in clauses 71 to 76.

Clause 79. Revocation of biodiversity management programme
Clause 79 enables the Minister to revoke an approved programme in writing. If the approved programme relates to land vested in the Commission or is otherwise relevant to the functions of the Commission, the Minister must consult with that body prior to revoking the programme.

Clause 79(3) provides that the CEO must publish advice of the revocation in the *Gazette*.

Clause 79(4) provides for the revocation to take effect either on the day of the publication of the revocation in the *Gazette*, or on a later day if this is specified in the notice.

Clause 79(5) provides that if a replacement for an approved biodiversity management programme is approved and notification of its approval given as provided in clause 84 the replaced programme is automatically revoked on the date the new programme takes effect.

Clause 80. Public authority to have regard to biodiversity management programme
This clause requires public authorities that have functions and operations relevant to matters addressed in a biodiversity management programme have regard to a relevant management programme in performing those functions and operations. There is no penalty provision.

PART 6 — RECOVERY PLANS AND INTERIM RECOVERY PLANS

Part 6 provides for the preparation of, consultation on, approval and operation of recovery plans. Recovery plans guide management activities with the objective of improving the conservation status of threatened species or threatened ecological communities. This part also provides for the preparation of interim recovery plans by the CEO in situations where there is insufficient information available to complete a (full) recovery plan.

Division 1 — Preliminary

Part 6 Division 1 provides definitions for terms used in relation to recovery plans and also identifies the requirements for the content of recovery plans.

Clause 81. Terms used

Clause 81 provides self-explanatory definitions for the following terms used in Part 6 Division 1: ***adopted plan, approved plan, draft plan, minor amendment, proposed plan*** and ***technical amendment.***

Clause 82. Content of recovery plan

Clause 82 specifies that a recovery plan is a written document that covers the conservation, protection and management of threatened species, threatened ecological communities or a combination of these and provides detailed requirements for the matters to be addressed and included in the written plan.

Clause 82(1) specifies that a recovery plan provides for the conservation, protection and management of one or more threatened species, one or more threatened ecological communities or a combination of threatened species and threatened ecological communities.

Clause 82(2) specifies that a recovery plan must provide for the research and management actions necessary to recover the species or communities, or both, as are covered by the plan. The actions to be covered are those that will stop the current decline in conservation status of these species and communities, as relevant. While the long-term goal of recovery is to eventually remove the relevant species and communities from the lists of threatened species or threatened ecological communities under the Act, the recovery goal under a specific recovery plan may only deal with operations to achieve significant improvements in the conservation status of the species and communities identified. These improvements will assist in maximising the chances of the species and communities, as relevant, surviving in the wild

Clause 82(3) specifies the criteria that must be satisfied by a recovery plan in order to be approved by the Minister under the Act. Subclauses (a) through (c) are essentially self-explanatory, covering the objectives of the plan, the criteria against which the implementation of the plan can be measured, and the actions identified to achieve the stated objectives.

Clause 82(3)(d) provides that a recovery plan must identify any listed critical habitat or habitat eligible for the Minister to consider listing as critical habitat that is relevant to the plan and the actions needed to protect that habitat. This aspect will also help identify areas that may be suitable for biodiversity conservation agreements under Part 7 and other assistance/awareness raising initiatives.

Clause 82(3)(e) provides that a recovery plan must identify any population of a threatened species that is critical to the survival of the species and the measures to be taken to protect that population. In this case a population would be a subset of a species in the normal way and one that has particular qualities that make it critical to the survival of the species. It is possible that such a population may be identified by specific physical or genetic characteristics or geographic location or distribution.

Clause 82(3)(f) is self-explanatory in that any occurrence that is critical to the survival of a threatened ecological community must be identified in the recovery plan for that community, along with the actions needed to protect it.

Clause 82(3)(g) provides that a recovery plan must identify any threatening process (listed under clause 34) that is affecting or likely to affect the threatened species or threatened community that is the subject of the recovery plan and specify the actions to be taken against the operation of that process.

Clause 82(3)(h) provides that the document must state the estimated duration of the plan.

Clause 82(3)(i) provides that a recovery plan must identify the land that will be materially affected by the plan's implementation; and, the persons or bodies who will likely be involved in that implementation, or evaluating its effectiveness.

Division 2 — Approved plans

Part 6 Division 2 stipulates the requirements to be met before a recovery plan can be approved, the consultation and publication process, Ministerial approval and amendments process for a recovery plan.

Clause 83. Preparation of draft plan
Clause 83(1) provides that the CEO may prepare a draft recovery plan as a precursor to the possible Ministerial approval of a recovery plan under clause 89.

Clause 83(2) requires that the CEO must have regard to the resources available to prepare the plan and the estimated cost of implementing the plan before deciding to prepare a draft recovery plan.

Clause 84. Consultation on draft plan
Clause 84 identifies the consultation requirements for a draft recovery plan ahead of its being submitted to the Minister.

Clause 84(a) identifies that the Commission must be consulted by the CEO if the draft plan relates to lad or water vested in that body or is relevant to a the function of the body.

Clause 84(b) requires the CEO to consult with the relevant persons identified under clause 82(3)(i)(i).

Clause 84(c) also requires the CEO to consult any other person or body to be identified in the plan under 82(3)(i)(ii).

Clause 85 CEO to publicise draft plan
Clauses 85(1) and (2) specify the publication and notification requirements applicable to a draft recovery plan, being the *Gazette* and the Department's website, and for the plan to specify where copies may be inspected and the time period for submissions under clause 86.

Clause 85(3) provides the CEO with the option of fixing and charging a fee for the provision of a draft recovery plan.

Clause 86. Public submissions
Clause 86 provides a minimum 60 day period for public submissions to be made subsequent to publication of advice about the availability of a draft recovery plan for comment. The date for submissions commences on the date of the publication of advice on the draft under clause 85.

Clause 87. Referral of draft plan to certain persons or bodies
Clause 87(1) provides that the CEO may modify a draft plan as he thinks fit after considering submissions received under clause 86 and then requires the CEO to refer the modified draft plan to those persons or bodies consulted under clause 84

Clause 87(2) provides that the persons or bodies to whom the modified draft plan has been referred under clause 87(1), have 28 days to make written requests to further modify the updated draft plan.

Clause 88. Submission to Minister
Clause 88(1) gives the CEO the discretion to submit a draft recovery plan, modified as the CEO thinks fit as a result of the processes under clause 86 and clause 87, to the Minister, for his consideration as to possible approval under clause 89.

Clause 88(2) requires that the CEO must include copies of the submissions received under clause 86 and requests made under clause 87 with any submission he makes under clause 88(1).

Clause 88(3) provides the Minister with the option of referring a draft recovery plan back to the CEO for modification and its subsequent re-submission.

Clause 89. Approval of plan
This clause gives the Minister a discretionary power to approve or not approve a draft plan. The Minister must not approve the plan unless the Minister is satisfied that it meets the requirements of clauses 82(2) and (3) and has given regard to submissions made under clause 86 and requests made under clause 87 and the matters referred to in clause 97 (matters relevant to approval or adoption of a recovery plan).

Clause 90. Amendment of approved plan
Clause 90 details the processes for amendment of an approved recovery plan, with particular requirements applying to situations where the proposed amendment is a technical amendment or otherwise. The term technical amendment has been defined under clause 81.

Clause 90(1) provides that the CEO may prepare an amendment to an approved recovery plan.

Clause 90(2) provides that the requirements under clauses 84, 85, 86, 87, 88, 89, 98, 99 and 100 (dealing with consultation, publication, consideration, approval and publication) apply when amending a plan just as when preparing a new plan.

Clause 90(3) provides that, in the case where the proposed amendment is a technical amendment or a minor amendment, the requirements specified in clauses 84 to 87 for targeted and community consultation on the proposed amendments do not apply. This means that there is no requirement for the public and directed consultation provided for in the preparation of draft plans in situations where the proposed amendment is only minor or technical in nature.

Clause 91. Joint recovery plan

Clause 91(1) provides for the preparation of joint recovery plans with other states or territories or the Commonwealth (for external territories), where the species or community also occurs in these other jurisdictions.

Clause 91(2) provides that the process steps and requirements for consultation, publication, consideration and approval requirements under clauses 84 through 89 apply to the preparation of a joint recovery plan as if it were a draft recovery plan.

Clause 91(3) provides that the processes for amending (clause 90), publishing (clause 101) and reviewing (clause 102) recovery plans do not apply for joint recovery plans.

Clause 91(4) provides that joint recovery plans are required to specify the procedures to be followed for their amendment, review and revocation.

Clause 91(5) provides that nothing in this Division (Division 2) affects the power of the State to make joint recovery plans or wildlife conservation plans with the Commonwealth under the provisions of the EPBC Act.

Division 3 — Adopted plans

Part 6 Division 3:

Subdivision 3 provides for the adoption of recovery plans prepared in other jurisdictions for use in Western Australia as recovery plans made under the Act. It also provides for the amendment of an adopted plan originally made under another jurisdiction.

Clause 92. Adoption of plan

Clause 92(1) allows the Minister to adopt recovery plans prepared in another State, Territory or the Commonwealth, whether prepared by the jurisdiction or one of its agencies and whether or not the recovery plan is in force in that other jurisdiction. Adoption of such a plan for use under the Act is to be made by formal instrument of the Minister.

Clause 92(2) provides that the Minister adopt the plan with any modifications are specified in the instrument of adoption.

Clause 92(3) requires that, before adopting a plan, the Minister is satisfied that the requirements of Clauses 82(2) and 82(3) relating to content of a recovery plan, have been met. The Minister must also have had regard to any submissions under clause 94 or requests under clause 95(2) and to the matters referred to in clause 97 (matters relevant to approval or adoption of a recovery plan).

Clause 93. CEO to publicise proposed plan

Clauses 93(1) and (2) specify the publication and notification requirements applicable to a plan proposed to be adopted as a recovery plan.

Clause 93(3) provides the CEO with the option of fixing and charging a fee for the provision of a plan proposed to be adopted as a recovery plan.

Clause 94. Public submissions

Clause 94 provides a public submission process for plans that are proposed to be adopted that are in keeping with the process under clause 86 for draft recovery plans. This provides for a minimum 60 day

period for public submissions to be made subsequent to publication of a notice about the availability for comment of a plan proposed to be adopted as a recovery plan.

Clause 95. Referral of proposed plan to certain persons or bodies
This clause has similar requirements to those for recovery plans in terms of consultation and modifications proposed by persons or bodies consulted.

Clause 95(1) requires the CEO to refer a plan proposed to be adopted under clause 92(1) to the Commission, those persons or bodies identified in the plan and any other person or body the CEO considers likely to be materially affected by the plan, as well as any other person or body the CEO considers should be consulted.

Clause 95(2) provides that, where a person or body consulted under clause 95 considers that the plan should be modified they have 28 days from receipt of the plan to make a written request for the plan to be modified.

Clause 96. Amendment of adopted plan
This clause enables the Minister to amend an adopted plan. It provides different provisions, with a simple procedure applying to amendments that are only technical in nature (such as taxonomic name changes or new verified biological information) or minor amendments.

Clause 96(1) provides that the Minister may, by instrument, amend an adopted recovery plan.

Clause 96(2) provides that, where the amendment is a technical amendment, the review and approval processes required in clauses 92(3) (requirements of plan), 95 (referral), 98 (notice), 99 (Operation of plan) and 100 (Publication of plan) apply, with no consultation requirements. In reading these provisions the term 'adoption of a plan' is to be read as 'amendment of an adopted plan' and the term 'recovery plan' is to be read as 'an amendment'.

Clause 96(3) provides that, where the amendment is a technical amendment or minor amendment, the proposed amendment is not required to be subject to the consultation process included in clauses 93 to 95.

Division 4 — General provisions for recovery plans

Part 6 Division 4 contains general provisions applicable to recovery plans.

Clause 97. Matters relevant to approval or adoption of recovery plans
Clause 97 specifies the matters the Minister must consider when deciding whether to approve a recovery plan or adopt a recovery plan under this Part. The matters are largely self-explanatory.

Subclause (b) requires the Minister to consider the extent to which implementation of a proposed recovery plan would be consistent with the most efficient and effective use of the resources available for biodiversity conservation (i.e. are there more important operations that need to be undertaken ahead of the proposed recovery plan?).

Subclause (c) requires the Minister to consider whether implementing the proposed plan would have significant adverse social or economic impacts that would make approval or adoption of the proposed plan inconsistent with the principles of ecologically sustainable development.

Clause 98. Notice of recovery plan
Clause 98 specifies the publication and notification requirements for approved or adopted recovery plans.

Clause 98(1) requires that the Minister must publish a notice in the Government Gazette once he has approved or adopted a recovery plan.

Clause 98(2) requires that the Gazette notice must, in the case of an approved plan, specify whether the Minister required any amendments to be made to the draft plan under clause 88 before the plan was approved, and in all cases where the Minister has approved or adopted a recovery plan, where copies of the plan may be inspected and obtained. This will normally be on the Department's website and/or head office.

Clause 99. Operation of recovery plan
This clause provides for the approved or adopted plan to take effect either on the day of the publication of the relevant notice in the *Gazette*, or on a later day, where the later day is specified in the *Gazette* notice.

Clause 100. Publication of recovery plan
Clause 100(1) requires the CEO to publish each approved or adopted recovery plan on the Department's website and, in addition, in any other way the CEO considers appropriate.

Clause 100(2) provides the CEO with the option of fixing and charging a fee for providing a copy of an approved or adopted recovery plan.

Clause 101. Review of recovery plan
This clause enables the CEO to review a recovery plan at any time, while also requiring that every approved or adopted recovery plan must be reviewed by the CEO at intervals of not longer than 10 years from the date they come into effect.

Clause 102. Revocation of recovery plan
Clause 102(1) enables the Minister to revoke an approved or adopted recovery plan by instrument.

Clause 102(2) requires the Minister to consult with the Commission before revoking a recovery plan in situations where the plan relates to land (or waters) vested in the Commission or is otherwise relevant to the functions of the Commission.

Clause 102(3) requires advice of the revocation to be published in the Gazette.

Clause 102(4) provides that the revocation takes effect from the date of publication under clause 102(3), or, a later date where that date is specified in the published notice.

Clause 102(5) provides that, in situations where a new recovery plan replaces an existing (old) recovery plan, the old recovery plan is automatically revoked on the day when the new plan takes effect.

Clause 103. Public authority to have regard to recovery plan
This clause requires that public authorities that have functions that relate to matters addressed in an approved or adopted recovery plan are required to have regard to the recovery plan in performing those functions.

Division 5 — Interim recovery plans

Part 5:

Division 5 provides for the preparation of, consultation on, approval and operation of interim recovery plans. Interim recovery plans may be prepared to guide conservation of threatened species or threatened ecological communities when there is insufficient information available to prepare a full recovery plan.

Clause 104. Interim recovery plan
This clause specifies the intent and content of interim recovery plans, which may be made for one or more threatened species, ecological communities or a combination of species and communities. The intent and content of interim recovery plans are similar to those for recovery plans under clause 82. There is likely to be a strong research/discovery component in interim recovery plans targeting investigations into the conservation requirements of the species or communities covered by the plan.

Clause 105. Making an interim recovery plan
This clause gives the CEO the discretion to make, by instrument, a recovery plan if the CEO is satisfied that it is required to stop the decline in the wild or support the recovery of the species or ecological community, but there is insufficient scientific information available to allow the preparation of a full recovery plan.

Clause 106. Consultation on proposed plan
This clause requires the CEO to consult with the Commission (if the proposed interim plan relates to land or waters vested in the Commission), and also that the CEO may consult with any other person or body who may be or will be materially affected by the operation of the proposed interim plan.

Clause 107. Notice of interim recovery plan
This clause specifies that the CEO must publish a notice in the Gazette advising when an interim recovery plan has been made and where copies can be obtained.

Clause 108. Operation of interim recovery plan
This clause provides for the interim recovery plan to take effect either on the day of publication of the relevant notice in the *Gazette*, or on a later day if that is specified in the Gazette notice.

Clause 109. Publication of interim recovery plan
Clause 109(1) requires the CEO to publish an interim recovery plan on the Department's website.

Clause 109(2) provides the CEO with the option of fixing and charging a fee for the provision of a recovery plan.

Clause 110. Review of interim recovery plan
Clause 110(1) enables the CEO to review an interim recovery plan at any time.

Clause 110(2) requires the CEO to review each interim recovery plan at intervals of not longer than 5 years from the date they come into effect.

Clause 111. Amendment of interim recovery plan
This clause enables the CEO to amend an interim recovery plan subject to the proposed amended plan being considered through the same consultation, review and approval processes contained in clauses 106 to 109. Subclause (3) provides that the consultation under clause 106 need not be undertaken where the amendment is a minor amendment or technical amendment.

Clause 112. Revocation of interim recovery plan
This clause enables the CEO to revoke an interim recovery plan by instrument. Before revoking an interim recovery plan, if the plan relates to land vested in the Commission or is otherwise relevant to the functions of the Commission, the CEO must consult with the Commission. This clause provides for publication and notification of the revocation notice, and for the revocation to take effect either on the day of the publication of the relevant notice in the *Gazette*, or on a later day where this is specified in the Gazette notice. If a new interim recovery plan revokes an existing (old) plan, the old plan is revoked on the date the new plan takes effect.

Clause 113. Public authority to have regard to an interim recovery plan
Clause 113 requires a relevant public authority that has functions relevant to an interim recovery plan to have regard to the interim recovery plan when undertaking those functions

PART 7 — BIODIVERSITY CONSERVATION AGREEMENTS

Part 7 provides for biodiversity conservation agreements between the State and the owners or occupiers of land where such an agreement will, to the Minister's satisfaction, result in an overall benefit to biodiversity conservation in the State. Such agreements are binding on the parties and designed to provide both protection for the State's and landholder/occupiers investments and a conservation gain outcome.

Clause 114. Minister may enter into biodiversity conservation agreement
Clause 114(1) enables the Minister to enter into biodiversity conservation agreements with landowners or occupiers.

Clause 114(2) identifies that such agreements can be for one or more of the following purposes:

a. to facilitate ecologically sustainable use of biodiversity components;
b. to mitigate the effect of, or prevent activities that may have an adverse impact on biodiversity; or
c. to promote or enhance biodiversity conservation in the State.

Clause 114(3) sets the overall requirement that the Minister needs to be satisfied that a proposed biodiversity conservation agreement will result in an overall benefit to biodiversity conservation in the State before a biodiversity conservation agreement is made.

Clause 114(4) applies where a landowner wishes to make a biodiversity conservation agreement for that land with the Minister. In this case the Minister is required to have the consent in writing of each occupier who is not the owner, and each mortgagee of the land, before a proposed biodiversity conservation agreement can be made for the relevant land.

Clause 114(5) applies where an occupier of land wishes to make a biodiversity conservation agreement for that land with the Minister. In this case the Minister is required to have the consent in writing of each owner and each mortgagee of the land, before a proposed biodiversity conservation agreement can be made for the relevant land.

Clause 114(6) will require the concurrence of the Minister for the *Land Administration Act 1997* (Land Act) before a biodiversity conservation agreement may be made for Crown land, including pastoral leases.

Clause 115. Content of biodiversity conservation agreement

Clause 115(1) provides self-explanatory definitions for the terms ***agreement land*** and ***specified*** which only apply to clause 115.

Clause 115(2) provides that the Minister may make provision in a biodiversity conservation agreement for the Minister/Department to provide: (a) financial assistance; (b) goods or services; or (c) technical advice. It also provides that the Minister may, as part of the agreement: (d) carry out a specific activity or make arrangements for an activity to be carried out; (e) implement, or participate in the implementation of a management plan for the land; or, (f) do anything else required to achieve any of the purposes of the agreement set out in clause 114(2).

Clause 115(3) covers the matters that may be included in an agreement relating to the activity of a landowner or occupier within their powers under this and other legislation to do or not do, or allow or not allow activities on the land. This clause does not assign any new powers to landowners or occupiers in relation to their ability to control activities on the land.

An agreement may provide that an owner or occupier of the land will: (a) restricts their use of the land and its use by visitors to the land; (b) carry out a specific activity or do a specified thing on the land; (c) refrain from carrying out a specific activity or doing a specified thing on the land; (d) not permit another person to carry out a specific activity or do a specified thing on the land; (e) permit access by a specified person; (f) contribute to costs of managing the land for biodiversity conservation; (g) apply money given as financial assistance in a specified way; (h) repay money provided as financial assistance if the agreement is breached; (i) return goods provided under the agreement in specified circumstances or after breach of the agreement; (j) implement or participate in implementation of management plans; or (k) do anything else that is necessary or expedient for the purpose of the agreement.

Clause 116. Amendment or cancellation of biodiversity conservation agreement

Clause 116(1) provides a self-explanatory definition for the term ***other party to the agreement*** that only applies to clause 118.

Clause 116(2) enables the Minister to amend a biodiversity conservation agreement with the other party's consent in writing.

Clause 116(3) provides that, before amending an agreement that relates to Crown land, the Minister must obtain the concurrence of the Minister for the Land Act.

Clause 116(4) provides that the Minister may cancel a biodiversity conservation agreement, giving written notice to the other party, if the Minister considers the agreement is no longer needed to achieve a purpose for which it was entered into, or is no longer capable of being so used.

Clause 116(5) provides that the other party to a biodiversity conservation agreement is not entitled to compensation if the agreement has been cancelled under subclause (4).

Clause 116(6) prevents a biodiversity conservation agreement from excluding, modifying or restricting the operation of the provisions of clause 116.

Clause 117. Lodgment of notification with Registrar and withdrawal of notification
A definition of Registrar is provided under clause 5(1) to the effect that Registrar means either the Registrar of Titles under the *Transfer of Land Act 1893*, or the Registrar of Deeds and Transfers under the *Registration of Deeds Act 1865*, as the case requires.

Clause 117(1) provides that the CEO must lodge a notification with the Registrar in relation to a biodiversity conservation agreement for the relevant land made under clause 114.

Clause 117(2) provides that if the biodiversity conservation agreement is cancelled, the CEO must lodge an application to have the notification on title withdrawn.

Clause 117(3) provides that the notification provided to the Registrar under the above clauses must be in a form approved by the Registrar and accompanied by the appropriate fee.

Clause 117(4) provides that the Registrar must make any endorsement or notation the Registrar considers necessary in the appropriate register or record of the land to which the notification relates

Clause 118. Biodiversity conservation agreement binding on owners and occupiers
Clause 118 provides for biodiversity conservation agreements to bind successive owners or occupiers of the land, if the relevant notification lodged under clause 117(1) remains on a register or record in respect of the relevant land.

Clause 119. Duty to notify CEO of change in ownership or occupation
Clause 119 establishes a duty for each owner of land subject to a notified biodiversity conservation agreement to notify the CEO in writing when they have ceased to be the owner or occupier of the land, including when another person ceases to be an occupier of that land. The owner must also include in the written notice, the name and address, if known, of the next owner or occupier of the land. Failure to carry out this duty will be an offence subject to a maximum penalty of $20,000. This will facilitate the Department working with the new owner/occupier as the case may be for continuation of the agreement .

Clause 120. Action in respect of money, goods or services provided under agreement
Clause 120(1) provides that, where the CEO is satisfied that goods provided to a landowner or occupier under a biodiversity conservation agreement are being used for purposes contrary to that specified in the agreement or have not been used, a Wildlife Officer may enter the land where the goods are located and take possession of the goods and remove them on behalf of the CEO.

Clause 120(2) provides that a wildlife officer must not enter the land to undertake the recovery of goods pursuant to clause 120(1) unless an owner or occupier has given their consent to enter the land, or has been given reasonable notice of the intent to enter and has not objected, or the entry is in accordance with an entry warrant.

Clause 120(3) provides that the warrant provisions of Part 12 Division 3 apply in relation to the issue and use of entry warrants under the above provision.

Clause 120(4) provides that the provisions under Part 12 Division 3 relating to entry warrants for wildlife officers covering entry to a place or vehicle for “inspection purposes” apply in relation to entry to recover goods provided under a biodiversity conservation agreement as identified under subclause (1).

Clause 120(5) provides that the CEO may seek to recover payments made to a landowner or occupier as financial assistance under a biodiversity conservation agreement if the CEO is satisfied that the payments have been used for purposes not covered under the agreement.

Clause 120(6) provides for the CEO to seek to recover from a landowner or occupier the equivalent monetary value of goods or services provided under a biodiversity conservation agreement when satisfied that they have been used for purposes other than the purposes of the agreement.

Clause 120(7) provides that the CEO may seek to recover the debt identified in subclauses (5) and (6), above in court.

PART 8 — BIODIVERSITY CONSERVATION COVENANTS

Part 8 provides for biodiversity conservation covenants.

Clause 121. Terms used
Clause 121 provides self-explanatory definitions for the terms *covenant land* and, *covenantor* that only apply under Part 8 – Biodiversity Conservation Covenants. It also provides a self-explanatory definition of *'register'* for this Part where *'register'* relates to the means of identifying the covenant on the land title relevant to that land.

Clause 122. Biodiversity conservation covenant
Clause 122(1) enables the CEO to enter into a biodiversity conservation covenant with an owner of land (the covenantor) for one or more of the specified purposes. A biodiversity conservation covenant may be for the purpose(s) of:

- conservation, protection or management of, biodiversity or its components, for a specially protected or threatened species, or a threatened ecological community, that occurs on the land; or
- scientific, or public education, purposes consistent with the above.

Clause 122(2) enables covenants to be operable for a specified period of time or be permanent.

Clause 122(3) provides for covenants to be either restrictive or positive in nature. A covenant may therefore restrict the use of the land or the works that may be carried out on the land, or require specified action be undertaken, including in a specified manner.

Clause 122(4) provides for a covenant to specify that different provisions to apply to different parts of the covenant land.

Clause 122(5) requires a covenant to be in a form approved by the Registrar.

Clause 123. Consents required
Clause 123 stipulates that a valid covenant requires the consent of each person who has a registered interest in the land.

Clause 124. Persons bound by biodiversity conservation covenant
Clause 124 specifies those persons who are bound by a biodiversity conservation covenant. This includes: the covenantor; the occupier of the land; and, successive owners and occupiers of the land (subject to clause 129).

Clause 125. Modification of biodiversity conservation covenant
Clause 125 enables the amendment of a biodiversity conservation covenant by agreement in writing of all each person bound by the covenant.

Clause 126. Cancellation of biodiversity conservation covenant
Clause 126(1) provides a self-explanatory definition for ***permanent covenant***.

Clause 126(2) provides that where a covenant is not permanent, it may be cancelled either by the agreement in writing of all parties bound by the covenant, or by written notice from the CEO to each party bound by the covenant.

Clause 126(3) provides that a permanent covenant may be cancelled by the agreement in writing of all parties bound by the covenant.

Clause 127. Lodgment of biodiversity conservation covenant with Registrar
Clause 127 provides that a covenant must be lodged with the Registrar in the required form and the Registrar must register the covenant on the land title. Subclause (4) provides that a copy of the registered covenant must be provided to the Commissioner of State Revenue as covenants related to nature conservation can provide a land tax exemption.

Clause 128. Instruments relating to modification or cancellation with Registrar
Clause 128 provides that where a covenant is modified, the CEO must advise the Registrar to modify the title record of the covenant. Where a covenant is cancelled, the CEO must advise the Registrar to discharge the covenant. If a covenant is modified or discharged the CEO must provide a copy of the relevant advice to the Commissioner of State Revenue.

Clause 129. Biodiversity conservation covenant binding on successive owners
Clause 129 provides for biodiversity conservation covenants (as amended) to bind successive owners of the land, where the notification remains registered.

Clause 130. Contravention of biodiversity conservation covenant
Clause 130 establishes that it is an offence for a person bound by a biodiversity conservation covenant to contravene the covenant. The maximum penalty for a conviction against this offence is a fine of $50,000.

Clause 131. Duty to notify CEO of change in ownership or occupation
Clause 131 establishes that it is an offence for the owner of land subject to a registered covenant to fail to give written notice to the CEO that they (or another person) have ceased to be the owner or occupier of the land. The owner or occupier must include in the written notice, the name and address, if known, of the next owner or occupier of the land. The written notice must be provided within 60 days. The maximum penalty for a conviction against this offence is a fine of $20,000.

PART 9 — CONTROL OF ENVIRONMENTAL PESTS

Part 9 provides means for targeted control of environmental pests that pose significant risks to biodiversity in situations where these pests are not adequately controlled under other State legislation. It enables the Minister to declare by order that species are an environmental pest provided that the Minister has the concurrence of the Ministers for the BAM Act, and the FRM Act, (as appropriate) prior to making such an order. It also sets out the matters that the Minister is to consider before making such an order as well as setting out duties in relation to controlling environmental pests on CALM Act managed land.

Clause 132. Declaration of environmental pest
Clause 132(1) provides the Minister a discretionary power to declare by order that a species is an environmental pest if there are reasonable grounds for believing that the species has or may have an adverse effect on the biodiversity of that area, or measures to control the species are required for biodiversity conservation.

Clause 132(2) provides that the area to which an environmental pest order will apply may be a part of, or the whole of, the State.

Clause 132(3) requires the Minister to obtain the concurrence of the relevant Minister(s) before making an order. The relevant Ministers include the Minister responsible for the *Biosecurity and Agriculture Management Act 2007* and, in the case of fish, the Minister responsible for the *Fish Resources Management Act 1994*. It also provides for consultation with the Ministers responsible for the other identified legislation.

Clause 132(4) makes the Minister's order subject to clause 258, as it is subsidiary legislation for the purposes of the *Interpretation Act 1984*. The order under subclause (1) is also subject to clause 259 and so is to be disallowable as if it were a regulation.

Clause 133. Matters to be considered by Minister
Clause 133 sets out a number of requirements that must be met before the Minister can make an environmental pest order.

Clause 133(1) requires that the Minister, before determining to declare a species to be an environmental pest, must give primary consideration to its impacts to biodiversity conservation, but also must consider whether resources are available for the control of the species and whether it is practical to control the species in the area proposed for the declaration.

Clause 133(2) requires that the Minister must not declare a species to be an environmental pest unless satisfied that other biodiversity conservation measures are or would be inadequate to control the species. The term *biodiversity conservation measures* is defined in clause 5(1) and includes, among other matters, biodiversity conservation agreements, covenants, measures under other legislation including environmental protection policies under the EP Act 1986..

Clause 133(3) provides that, if the species under consideration to be declared an environmental pest is already a declared pest under the BAM Act for an area, the Minister must be satisfied that additional measures as available under the proposed Act are necessary to control the species.

Clause 134. Environmental pest on CALM Act land

Clause 134(1) requires the CEO to eradicate an environmental pest on CALM Act land if it is practicable to do so, or otherwise take measures to control it. [*CALM Act land* is defined in clause 5(1).]

Clause 134(2) establishes that the CEO's obligation to eradicate or otherwise control environmental pests does not apply to the extent that it would be contrary to or inconsistent with a CALM Act section 8A agreement to manage the relevant land.

Clause 135 Environmental pest notice

Clause 135(1) establishes that this provision does not apply to CALM Act land, because the CEO being responsible for the management of CALM Act land.

Clause 135(2) enables the CEO to give an environmental pest notice to a landowner or occupier of land in an area subject to an environmental pest declaration, requiring the owner or occupier to control the environmental pest by taking measures on that land as specified in the notice.

Clause 135(3) specifies the self-explanatory requirements for format and content of an environmental pest notice, including the requirement that failure to comply with the notice could result in a fine, the CEO taking remedial action or both.

Clause 136. Matters relevant to giving of environmental pest notice

Clause 136(1) establishes that the terms, ***agricultural activity***, ***Director General*** and ***pest control notice*** take their meanings from the terms used in the BAM Act section 6:

Clause 136(2) requires the CEO to consider the adequacy of other biodiversity conservation measures applicable to the control of an environmental pest before giving an environmental pest notice and, where the land is land used solely or principally for agricultural activity, the CEO must comply with the requirements of clause 137(1). The term *biodiversity conservation measures* is defined in clause 5(1).

Clause 136(3) addresses the circumstances where a species has been declared an environmental pest and is also a BAM Act declared pest the subject of a BAM Act pest control notice. Under these circumstances the CEO is not to give an environmental pest notice unless the Director General of the Department of Agriculture and Food has been consulted.

Clause 137. Consultation on proposed measures: land used solely or principally for agricultural activity

Clause 137(1) provides the requirements for information the CEO must give the person responsible for land used solely or principally for agricultural activity regarding a proposed environmental pest notice, and also that the CEO must give the person a reasonable opportunity to make a submission regarding the proposed measures to be included in the proposed notice.

Clause 137(2) provides that it is sufficient to meet the requirements of subclause (1) to advertise the proposed notice measures as prescribed and providing a period for comment by submission.

Clause 138. Persons bound by environmental pest notice

Clause 138 stipulates that a person who is given an environmental pest notice, is bound by the notice.

Clause 139. Amendment or cancellation of environmental pest notice

Clause 139 is self-explanatory and provides that the CEO may amend or cancel an environmental pest notice by given written notice to each person bound by the notice.

Clause 140. Contravention of environmental pest notice

Clause 140(1) establishes that it is an offence for a person bound by an environmental pest notice to contravene the notice. The maximum penalty prescribed for a conviction against this offence is a fine of $50,000.

Clause 140(2) provides a defence to a charge against an owner or occupier of land under the proposed subsection (1) offence (contravening an environmental pest notice) if the other person has complied with the notice.

Clause 140(3) provides two defences to a charge under the proposed subsection(1) offence (contravening an environmental pest notice). In subclause (a) the defence is that the direction in the notice was somehow unnecessary or inappropriate, meaning that the notice essentially gave a direction that could not be followed. In subclause (b) the defence is that the person changed has undertaken alternative measures, or some of the measures included in the notice and the outcome has been control of the pest as sought in the notice.

Clause 141. Duty of owner to notify CEO of change in ownership or occupation

Clause 141 is self- explanatory and provides a requirement for an owner or occupier that has been given an environmental pest notice to notify the CEO if there is a change in occupation or ownership of the land. This is so that the CEO may re-issue an environmental pest notice to the new owner or occupier, if the environmental pest issue remains unresolved. A penalty for non-compliance of $20,000 is provided.

Clause 142 Review by CEO

Clause 142(1) provides that a person bound by and environmental pest notice may make a written request to the CEO to review the notice.

Clause 142(2) provides that the CEO may suspend the notice whilst considering any request made under subclause (1).

Clause 142(3) provides that the CEO may, once in receipt of a request to review the notice under subclause (1), refuse to review the notice, or review the notice and amend, suspend, cancel or confirm it.

Clause 142(4) provides that the reviewed notice takes effect once the review is complete.

Clause 142(5) provides that the CEO must give written advice to the person who requested a review under subclause (1) of the decision on the review and the reasons for the decision.

Clause 142(6) provides that a person bound by an environmental pest notice retains the ability under clause 143 to seek a review of the matters specified in clause 143 by the State Administrative Tribunal, but only after the CEO has made a decision on the request made under subclause (1).

Clause 143. Review by State Administrative Tribunal

Clauses 143(1) provides that a person bound by an environmental pest notice may, after the CEO has made a decision on a request for review made under clause 142(3), apply to the State Administrative Tribunal for a review of the decision by the CEO to give the notice, or the CEO's decision in relation to the review under clause 142(3), subject to the regulations referred to in clause 143(2).

Clause 143(2) provides that the regulations may prescribe circumstances involving a matter of emergency or urgent need where the ability of a person bound by the notice does not have an option to apply to the State Administrative Tribunal under subclause (1).

Clause 144. Compliance statements

Clause 144 sets out the requirements for the CEO to prepare compliance statements relating to any contraventions by public authorities of an environmental pest notice. This provides a means of providing a report to the community of any situations where a public authority has failed to comply and is an alternative to prosecution which is available in other situations not involving a public authority.

Clause 144(1) provides that a compliance statement means a statement setting out any contraventions by a public authority of an environmental pest notice issues for the relevant period along with any measures that have been taken to remedy the contravention.

Clause 144(2) provides that there are two periods for compliance statements each year: 1 January to 30 June and also 1 July to 31 December.

Clause 144(3) provides that the CEO must consult with each authority that is to be referred to in the compliance statement before completing the statement.

Clause 144(4) provides that each compliance statement must be published in the annual report of the Department.

Clause 144(5) provides that the Minister must be given the compliance statement within 3 months of the end of the relevant period (i.e. by 30 September in the same calendar year for the January to June Statement and by 31 March of the following year for the July to December statement).

Clause 144(6) provides that each compliance statement must be tabled in each House of Parliament as soon as practicable after the Minister has received it.

PART 10 — FAUNA AND FLORA

Part 10 provides for the protection of fauna generally throughout the State, e.g. from unlawful taking. It also provides for the protection of flora on Crown land and covers dealings in flora and fauna as necessary for biodiversity conservation.

Division 1 — Protection of fauna

Part 10:
Division 1 provides for the protection of fauna (native animals).

Subdivision 1 — Property in fauna

Part 10 Division 1:
Subdivision 1 addresses the property in fauna, which is generally the property of the State until lawfully taken.

Clause 145 Term used: fauna
Clause 145 provides that *fauna* for this subdivision does not include fish or pearl oyster as defined in clause 5.

Clause 146 Property in fauna
Clause 146(1) establishes that the property in wild fauna is vested in the State. A generally similar provision is provided in the Wildlife Act section 22(1), with the exception that the exclusion of fish and pearl oyster is not in place under the Wildlife Act and has historically been dealt with administratively.

Clause 146(2) establishes that this property vesting ceases when the fauna has been lawfully taken. It is derived from the Wildlife Act section 22(1).

Clause 146(3) and (4) provide that the progeny from fauna not lawfully taken is property of the State.

Clause 147. Property remains vested in the State in certain cases
Clause 147 sets out the circumstances where property vesting in fauna remains with the State.

Clause 147(1) identifies that this clause applies to the classes of fauna specified in subclauses (a) and (b).

Clause 147(1)(a) identifies that fauna captured under a licence or other authorisation that authorises the capture of live fauna is subject to this clause.

Clause 147(1)(b) identifies that injured or abandoned fauna that has been captured, rescued, received or temporarily cared for under clause 161, or the regulations referred to in that clause, is subject to this clause.

Clause 147(2) provides that, despite clause 146, fauna covered by clause 147 remains the property of the State.

Clauses 147(3) and (4) provide that the Minister may, by order, declare that property in fauna of a certain class specified in the order, that is otherwise subject to clause 147, ceases to be vested in the State at a time specified in the order.

Clause 148. No compensation

Clause 148 stipulates that the provisions vesting the property in fauna in the State do not entitle any person to compensation. This provision will maintain the *status quo* as it is equivalent to section 22(2) of the Wildlife Act, which has been in effect since 1 July 1952.

Subdivision 2 — Protection provisions

Part 10 Division 1: Subdivision 2 provides for the protection of fauna from unlawful actions, and related matters.

Clause 149. Taking fauna other than threatened fauna or managed fauna

Clause 149(1) establishes that it is an offence to take fauna without a lawful authority to do so. Clause 5 defines *take* in relation to fauna.

The maximum penalties prescribed for taking fauna (that is not threatened fauna or managed fauna) without lawful authority are fines of:

a. $500,000, if the offence involves a cetacean (*cetacean* is defined in clause 5(1);
b. $200,000, if the offence involves listed specially protected fauna that is not a cetacean;
c. $50,000 in any other case.

Clause 149(2) establishes that this offence does not apply to listed threatened fauna or managed fauna. The relevant offence in relation to threatened fauna is in clause 150. Managed fauna are covered under clause 163 and the regulations.

Clause 149(3) provides that subclause (1) does not apply if the fauna is taken by the identified persons, including a CALM Act officer or an inspector under the *Animal Welfare Act 2002*.

Clause 150. Taking threatened fauna

Clause 150(1) establishes that it is an offence to take listed threatened fauna without, or not in compliance with, an authorisation given under clause 40.

The maximum penalties prescribed for taking listed threatened fauna without authorisation or under a conferred right are fines:

a. $500,000, if the offence involves a cetacean (*cetacean* is defined in clause 5(1);
b. $500,000, if the offence involves listed critically endangered fauna that is not a cetacean;
c. $400,000, if the offence involves listed endangered fauna that is not a cetacean;
d. $300,000, if the offence involves listed vulnerable fauna that is not a cetacean.

Clause 150(2) provides that subclause (1) does not apply if the fauna is taken by the identified persons, including a CALM Act officer or an inspector under the *Animal Welfare Act 2002*.

Clause 151. Defences to charges under sections 149 and 150

Clause 151 provides defences which may apply to a charge that fauna has been taken without lawful authority, depending on the level of protection that the relevant fauna has, i.e. ordinary protection, or special protection, or protection as a threatened species.

Clause 151(1) provides a defence to a charge of unlawful taking of ordinarily protected fauna where a person can prove that the taking occurred in the course of a lawful activity the sole or dominant purpose of which was not to take fauna; and, could not reasonably have been avoided.

Clause 151(2) provides a defence to a charge of unlawful taking of specially protected fauna or threatened fauna (subject to subclause (3)) where a person can prove that the taking occurred in the course of a lawful activity the sole or dominant purpose of which was not to take fauna; and, could not reasonably have been avoided, and the person charged did not know, and could not reasonably have known, that the specially protected fauna or threatened fauna concerned was present.

Clause 151(3) describes the circumstances where the defence to unlawfully taking threatened fauna in subclause (2) will not be available. This will be where the taking has resulted in the threatened fauna becoming eligible for listing as an extinct species.

Clause 152. Possessing fauna

Clause 152(1) establishes that it is an offence for a person to be in the possession of fauna unless they have lawful authority to possess it. This offence provision is derived from the Wildlife Act section 16A. The maximum penalties prescribed for a conviction against this offence are the fines:

(a) if the offence involves a cetacean — a fine of $500,000;
(b) if the offence involves a critically endangered species that is not a cetacean — a fine of $500,000;
(c) if the offence involves an endangered species that is not a cetacean — a fine of $400,000;
(d) if the offence involves a vulnerable species that is not a cetacean — a fine of $300,000;
(e) if the offence involves specially protected fauna that is not a cetacean — a fine of $200,000;
(f) in any other case (ordinarily protected fauna) — a fine of $50,000.

Clause 152(2) establishes that the possession offence does not apply to managed fauna (clause 163).

Clause 152(3) provides defences against a charge of unlawfully possessing fauna in the specified circumstances. Paragraph (a) provides that a defence under clause 151(1) or (2) can be used as a defence against subclause (1). Paragraph (b) provides a defence where a person charged under clause 152(1) had possession of the fauna for no longer than the period reasonably required to release it or deliver it to a person who had lawful authority to possess it.

Clause 152(4) provides a defence against a charge of unlawful possession of a carcass (defined in clause 5) in circumstances where the animal was taken in the circumstances identified in subclauses (1) or (2) or in circumstances beyond the control of the person charged and;

- the condition or location of the carcass was likely to endanger public health or safety; and,
- the person had possession of the fauna carcass for no longer than was reasonably required to move it or dispose of it.

Clause 152(5) provides that an inspector under the *Animal Welfare Act 2002*, or a person assisting an inspector has lawful authority to possess fauna seized under that Act in order to comply with section 45 of that Act (dealing with seizing fauna related to a possible offence under that Act). The relevant person may possess fauna in such circumstances for a reasonable period to comply with the Animal Welfare Act provision.

Clause 153. Disturbing fauna

Clause 153(1) establishes that it is an offence for a person to disturb (defined in clause 5(1)) fauna unless they have lawful authority to disturb it. The maximum penalties prescribed for a conviction against this offence are the fines set out in subclauses (a) through (f). These penalties range from $50,000 to $500,000 depending on the classification of the species involved in the offence. This offence provision is derived from the Wildlife Act section 16(1), where disturb is an element of the definition of to take, in relation to fauna.

Clause 153(2) provides that subclause (1) does not apply to managed fauna which is dealt with under clause 163.

Clause 153(3) provides a defence to a charge under subclause (1) for situations where the fauna is not threatened or specially protected. The defence arises where the charged person can prove that the disturbance occurred in the course of a lawful activity the sole or dominant purpose of which was not to disturb fauna and could not reasonably have been avoided.

Clause 153(4) provides a defence to a charge under subclause (1) for situations where the fauna is threatened or specially protected. The defence is the same as in subclause (3), with the additional

requirement that the person charged did not know, and could not reasonably have known, that the species was present.

Clause 154. Offender liable to punishment for certain offences despite *The Criminal Code* section 11

Clause 154 provides that a person may still be punished for an offence against sections 149(1) taking fauna, clause 152(1) possessing fauna, or clause 153(1) disturbing fauna, if, after the offence was committed, the fauna concerned became managed fauna (allowing taking without a licence or other authority).

Clause 155. Feeding fauna

Clause 155 provides that a person must not feed wild fauna unless the person has lawful authority to do so. Lawful authority includes those matters identified in clause 7 and will include feeding authorised under regulations or licences. Requirements for authorisation of feeding have been included to provide a means to avoid creating situations where people feed fauna in an unauthorised way and so risk causing that fauna sickness, creating a dependency for that fauna on unnatural feeding, or changing the behaviour of that fauna towards people. Unnatural feeding is recognised worldwide as risking the death of that fauna, as well as providing an increased risk of injury to, or nuisance for, people. The maximum penalty is $20,000.

Clause 156. Use of prohibited device or prohibited method when taking or disturbing fauna

Clause 156 provides offences for persons who use prohibited devices or methods to take or disturb fauna, allow the use of prohibited devices or methods, or allow prohibited devices to be on their land. Prohibited devices and prohibited methods may be prescribed in regulations.

Clause 156(1) provides that it is an offence to use a prohibited device or method to take or disturb fauna, with a penalty of $50,000.

Clause 156(2) provides that it is an offence for an occupier of land to allow a prohibited method to be used in the taking or disturbance of fauna on the land they are occupying, with a penalty of $50,000.

Clause 156(3) provides that it is an offence for an occupier of land to allow a prohibited device to be on the land in situations where the occupier knows or ought reasonably know that it is to be used to take or disturb fauna. The penalty is $50,000.

Clause 157. Dealing in fauna

Clause 157(1) establishes that dealing in fauna without a license is an offence. The maximum penalties prescribed for a conviction against this offence are the fines set out in subclauses (a) through (f). These penalties range from $500,000 for a cetacean or critically endangered species down to $50,000 for a species that is not listed as a specially protected species, threatened species or cetacean species; with the penalty in keeping with the listing status of the species involved in the offence.

Clause 158(2) describes what constitutes dealing in fauna, being a business that involves the purchase or supply of fauna. The term *purchase* takes its ordinary meaning, and the term *supply* is defined in clause 5(1).

Clause 158. Processing fauna

Clause 158(1) provides that this section applies to fauna excluding fish and pearl oysters. The terms fauna, fish, and pearl oyster are defined in clause 5(1).

Clause 158(2) establishes that it is an offence to process fauna for a commercial purpose without a licence. The maximum penalties prescribed for a conviction for unlicensed commercial processing of fauna are the fines set out in subclauses (a) through (f), ranging from $500,000 for a cetacean or critically endangered species down to $50,000 for a species that is not listed as a specially protected species, threatened species or cetacean species. These penalties are the same as those applying under clause 157(1) and are in keeping with the listing status of the species involved in the offence.

Clause 158(3) provides that it is an offence to operate a fauna processing establishment without a licence, with a penalty of $50,000.

Clause 159. Importing fauna
Clause 159 establishes that importing fauna without lawful authority, including authority provided under the regulations, is an offence. The maximum penalties prescribed for a conviction against this offence are the fines set out in subclauses (a) through (f), being the same as those under clauses 157(1) and 158(2), and related to the listing status of the species involved.

Clause 160. Exporting fauna
Clause 160 establishes that exporting fauna without lawful authority, including authority provided under the regulations, is an offence. The maximum penalties prescribed for a conviction against this offence are the fines set out in subclauses (a) through (f), being the same as those under clauses 157(1), 158(2) and 159, and related to the listing status of the species involved.

Clause 161. Injured or abandoned fauna
Clause 161 provides for the temporary care and treatment of injured or abandoned fauna until such time as it can be released or transferred to another person for further care.

Clause 161(1) provides a self-explanatory definition of temporarily care in relation to (a) injured, and (b) abandoned, fauna.

Clause 161(2) provides that the requirements of clauses 149(1) taking fauna, 152(1) possessing fauna and 153(1) disturbing fauna, do not prohibit a person from capturing, temporarily caring for, or transporting for further care, injured or abandoned fauna.

Clause 161(3) provides that regulations may set out specific provisions relating to the operation of subclause (2), including; the species that may be excluded, a requirement for a licence in order to temporarily care for fauna, requirements to notify the CEO when caring for fauna, wildlife officer powers in relation to injured or abandoned fauna being held by persons, the release of such fauna or any other matter relating to the keeping or possession of injured or abandoned fauna.

Clause 162. Releasing fauna
Clause 162(1) provides that a person must not release any fauna anywhere in the State without lawful authority to do so. It provides a penalty of $20,000.

Clause 162(2) provides defences for a charge against subclause (1) in circumstances where the fauna had been taken in the course of a lawful activity the sole or dominant purpose of which was not to take fauna and a defence under clause 151(1) or 151(2) may be justified, and where it would be reasonably expected that the released fauna would survive.

Clause 163. Managed fauna
Clause 163 provides that the regulations may prescribe fauna to be managed fauna for the purposes of the Act, meaning that they may be taken, possessed or disturbed in described circumstances without a requirement for a licence. This is intended to replace provisions in the Wildlife Act relating to the management of fauna, including under archaic provisions such as open seasons.

Clause 163(1) provides that the regulations may prescribe that fauna is to be managed fauna in relation to one or more of the clauses:149(1) taking fauna, 152(1) possessing fauna and 153(1) disturbing fauna.

Clause 163(2)(a) provides that the regulations may prescribe that specified fauna is managed fauna across the entire State or a specified part of the State.

Clause 163(2)(b) provides that that the regulations may regulate by prohibiting, or imposing requirements or conditions on, the taking, disturbance, possession or disposal of managed fauna.

Clause 163(2)(c) provides that that the regulations may confer powers on wildlife officers to, in prescribed circumstances, give directions to people prohibiting the taking, disturbance, possession or disposal of managed fauna.

Clause 163(3) provides that the regulations may also regulate the conduct of people in the vicinity of the managed fauna, including the distance people must keep away from the managed fauna (including for safety of the fauna and people).

Clause 163(4) provides that no regulations are to be made under these provisions to allow the taking or disturbance of native species of duck, goose or quail for the purposes of sport or recreation. This is carried forward from section 15A of the *Wildlife Conservation Act 1950*.

Clause 163(5) provides that ***purposes of sport or recreation*** in subclause (4) includes either or both of these purposes, including whether or not the taking is for food.

Clause 163(6) provides that clause 163 does not restrict the more general regulation making powers included in clauses 255(2) and 255(4).

Clause 164. Regulations: stranded or distressed fauna
Clause 164 provides for special management controls to be made in regulations in relation to stranded or distressed fauna, including stranded whales and other species.

Clause 164(1) provides self-explanatory definitions of specific terms used in clause 164, being; ***closed area*** and ***responsible authority***.

Clause 164(2) provides that the regulations may regulate, control or prohibit the carrying out of any activity in relation to fauna that is, or appears to be, stranded or distressed, including by closing access to land (as closed areas) where the fauna is, or is likely to be located, or otherwise provide for the protection of such fauna.

Clause 164(3) provides that, (a), in relation to closing areas of land that is private land, the regulations may require the consent of an owner or occupier before that land is closed and; (b) in relation to land that is controlled, managed or cared for by a public authority, the regulations must provide for notification of relevant land closure to be given to the responsible authority as soon as is practicable after closure.

Clause 164(4) also deals with land closures and provides that the regulations may confer power on the CEO to close land, to provide for identification of such areas by signs, barriers and other devices as prescribed, to confer power to CALM Act officers to direct persons to leave or not enter a closed area, and to prohibit persons from a closed area except with the permission of a CALM Act officer.

Clause 164(5) provides that clause 164 does not restrict the more general regulation making powers included in clauses 255(2) and 255(4).

Clause 165. Humane destruction of fauna
Clause 165 enables wildlife officers, forest officers, conservation and land management officers and rangers to humanely destroy fauna in situations where they reasonably believes that any fauna is suffering so severely that destroying it would be a humane thing to do.

Division 2 — Protection of flora

Part 10:
Division 2 provides for the protection of flora (native plants) across the State.

Subdivision 1 — Property in flora

Part 10 Division 2:
Subdivision 1 addresses the property in flora (native plants).

Clause 166. Term used: flora
Clause 166 identifies that the term *flora* in this subdivision does not include fish (defined in clause 5 to be fish under the FRM Act).

Clause 167. Property in flora
Clause 167 allocates the property in flora situated on Crown land. The property in flora growing on private land rests with the landowner. This carries forward the situation under the Wildlife Act.

Clause 167(1) identifies that the property in flora on Crown land is vested in the State.

Clause 167(2) provides that the property vesting in clause 167(1) does not apply to cultivated flora, which has been defined under clause 5 to be *"flora that has been intentionally sown, planted or propagated"* with some identified exceptions, including any exceptions that are prescribed.

Clause 167(3) provides that the property vesting of flora on Crown land ceases to be with the State when the flora has been lawfully taken.

Clause 168. Property remains vested in the State in certain cases

Clause 168(1) provides an exception to clause 167(3) in cases where re-establishment of the flora on Crown land has been made a condition of a licence or an authorisation under clause 40. Such re-established flora is the property of the Crown.

Clause 168(2) provides an exception to clause 167(3) in cases where the flora has been taken under a contract pursuant to Part 8 of the *Forest Products Act 2000*. In these cases the flora remains the property of the Crown until it has been sold and the proceeds of the sale have been received by the Forest Products Commission.

Clause 168(3) provides that, despite clause 168(1), the Minister may declare by order that flora covered by this provision ceases to be the property of the State.

Clause 168(4) further provides that any order made under clause 168(3) must specify the time when the property in such flora ceases to be vested in the State.

Clause 168(5) further provides that clause 258 applies to an order made under clause 268(3), meaning that the order is subsidiary legislation. Such an order is identified under clause 259 as being subject to disallowance by Parliament.

Clause 169. Flora propagated from taken flora

Clause 169 provides that flora propagated from flora that is the property of the State under clause 168, or that was taken from Crown land without lawful authority, is the property of the State.

Clause 170. No compensation

Clause 170 stipulates that the provisions vesting the property in flora on Crown land in the State do not entitle any person to compensation. This provision will maintain the *status quo* as it is equivalent to section 23A(2) of the Wildlife Act.

Subdivision 2 — Protection provisions

Part 10 Division 2: Subdivision 2 provides for the protection of flora from unlawful actions, and related matters.

Clause 171. Taking flora

Clause 171 provides for control on the taking of flora other than threatened flora or cultivated flora on Crown and private land.

Clause 171(1) provides that only persons who have lawful authority to take flora on Crown land (see clause 7), or who are engaged in clearing that does not involve an offence under the *Environmental Protection Act 1986* section 51C may take flora from Crown land. Penalties for taking flora outside of these requirements are; $200,000 for specially protected listed flora or $50,000 for other flora. The taking of sandalwood is covered by clause 172 and threatened flora is covered by clause 173.

Clause 171(2) provides that a person must not take flora (other than threatened flora or cultivated flora) on private land unless the person is the owner or occupier or is authorised, in a manner prescribed in the regulations, by the owner or occupier to do so. It is intended that the authorisation will be in writing or a similarly secure and identifiable means. This provision means that owners and occupiers, or the persons they have appropriately authorised may take flora from private land. If flora is taken other than in keeping with this subclause a penalty of $200,000 for specially protected flora and $50,000 for ordinary flora will apply.

Clause 171(3) provides that subclauses (1) and (2) do not apply if the flora is threatened flora, sandalwood, or cultivated flora.

Clause 172. Taking sandalwood
Clause 172(1) provides that only persons with lawful authority to take wild sandalwood, including where they are engaged in clearing that does not involve the commissioning of an offence under the EP Act section 51C, may take it. The penalty for taking sandalwood without lawful authority is $200,000. This provision does not apply to cultivated (cropped) sandalwood.

Clause 172(2) provides that a person does not have lawful authority to take wild sandalwood growing on private land by reason only of being the owner or occupier, or being authorised by the owner or occupier.

Clause 173. Taking threatened flora
Clause 173 identifies that taking of threatened flora on Crown or private land without proper authorisation is an offence.

Clause 173(1) provides that a person commits an offence if they take threatened flora from Crown land without, or contrary to the conditions of, an authorisation under clause 40 (authorisation for taking threatened flora), with offences being $500,000 for critically endangered flora, $400,000 for endangered flora and, $300,000 for vulnerable flora.

Clause 173(2) provides that a person commits an offence if they take threatened flora from private land unless they are the owner or occupier (or authorised by the owner or occupier in the prescribed way) and unless they fully comply with the conditions of an authorisation under clause 40 (authorisation for taking threatened flora). The penalties for offences under this clause are the same as for clause 173(1).

Clause 173(3) provides that subclauses (1) and (2) do not apply if the threatened flora is cultivated flora.

Clause 174. Defence to charges under sections 171, 172 and 173
Clause 174 provides defences for charges under clause 171 (Taking flora), clause 172 Taking sandalwood) and clause 173 (Taking threatened flora).

Clause 174(1) provides that it is a defence against charges under clause 171(1) or 171(2) involving flora that is not specially protected flora to prove that the taking occurred in the course of a lawful activity where the sole or dominant purpose was not to take flora and the taking could not have reasonably been avoided.

Clause 174(2) provides that it is a defence to a charge under clause 171(1) or (2) where the flora is specially protected flora, or to a charge under clause 173(1) or (2) for threatened flora; to prove that the taking occurred in the course of a lawful activity where the sole or dominant purpose was not to take flora and the taking could not have reasonably been avoided, and, in addition, prove that the person charged did not know and could not have reasonably known that the specially protected or threatened flora was present.

Clause 174(3) provides that the defence under 174(2) for threatened flora does not apply if the taking has resulted in the threatened flora becoming eligible for listing as an extinct species (i.e. the taking has led to the extinction of the species).

Clause 175. Use of prohibited device or prohibited method when taking flora
Clause 175(1) provides that it is an offence to use a prohibited device or prohibited method (prescribed in the regulations) to take flora. The penalty is a fine of $50,000.

Clause 175(2) provides that an occupier must not allow a prohibited device or prohibited method to be used to take flora on the land. The penalty is a fine of $50,000.

Clause 176. Supplying flora
Clause 176(1) establishes that the unlicensed supply of flora is an offence. The maximum penalties prescribed for a conviction against this offence are the fines set out in subclauses (a) through (e). These penalties range from $50,000 to $500,000 depending on the listing status of the species involved in the offence, with the highest penalty for critically endangered flora, $200,000 for sandalwood and the lowest penalty for unlisted flora.

Clause 176(2) provides that this offence does not apply to a gift of flora where the flora has been lawfully acquired.

Clause 177. Dealing in flora
Clause 177 establishes that unlicensed dealing in flora is an offence. The maximum penalties prescribed for a conviction against this offence are the fines set out in subclauses (a) through (e). These penalties range from $50,000 to $500,000 depending on the listing status of the species involved in the offence, with the highest penalty for critically endangered flora, $200,000 for sandalwood and the lowest penalty for unlisted flora.

Clause 177(2) provides that a person deals in flora if they conduct a business that involves the purchase and supply of flora.

Clause 178. Processing flora
Clause 178 establishes offences applicable to the unlicensed processing of flora for a commercial purpose (clause 178(2)), and the unlicensed operation of a flora processing establishment (clause 178(3)). It gives a definition of flora for this section which excludes forest products taken under FPC contract.

The maximum penalties prescribed for a conviction for unlicensed commercial processing of flora (clause 178(2)) are the fines set out in subclauses (a) through (e). These penalties range from $50,000 to $500,000 depending on the listing status of the species involved in the offence, with the highest penalty for critically endangered flora, $200,000 for sandalwood and the lowest penalty for unlisted flora.

The maximum penalty for a conviction for the unlicensed operation of a flora processing establishment is a fine of $50,000 (clause 178(3)).

Clause 179. Exporting flora
Clause 179 establishes that export of flora from an unlawful source is an offence. It is not an offence to export flora taken and possessed lawfully. The maximum penalties prescribed for a conviction against this offence are the fines set out in subclauses (a) through (e). These penalties range from $50,000 to $500,000 depending on the listing status of the species involved in the offence, with the highest penalty for critically endangered flora, $200,000 for sandalwood and the lowest penalty for unlisted flora.

Clause 180. Additional penalty for offence involving sandalwood
Clause 180 provides that a court may order that a person convicted of an offence under this Division or the regulations that involves sandalwood may, if an application is made by the prosecutor, be required to pay, in addition to the fine imposed, an amount per tonne of sandalwood involved in the offence as is prescribed in the regulations.

Clause 180(3) provides that the regulations may not prescribe an amount greater than $20,000 per tonne for the penalty under subclause (1).

Division 3 — Taking or disturbance by Aboriginal people [Covers Aboriginal persons taking flora and fauna for customary purposes]

Part 10:
Division 3 provides for Aboriginal people to take flora and fauna for customary purposes. These provisions are equivalent to section 23 of the Wildlife Act, which was inserted in that Act by the *Conservation Legislation Amendment Act 2011* section 49.

Clause 181. Terms used
Clause 181 defines terms used in the Division. The definitions are consistent with those in the *Wildlife Conservation Act 1950*, as amended in 2011.

Clause 182. Taking or disturbance for Aboriginal customary purposes
Clause 182 provides defences against charges of unlawfully taking fauna or flora for Aboriginal persons taking fauna or flora for customary purposes. They do not affect the operation of the CALM Act.

Clause 182(1) provides that this action does not affect the operation of the CALM Act, which also provides for Aboriginal customary activities on land subject to that Act.

Clause 182(2) provides the details of the defences to charges of taking fauna or flora. These include that the person is an Aboriginal person and has not used a prohibited device, has abided by any regulations that restrict the defences for taking, that they have the permission of the landowner to access the land and take the fauna or flora (other than CALM Act land). In cases where exclusive native title exists the accused must also have either held the native title or taken the fauna or flora with the permission of the exclusive native title holder.

Clause 182(3) provides similar defences in relation to a charge of disturbing fauna, to those detailed for taking fauna or flora under subclause (2).

Clause 182(4) provides that if the taking of fauna or flora or the disturbance of fauna undertaken in accord with the defences under subclauses (2) and (3) would entitle the Aboriginal person to do an act inconsistent with the continued existence, enjoyment or exercise of native title rights and interests the defence does not apply unless the taking is only sufficient for food for the taker and the taker's family and not for sale.

Clause 182(5) provides that the defences in subsections (2) and (3) apply in addition to the standard defences under clauses 151(1) and (2) for taking fauna, 153(3) and (4) for possessing fauna, and 174(1) and (2) for taking flora.

Clause 183. Possessing fauna taken for Aboriginal customary purposes
Clause 183 provides that if fauna is taken under the customary purposes defence under clause 182(2), an Aboriginal person is authorised to possess that fauna for a customary purpose.

Clause 184. Selling fauna or flora taken for Aboriginal customary purposes
Clause 184 provides that an Aboriginal person who take fauna or flora for a customary purpose must not sell that fauna or flora, unless an exception is provided in the regulations. A penalty of $10,000 is provided for an offence against this provision.

Clause 185. Permission given by exclusive native title holder to take or disturb fauna
Clause 185 provides that the holder of exclusive native title may give permission for another Aboriginal person to take or disturb fauna in the area subject to their exclusive native title.

Clause 185(1) provides self-explanatory definitions of **taking** and **disturbance** in relation to fauna for the purposes of this section.

Clause 185(2) provides that an exclusive native title holder for an area does not commit an offence against the Act if they permit a person to take or disturb fauna within the native title area.

Clause 185(3) provides that subclause (2) applies despite any other provision of this Act.

Clause 186. Regulations: restriction or exclusion of s. 182(2) or (3)
Clause 186 provides that regulations may restrict or exclude the operation of the defences provided in clauses 182(2) and (3) relating to the taking of fauna or flora, disturbing fauna, or possessing fauna for customary purposes. Restrictions or exclusions may be stated in the regulations relating to the fauna or flora that may be involved, who may take the fauna or flora, who may disturb or possess the fauna, as well as the time, place, manner, quantity and circumstances of the relevant action as identified.

Division 4 — Other matters

Part 10:
Division 4 provides for Orders to be made to limit the quantity of sandalwood that may be harvested, and for the Regulations to impose charges for fauna and flora that is taken for commercial purposes. The charges will replace royalties payable under the Wildlife Act section 18 (fauna) and section 23C(3)(a) (flora). It is also provided that *The Criminal Code* section 417, which applies to possession of stolen or unlawfully obtained property, is not affected. This provision replaces section 20(4) of the Wildlife Act, which is in similar terms.

Clause 187. Orders limiting quantity of sandalwood taken
Clause 187 (1) provides that the section does not relate to sandalwood that is cultivated flora and also defines the use of the terms specified and taken for the purposes of this section.

Clause 187(2) provides that the Minister can issue an order to limit the quantity of sandalwood (excluding cultivated sandalwood) that may be taken over a time period and also specify the quantity within a specific part of the overall time period. This will provide an opportunity for a level of harvest averaging within overall bounds over an identified set of time periods and is a development of the Order in Council provision of section 2 of the *Sandalwood Act 1929*.

Clause 187(3) provides that a clause 187(2) Order may be made to apply to a specified kind of sandalwood or sandalwood taken in specified circumstances, where specified means specified in the Order.

Clause 187(4) provides that the Minister must consult with the Minister for the *Forest Products Act 2000* before making a clause 183(2) Order.

Clause 187(5) provides that the CEO must ensure that the quantity of sandalwood licensed to be taken in any period does not exceed the quantity fixed in the order for the corresponding period.

Clause 188. Regulations: charges for fauna and flora
Clause 188(1) provides that the regulations may impose charges on the fauna taken for a commercial purpose on any land and the flora taken on Crown land for a commercial purpose.

Clause 188(2) provides that the regulations may prescribe the amount of the charges or the method used to calculate them and the persons liable to pay them and may also make provision for the collection of the charges.

Clause 188(3) provides that the regulations may require that the charges are to be paid whether or not the fauna or flora was taken under lawfully authority.

Clause 188(4) provides that the regulations may; impose different charges for different categories of fauna or flora; specify where charges are not payable, require identifiers once charges have been paid, including specifying how these are to be applied; require recovery of unpaid charges and prohibit avoidance of paying charges; as well as wildlife officer powers to seize, sell, or otherwise dispose of fauna and flora where a charge payable has not been paid.

Clause 189. Operation of *The Criminal Code* section 417 not affected
Clause 189 provides that the Criminal code section 417, dealing with possession of stolen or unlawfully obtained property, can apply in relation to fauna or flora where it is reasonably suspected to have been taken otherwise than as authorised under the Biodiversity Conservation Act.

PART 11 — NATURE-BASED TOURISM AND RECREATION

Part 11 enables nature-based tourism and recreation may be made subject to codes of practice or regulations to help ensure tourism involving biodiversity is sustainable for the biodiversity involved.

Clause 190. Terms used
Clause 190 provides definitions for the terms ***aquatic eco-tourism***, ***commercial operator*** and ***nature-based tourism and recreation*** covering their use in Part 10.

Clause 191. Issue of codes of practice
Clause 191(1) provides that the Minister may issue a code of practice to provide guidance for nature-based tourism on land that is not CALM Act land, being land where the CALM Act and regulations do not apply.

Clause 191(2) provides that a code of practice may incorporate other codes or subsidiary legislation existing or in force.

Clause 191(3) provides that the Minister may amend or revoke a code of practice.

Clause 191(4) provides that if the Minister issues, amends or revokes a code of practice the CEO must publish advice of this action in the Gazette.

Clause 191(5) provides that a code of practice is not subsidiary legislation under the *Intrepretation Act 1984*.

Clause 192. Approval of codes of practice

Clause 192 provides for the Minister to approve codes of practice developed and issued by other bodies including tourism bodies, or persons, or in place under other legislation.

Clause 192(1) provides for the Minister to approve another code of practice as a code of practice under this part (part 11) of this Act.

Clause 192(2) provides that the code of practice may be approved as existing from time to time or a particular time.

Clause 192(3) provides that a code of practice approved under clause 192(1) may consist of any code, standard, rule, specification or provision that relates to a purpose mentioned in clause 192(1).

Clause 192(4) provides that the Minister may approve a revision of all or part of any code of practice approved under clause 192(1), while clause 192(5) provides for the Minister to revoke an approval under clause 192(1).

Clause 192(6) provides that if the Minister approves, amends or revokes a code of practice under clause 192 the CEO must publish advice of this action in the Gazette.

Clause 192(7) provides that a code of practice approved under clause 192(1) is not subsidiary legislation under the *Intrepretation Act 1984*.

Clause 193. Regulations: nature-based tourism and recreation

Clause 193(1) provides that the regulations may provide for the control and management of nature-based tourism on land that is not CALM Act land.

Clause 193(2) provides that the regulations may not cover the control and management of aquatic eco-tourism covered under the *Fish Resources Management Act 1994.*

Clause 193(3) provides that the regulations made for the purposes of subclause (1) to limit the number of persons who may use a place for nature-based tourism or recreation where such a limit is necessary because the activity is being or is likely to be detrimental to native species or their habitats. The regulations may also regulate commercial operators, the activities or services they may provide and place restrictions on the number of licences that may be issued for a particular activity or in a particular place related to nature-based tourism and recreation.

Clause 193(4) provides that clause 193 does not limit or otherwise affect the operation of clause 255(2) or 255(4), relating to general regulation making powers.

Clause 194. Consultation

Clause 194 provides for consultation on codes of practice under clauses 191 and 192.

Clause 194(2) requires that before a code of practice is issued or approved or relevant regulations are made under clause 193, the Minister must consult with the Minister responsible for the *Western Australian Tourism Commission Act 1983,* tourism industry bodies, and any other person or body who or which appears to the Minister to be likely to be affected by, or interested in, the code of practice or regulations.

Clause 194(3) requires the Minister to also consult with the Minister responsible for the *Fish Resources Management Act 1994* before issuing or approving a code of practice if it contains provisions relating to aquatic eco-tourism.

PART 12 — INSPECTION AND COMPLIANCE

Part 12 provides inspection powers to wildlife officers in relation to compliance with the proposed Act. To enable wildlife officers to investigate offences using powers under the CI Act consequential amendments to the CALM Act have been provided in clause 306. This Part also enables the CEO to take remedial action in relation to contravention of a biodiversity conservation covenant, an environmental pest notice, or a habitat conservation notice.

Division 1 — Preliminary

Part 12:
Division 1 provides definitions for words and expressions used in Part 13.

Clause 195. Terms used

Clause 195 provides definitions for 10 terms used in Part 12.

- ***dwelling*** is defined in equivalent terms to the definition of *dwelling* in the CI Act section 3(1).
- ***entry warrant*** is defined by reference to the relevant provision of Part 12 (Division 3).
- ***inspection purposes*** is defined by reference to the relevant provision (clause 198).

The definition of the term ***instrument*** is self-explanatory. The instruments named in the definition as *biodiversity conservation covenant*, *environmental pest notice*, *habitat conservation notice*, and *licence*, are all defined in clause 5(1). An exemption from the Act may be authorised by the Minister under clause 271.

The definition of the term ***licensed premises*** is self-explanatory.
The terms *licence*, *place*, and *vehicle* are defined in clause 5(1) and exemptions from the Act are detailed under clause 271.

The definition of the term ***occupier*** is self-explanatory.
Paragraph (a) of the definition is in equivalent terms to the definition of *occupier* in the CI Act section 3(1).

The definition of the term ***offence*** is self-explanatory.

The definition of the term ***photograph*** is derived from the definition of *photograph* in the CI Act section 3(1).

The term ***reasonably suspects*** is defined by reference to the relevant provision (clause 196).

The term ***thing relevant to an offence*** is defined by reference to the relevant provision (clause 197).

Clause 196. Reasonably suspects: meaning

The meaning of ***reasonably suspects*** is in similar terms to the meaning given to reasonably suspects in the CI Act section 4.

Clause 197. Thing relevant to an offence: meaning

In clause 197(1) the meaning given to ***thing relevant to an offence*** is in similar terms to the meaning given to this expression in the CI Act section 5(1).

With regard to clause 197(2), which is in similar terms to the CI Act section 5(2), an example of non-material things is given in the CI Act section 5(2) in the following terms: *Example*: the distance between 2 things or the visibility from a window are non-material things.

Division 2 — Inspection and related functions

Part 12:
Division 2 provides the inspection and related functions of wildlife officers.

Clause 198. Purposes for which inspection may be carried out
Clause 198 sets out the purposes applicable to inspections that may be carried out by wildlife officers. In addition to the purposes described in this provision other purposes for inspections can be prescribed in regulations made under the proposed BC Act. This clause is modelled on the BAM Act section 64.

Clause 199. Power to enter places
Clause 199 sets out the powers that wildlife officers have to enter a place for the purpose of an inspection. If the occupier of a dwelling refuses to give a wildlife officer informed consent to enter the dwelling, an entry warrant will be required.

Clause 200. Power to enter includes power to enter some other places
Clause 200 provides that where a wildlife officer enters a place for an inspection under clause 199 and must physically pass through another premises in the one building to enter the premises to be inspected, the officer may enter, but not inspect, the other premises. In other situations where a wildlife officer reasonably suspects he must pass through another place to get to the place to be inspected the officer may enter, but not inspect the other place.

Clause 201. Power to stop and enter vehicles and ancillary powers
Clause 201 is a modernisation of the powers available to wildlife officers under the Wildlife Act. It provides that a wildlife officer may, for inspection purposes, stop and enter vehicles other than mobile homes, using means as are reasonably necessary, including obstructing other vehicles. The powers also include detaining the vehicle for a reasonable period and move the vehicle to a place suitable to conduct the inspection. The powers do not include the use of any means that are likely to cause death or grievous harm to any person.

Clause 202. Application of CI Act section 31
Clause 202 provides that CI Act section 31 applies in relation to inspections of vehicles or places by wildlife officers (clauses 199, 200 and 201). The CI Act section 31 sets out an occupier's rights in respect of entry to a place that they occupy.

Clause 203. Other powers related to inspection
Clause 203 details what a wildlife officer may do when inspecting a vehicle or place. These include: taking equipment necessary for the inspection; make reasonable use of facilities at the location; remain on the place for as long as it reasonably take to complete the inspection; open and inspect cupboards; containers; inspect cages or enclosures; photograph or otherwise make a record of a vehicle, place or thing; restrain or capture any animal; inspect a boundary fence; take samples of organisms, habitats, water or soil; apply an identifier to any organism; survey and mark-out land, and label any container or thing, such as to identify its contents.

Clause 204. Obtaining records
Clause 204 provides for wildlife officers to seek and obtain records relevant to the Act that are held by persons subject to authorised inspections. The provision is modelled on section 66 of the BAM Act and provides for wildlife officers to, among other things: direct custodians of records to provide the record or a copy; to direct the responsible person to print out the record or make a copy; to direct a person to provide the relevant access code or password in order to gain access to the record; to take copies or photograph a record; or to secure a record or computer containing a record against damage, interference or unauthorised removal.

Clause 204(3) provides that a wildlife officer who has been given a record must, if practicable, allow a person entitled to possession of the record to have reasonable access to it.

Clause 205. Directions
Clause 205 provides for the powers of wildlife officers to give directions to people. The directions a wildlife officer may give and the circumstances where they may be given are detailed and divided into situations relating to inspections and other situations.

For inspection purposes the powers include directing:
- an occupier of a place or vehicle or in possession of a thing to give the wildlife officer information as to the name and address of the owner of the vehicle, place or thing, and any other information relevant to the inspection;
- a person in possession or control of an organism to advise the name and address of the supplier of the organism;

- an occupier of a place or vehicle to answer questions, produce a thing, to open or unlock a container or other thing to which the wildlife officer requires access.

For other compliance purposes a wildlife officer's powers include directing:
- an occupier of a place or vehicle to give the wildlife officer a plan, or access to a plan of the place or vehicle;
- an occupier of a place or vehicle or person in control of a thing to give that officer any assistance the officer reasonably needs to carry out the officer's functions in relation to that place, vehicle or thing;
- an occupier of a vehicle to move that vehicle to a specified place for inspection or treatment;
- a person who is or could be carrying an organism or potential carrier to go to a specified place for inspection or treatment;
- a person who 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;
- a person who appears to be control of an organism to do anything necessary to identify the organism;
- a person who appears to be in control of an animal to restrain, capture, move or handle the animal or move it to a specified place for inspection or treatment;
- a person who appears to be in control of any goods, vehicle, package or container to label it;
- a person who appears to be in control of an organism to or other thing subject to the Act to keep that in their possession, or to leave it at a specified place, until further directed by a wildlife officer.

Clause 205(3) provides that a person directed by a wildlife officer under the identified subclauses to do anything necessary, so far as is practicable, to achieve the purpose of the direction.

Clause 205(4) provides that a wildlife officer may move a vehicle relevant to a direction under this clause.

Clause 206. Seizure of thing relevant to an offence
Clause 206 covers the seizing of things related to an offence under the Act.

Clause 206(1) provides a wildlife officer may seize a thing relevant to an offence when exercising a power under the Act.

Clause 206(2) limits the power to seize to circumstances where the wildlife officer reasonable suspects that the thing has been unlawfully obtained, or, that possession of the thing is unlawful, or, it is necessary to seize the thing for the identified purposes.

Clause 206(3) provides that the CI Act section 147 (seizing things, ancillary powers), 148 (Records relevant to offence), 149 (Records, powers to facilitate seizing), 150 (Seized things, list to be supplied on request) and 151 (Privileged material, procedure on seizure of) apply to the seizure of a thing under clause 206 and a thing that may be seized under clause 206 and a thing that is seized under clause 206.

Clause 206(4) provides that the form prescribed for CI Act section 147(1) relating to the notice given to a person that a thing has been seized may be adapted for use under clause 206 of this Act.

Clause 207. Dealing with seized thing
Clause 207(1) defines the term ***deal with*** as used in clause 207 and is self-explanatory.

Clause 207(2) provides that where a perishable or living thing has been seized that requires care to maintain its condition, the wildlife officer may deal with it in accordance with directions given by the CEO.

Clause 207(3) provides that, where a thing is seized and subclause (2) applies, the proceeds from the sale of the thing, after deducting the expenses of dealing with it and associated with its sale, are to be credited to the Government's Consolidated Account, unless subclause (5) applies.

Clause 207(4) identifies that subclause (5) applies where a thing seized under clause 206 or under the CI Act in connection with an offence and it is sold under subclause (2) and, either the prosecution is not commenced or no person is convicted of an offence after the conclusion of the prosecution.

Clause 207(5) provides that, in the circumstances identified in subclause (4) the proceeds of a sale of the thing, after deducting the expenses of dealing with it and associated with its sale, are to be paid to the person entitled to the possession of the thing before it was seized.

Clause 208. Dealing with seized live fauna
Clause 208 provides that where live wild fauna has been seized under the Act (or CI Act) by a wildlife officer, and the wildlife officer considers that it would not be practicable to keep the fauna in captivity, the officer may release the fauna into the wild, unless the officer reasonably suspects that another person is entitled to have possession of the fauna.

Clause 209. Forensic examination
This clause provides for wildlife officers to undertake forensic examinations of materials they have, or to arrange for such examination to be undertaken, in keeping with their roles under the proposed Act.

Clause 209(1) provides a self-explanatory definition of the term ***do a forensic examination*** for clause 209.

Clause 209(2) provides that wildlife officers who have taken a sample under clause 203(i) may undertake or arrange a forensic examination of the sample.

Clause 209(3) provides that a wildlife officer operating under Division 2 (Inspection and related functions) may undertake, or arrange to have undertaken a forensic examination on a thing that may be seized under clause 206, whether the thing is seized or not.

Clause 209(4) provides that the forensic examination may involve, where reasonably necessary dismantling, damaging or destroying the thing being examined.

Clause 209(5) provides that the forensic examination power under subclause (3) must not be exercised where the thing may contain information that is privileged as defined in section 151(1) of the CI Act until a decision is made under that section that the information is not privileged or orders have been made to enable the power to conduct a forensic examination of the thing to be used.

Division 3 — Entry warrants

Part 12:
Division 3 provides for the application and issue of entry warrants in respect of the exercise of inspection powers provided to wildlife officers under the proposed Act. An entry warrant for the purpose of a criminal investigation conducted by a wildlife officer may be granted under the CI Act. This provision will bring the use of entry warrants by wildlife officers in line with standard procedures under the CI Act.

Clause 210. Applying for entry warrant
Clause 210 provides that a wildlife officer may apply to a JP for an entry warrant authorising access to a place or vehicle for inspection purposes whether or not the officer may enter the place or vehicle without such a warrant.

Clause 211. Making an application
Clause 211 provides the details of the process to be followed in making an application for an entry warrant.

Clause 211(1) provides definitions of the terms ***application*** and ***remote communication*** as they apply in clause 210, and subclause (2) provides that giving information in support of an application for a warrant is included in the concept of making an application for a warrant.

Clause 211(3) provides that an application must be made in person to a JP unless the warrant is required urgently or the applicant suspects that there is no JP available within a reasonable travel distance. Subclause (4) provides that in such circumstances the application may be made by telephone, fax, email radio, or other suitable means. With the JP able to grant the application only if satisfied that the matter is urgent and there was no reasonable ability for the officer to apply for the warrant in person.

Clause 211(5) provides that, apart from the situation in subclause (3), the application must be made in writing unless it is made by remote communication and it is not practicable to send the JP written material. Subclause (6) provides that in these circumstances the application may be made orally, in which case the JP must keep a written record of the application and any supporting information provided.

Clause 211(7) provides that an application must be made on oath unless it is made by remote communication and it is not practical for a JP to administer an oath to the applicant. Subclause (8) provides that where an application is made under subclause (7) the application may be made unsworn and if the JP issues the warrant the applicant must send the JP an affidavit as soon as practicable after that application verifying the details of the application including supporting information.

Clause 212. Further provisions relating to application for entry warrant
Clause 212 provides further requirements relating to applications for warrants made by remote communication.

Clause 212(1) provides that where a warrant has been sought by remote communication and the JP issues the warrant, a copy of the warrant must be issued by remote communication also (e.g. email or fax) where practicable. If it is not practicable to do this, the JP must send the applicant the information that must be set out in the warrant by remote communication and the applicant must then transfer the information onto a form of warrant and copy this back to the JP as soon as practicable. In addition, the JP must attach a copy of the form provided by the applicant to the original warrant as well as any affidavit received from the applicant and make them available for collection by the applicant.

Clause 212(2) provides that the form of the warrant completed by the applicant and the copy of the original warrant sent to the applicant, whichever is prepared under subsection (1) has the same force and effect as the original warrant from the JP.

Clause 212(3) provides that if the applicant for an entry warrant contravenes clause 211(8)(b) (i.e. the applicant does not provide the required affidavit to the JP in the identified time period), or provide a copy of the form of the warrant prepared under subclause (1)(b) to the JP within the identified time period, the evidence collected under the warrant is not admissible in court.

Clause 213. Issuing entry warrant
This clause sets out the circumstances under which a JP may issue an entry warrant under the proposed Act.

Clause 213(1) provides that a JP may issue an entry warrant where satisfied that it is necessary for a wildlife officer to enter a place or vehicle for inspection purposes.

Clause 213(2) provides that an entry warrant must contain the identified information. This includes, a description of the place or vehicle to be entered, the purpose of the inspection, the period (not exceeding 30 days) when the warrant may be executed, the name of the issuing JP and the date and time when it was issued.

Clause 213(3) provides that where a JP refuses to issue an entry warrant the JP must record on the application the refusal, the date and time and the reasons for the refusal.

Clause 214. Effect of entry warrant
Clause 214 identifies that an entry warrant has effect under this clause and according to its contents prepared in accordance with the proposed Act. It comes into force on the date issued by the JP and provides for the wildlife officer identified on it to enter the place or vehicle identified within the period of operation of the warrant to exercise the inspection and related functions powers under Division 2.

Clause 215. Execution of entry warrant
Clause 215 provides that an entry warrant may be executed by any wildlife officer, not just the wildlife officer that it was issued to. It also identifies that a wildlife officer executing a warrant must, when requested by a person apparently in charge of a place or vehicle identified in the warrant, produce the warrant.

Division 4 — Remedial action

Part 12: Division 4 enables the CEO to take remedial action in relation to contravention of a biodiversity conservation covenant, an environmental pest notice, or a habitat conservation notice.

Clause 216. Term used: relevant instrument
Clause 216 provides a definition of ***relevant instrument*** which only applies to Division 4 of Part 13. The term *relevant instrument* has been defined to include each of the three instruments that may be issued under the proposed Act that are relevant to the CEO taking remedial action if they have been contravened, i.e. a biodiversity conservation covenant; an environmental pest notice; or a habitat conservation notice.

The terms *biodiversity conservation covenant*, *environmental pest notice*, and *habitat conservation notice* are defined in clause 5(1).

Clause 217. CEO may take remedial action
Clause 217 provides that, when the CEO considers that a relevant instrument has been contravened, the CEO may take remedial action the CEO considers necessary to ensure compliance with the instrument. Remedial action includes, stopping things being done in contravention of the instrument, doing things required to be done under the instrument, carrying out works necessary to remedy anything done in contravention of the instrument and, doing anything incidental to these actions.

Clause 217(3) provides that a wildlife officer taking remedial action under clause 217 may (subclause (a)) enter land with or without vehicles and equipment, and (subclause (b)) remain on that land until the remedial action is completed.

Clause 217(4) restricts the ability of a wildlife officer to enter land under subclause (3)(a) to situations where the officer has the consent of an owner or occupier of the land, or an owner or occupier of the land has been given reasonable notice of the proposed entry and has not refused, or the entry is in accordance with an entry warrant under Division 3 (subclause (5)).

Clause 217(6) provides that inspection purposes under Division 3 (entry warrants) are to include the purposes of remedial action.

Clause 218. Notice required before remedial action
Clause 218 requires that the CEO must give a person bound by a relevant instrument written notice before taking remedial action. The requirements include that the written notice must state the CEO's opinion that the notice has been contravened, give details of the action necessary for the person to comply with the instrument, and provide advice that if the instrument is not complied with within a specified time period, the CEO may take remedial action. The remedial action may only commence after the above requirements have been met and the maximum time period the CEO has specified for the person to comply with the instrument has been exceeded.

Clause 219. Recovery of costs of remedial action
Clause 219 provides that the CEO may recover the reasonable costs incurred in taking remedial action from the person bound by the relevant instrument through an appropriate court as a debt to the State. Where a relevant instrument binds more than one person, each of the persons bound by the instrument is jointly and severally liable for the identified reasonable costs borne by the CEO in undertaking the remedial action.

Division 5 — Other provisions

Part 12:
Division 5 sets out other provisions applicable to the exercise of powers under Part 12, Inspection and Compliance, of the proposed Act.

Clause 220. Time and place for compliance with direction
Clause 220 provides that a wildlife officer, in giving a direction under the proposed Act may specify the date and time when and the place where the direction must be complied with. This provision is in similar terms to the BAM Act section 88 relating to inspectors under that Act.

Clause 221. Direction may be given orally or in writing
Clause 221 provides that a wildlife officer's direction may be given orally or in writing. Where given orally, this must be confirmed in writing within 5 business days after it is given unless by that time the direction has been complied with or cancelled. A wildlife officer's direction remains valid even if the requirement to

confirm the direction in writing is not met. This clause is in similar terms to section 89 of the BAM Act relating to inspectors under that Act.

Clause 222. Exercise of power may be recorded
Clause 222 provides that a wildlife officer may record by audio-visual or other means the exercising of the power to give directions. This provision is in similar terms to section 90 of the BAM Act relating to inspectors under that Act.

Clause 223. Assistance to exercise powers
Clause 223 is a development of section 91 of the BAM Act relating to inspectors under that Act. It provides that a wildlife officer may authorise as many other persons as a are reasonably necessary to assist in exercising a power under the proposed Act. Authorised assisting persons must obey lawful directions given by the wildlife officer and are considered to be performing functions under this Act while assisting the wildlife officer. These assisting persons are therefore protected from liability under clause 273 while assisting the wildlife officer except in situations where they contravene a reasonable and lawful direction from the wildlife officer.

Clause 224. Use of force
Clause 224 is also a development of section 91 of the BAM Act relating to inspectors under that Act.

Clause 224(1) provides that a wildlife officer and person assisting a wildlife officer may use force that is reasonably necessary against a person or thing to exercise the power under the proposed Act and to overcome resistance that is offered, or the wildlife officer reasonably expects will be offered, by any person to the exercise of that power.

Clause 224(2) restricts the power to use force such that in situations where the use of force is likely to cause significant damage to property the CEO must have given the wildlife officer prior written authorisation to do so in relation to the particular case.

Clause 224(3) provides that any use of force under clause 224 will be subject to *The Criminal Code* Chapter XXVI, which includes use of force in compliance operations.

Clause 225. Evidence obtained improperly
Clause 225 provides for the treatment of evidence that has been obtained contrary to the provisions of the proposed Act, including that such evidence may be considered in court in specified circumstances.

Clause 225(1) provides that clause 225 covers situations where a thing relevant to an offence is seized under a purported power conferred by the proposed Act or an entry warrant issued or purportedly issued and, a requirement relating to the exercising of the power or the issue of the entry warrant is contravened

Clause 225(2) provides that evidence derived from a thing seized or obtained in the circumstances of subclause (1) is not admissible in court unless the person subject to the court proceedings does not object to it being admitted or the court decides to allow it under subclause (3).

Clause 225(3) provides that the court may admit such evidence if it is satisfied that the desirability of admitting it outweighs the undesirability.

Clause 225(4) is self-explanatory identifying matters the court must take into account in making a decision about evidence under subclause (3).

Clause 225(5) provides that in deciding to admit evidence under subclause (3) the court must take into account a number of matters including: objections from the person the evidence will be against; the seriousness of the offence for which the evidence is relevant; the seriousness of the contravention of the Act under which the evidence was obtained; whether the contravention of the Act in obtaining the evidence was intentional or reckless,

Clause 226. Compliance with directions
Clause 226 will establish that it is an offence to contravene a direction given by a wildlife officer under the proposed Act with a penalty of $10,000. The clause also provides that a person who has a reasonable excuse for not complying has a defence to such a charge.

Clause 227. False or misleading information
Clause 227 provides that it is an offence to provide false or misleading information to a wildlife officer carrying out a function under the proposed Act, with a penalty of $10,000. False information is identified to include: states anything that the person knows is false or misleading; knowingly omits to state anything, the effect of which is to make a statement false or misleading; or, knowingly provides a false or misleading document or record or excludes anything from a document or record the effect of which makes the document or record false or misleading.

Clause 228. Obstruction of wildlife officer
Clause 228 provides that it is an offence to obstruct a wildlife officer, or a person assisting a wildlife officer, from exercising a power under this Act, with a penalty of $20,000.

Clause 229. Self-incrimination not an excuse
Clause 229 provides that an individual does not have an excuse of self-incrimination to avoid complying with a direction to provide information or answer questions or produce records or things. However, any information or answer provided, or document or thing produced in compliance with a direction is not admissible as evidence in proceedings against the individual other than proceedings for perjury or an offence against clause 227 (false or misleading information). This clause only applies in relation to directions from a wildlife officer.

Clause 230. Orders for forfeiture or disposal of seized things
Clause 230 provides that, where a thing is seized under clause 206 or the CI Act in respect of an offence against the proposed Act, a court may order that the seized thing is forfeit to the State, to be destroyed or disposed of, if the court is satisfied the thing was used in or involved in the commission of the offence.

Clause 231. Application of *Criminal and Found Property Disposal Act 2006*
This clause provides, for the purposes of the CFPD Act, the Department of Parks and Wildlife will become a prescribed agency to enable the CEO to control and manage property seized under clauses 206 and 230 until the property is disposed of under the CFPD Act, except for property dealt with under clauses 207(2) (dealing with perishable things) and 208(1) (dealing with live wild fauna that may be released).

PART 13 — LEGAL PROCEEDINGS

Part 13 sets out provisions applicable to legal proceedings for the prosecution of offences; the responsibilities of certain persons in relationship to the commission of offences, e.g. a body corporate; remediation orders in relation to the commission of certain offences; evidence; and compensation.

Division 1 — General provisions relating to offences

Part 13:
Division 1 contains general provisions relating to offences under the proposed Act.

Clause 232. Who can commence prosecution
Clause 232 is similar to the Wildlife Act section 26(3). It provides that only the CEO or a person authorised by the CEO may commence a prosecution.

Clause 233. Time for commencing prosecution
Clause 233(1) is similar to the Wildlife Act section 26A, although the time within which a prosecution action may commence has been extended from 2 years to 3 years from the date on which the offence was allegedly committed. The extension is due to experience with delays in developing a case for prosecution.

Clause 233(2) will further extend the time period for a prosecution to commence in situations where the prosecution notice identifies that evidence of the alleged offence first came to the attention of the CEO, or other person authorised to commence prosecution, on a later day, prosecution may commence within three years of that day. In these circumstances the prosecution may be commenced within three years of

that day and the notice need not contain details of the actual date on which the offence is alleged to have been committed.

Clause 233(3) provides that the day on which the evidence first came to the person authorised to commence prosecution is, without evidence to the contrary, the day specified in the prosecution notice.

Clause 234. Attempt, incitement or accessory after the fact

Clause 234(1) provides a definition for the term *accessory* ***after the fact to an offence*** that takes its meaning from *The Criminal Code* section 10 which is in the following terms:

(1) A person who, knowing that another person has committed an offence, receives or assists that other person in order to enable that other person to escape punishment is said to become an accessory after the fact to the offence.

(2) A person does not become an accessory after the fact to an offence committed by the person's spouse by receiving or assisting that spouse.

Clause 234(2) provides that the Criminal Code section 555A (Attempt and incitement to commit simple offence under this Code) applies to an offence under the proposed Act as if it were an offence under that Code.

Clause 234(3) provides that a person who becomes an accessory after the fact to an offence against the proposed Act also commits an offence against the Act and is liable on conviction to the same penalty applicable to a person who committed the principal offence.

Clause 235. Penalties for continuing offences

Clause 235 provides for ongoing daily penalties of $5,000 for a person continuing to commit the same offence over several days in addition to the penalty for committing the offence.

Clause 236. Court may cancel or suspend licence

Clause 236 will update the provision under section 26 of the Wildlife Act and provides that a court may cancel or suspend a licence issued under the proposed Act when convicting the licence holder of an offence under the proposed Act.

Division 2 — Responsibility of certain persons

Part 13: Division 2 provides that certain persons, including officers of a body corporate, partners, principals and employers, have responsibilities and liabilities in relation to offences under the proposed Act.

Clause 237. Liability of officers of body corporate for offence by body

Clause 237 provides that officers of a body corporate as defined in the (Commonwealth) *Corporations Act 2001* have responsibilities for offences under the identified clauses (subclause (2) and circumstances, or as specified in the regulations, where an offence is committed by the body corporate.

Clause 237(3) provides that if a body corporate is guilty of an offence to which clause 237 applies, an officer of the body corporate is also guilty of an offence if the officer concerned failed to take all reasonable steps to prevent the commission of the offence by the body corporate.

Clause 237(4) provides that in considering what constitutes reasonable steps in subclause (3) a court must have regard to: what the officer knew or ought to have known about the commission of the offence; whether the officer was in a position to influence the body corporate in relation to the commission of the offence; and, any other relevant matter.

Clause 238. Further provisions relating to liability of officers of body corporate

Clause 238(1) provides that clause 237(1) (liability of officers of a body corporate) does not affect the liability of a body corporate for an offence under the proposed Act.

Clause 238(2) provides that clause 237(1) (liability of officers of a body corporate) does not affect the liability of an officer of a body corporate, or any other person, under the specified provisions of the *Criminal Code* under; Chapter II (Parties to an offence), Chapter LVII (Attempts and preparation to

commit offences), Chapter LVIII (Conspiracy), and LIX (Accessories after the fact and property laundering).

Clause 238(3) provides that an officer of a body corporate may be charged with, and convicted of, an offence in accordance with section 237, whether or not the body corporate is charged with, or convicted of, the principal offence committed by the body corporate.

Clause 238(4) provides that where an officer of a body corporate is charged with an offence and claims the body corporate has a defence if it were charged for that offence, the onus to prove the defence rests with the charged officer and the standard of proof is the standard that would apply if the body corporate were charged. Subclause (5) provides that the officer is not limited by subclause (4) in relation to any other defence that may be available.

Clause 239. Liability of partners
Clause 239 provides for partners in a partnership to be considered to have liability for offences by the partnership.

Clause 239(1) provides a definition for ***offence*** under the proposed Act for this clause relating to partnerships.

Clause 239(2) provides that a licence granted to a partnership provides the same rights and duties as licensee to all members of the partnership.

Clauses 239(3), (4), (5), and (6) provide an explanation of the responsibilities of identified partners in relation to charges for offences committed by partners in the partnership.

Clause 239(7) provides for defences for persons against charges under the proposed Act to prove the offence was committed without the person's consent or connivance; and, the person took all reasonable measures to prevent the commission of the offence.

Clause 240. Liability of principals for offence by agent
Clause 240 provides for the liability of principals for offences committed by their agent.

Clause 240(1) provides where an agent (not an employee) is acting on behalf of another person (the principal) and the agent is charged with an offence, the principal may also be charged with the offence.

Clause 240(2) provides that if the agent is convicted of the offence, the principal is also taken to have committed the offence, subject to the defences under subclause (5).

Clause 240(3) provides that the principal may be charged with an offence committed by a person acting on their behalf (an agent) then the principal may be charged for the offence whether or not the agent is charged.

Clause 240(4) provides that if the principal is charged (subclause (3)) and it is proved that the agent committed the offence, the principal is also taken to have committed the offence, subject to the defences under subclause (5).

Clause 240(5) provides it is a defence for the principal to prove the offence was committed without the principal's consent or connivance; and, the principal took all reasonable measures to prevent the commission of the offence.

Clause 241. Liability of employers for offence by employee
Clause 241 provides for the liability of employers for their employees offences.

Clause 241(1) provides that if an employee is charged with an offence, the employer may also be charged with the offence whether or not the employee acted without the employer's authority or contrary to the employer's authority or instructions.

Clause 241(2) provides that if an employer is charged and an employee is convicted of an offence, the employer is also taken to have committed the offence, subject to the defences in subclause (5).

Clause 241(3) provides that if an employee commits an offence as an employee and the employee is not charged with an offence, the employer may be charged whether or not the employee acted without the employer's authority or contrary to the employer's orders or instructions.

Clause 241(4) provides that if the employer is charged and it is proved the employee committed the offence, the employer is taken to have also committed the offence, subject to the defences in subclause (5).

Clause 241(5) provides a defence to a charge for an employer to prove the offence was committed without the employer's consent or connivance; and, the employer took all reasonable measures to prevent the commission of the offence.

Division 3 — Remediation orders

Part 13:
Division 3 provides for remediation orders to be made by a court that convicts a person of a relevant offence as an alternative to, or in addition to, a monetary penalty. Remediation orders may apply when damage to a habitat or threatened ecological community has occurred.

Clause 242. Terms used
Clause 242 provides definitions of the terms used in this division including *environmental damage,* ***relevant offence****,* ***remediation measures, remediation order*** and, ***specified***.

Clause 243. Making a remediation order
Clause 243 provides that a court may make a remediation order for a person to take specified measures to repair damage to a habitat or a threatened ecological community on convicting that person of an offence under the proposed Act.

Clause 243(1) provides that the court may order the offender o take remediation measures within a specified time or to pay the CEO or another person within a specified time the monetary amount set by the court as the costs reasonably incurred by the CEO or another person in taking remediation measures.

Clause 243(2) provides that a remediation order must be made in accordance with the regulations.

Clause 243(3) provides that a remediation order may be made by a court on its own initiative or on the application of the prosecutor.

Clause 243(4) provides that, in making a remediation order, the court may make any other order necessary to give effect to the remediation order.

Clause 244. Limitation on making remediation order: damage to habitat on private land
Clause 244 provides that a court must not make a remediation order for damage caused to habitat on private land if the offender was an owner or occupier of the land at the time the offence was committed and the offence did not involve a threatened species, threatened ecological community or critical habitat.

Clause 245. Enforcement of remediation order under section 243(1)(a)
Clause 245 provides the process for the court to consider an application from the CEO that a remediation order has been contravened.

Clause 245(1) provides that the CEO may apply to a court seeking an order under subclause (3) where the CEO considers that a remediation order under clause 243(1)(a) has been contravened.

Clause 245(2) provides that such an application must be made in accordance with the regulations.

Clause 245(3) provides that the court may consider such an application and either; amend the existing remediation order, cancel the remediation order and make an order for the offender to pay the monetary amount as applicable under clause 243(1)(b), or, dismiss the application.

Clause 246. Enforcement of remediation order under section 243(1)(b)
Clause 246 provides the process for enforcement of relating to payment of the amount payable under a remediation order made under clause 243(1)(b).

Clause 246(1) provides that if the amount payable under clause 243(1)(b) is not paid within the time specified in the remediation order, the person due to be paid may lodge a certified copy of the order in court.

Clause 246(2) provides that a lodged certified copy is to be taken as a judgment of the court and so may be enforced.

Clause 246(3) provides that there is no fee is to be charged for a certified copy of the order or for lodging it under subclause (1).

Division 4 — Evidentiary provisions

Part 13:
Division 4 provides evidentiary provisions that are in addition to those provided in the *Evidence Act 1906* (WA).

Clause 247. Terms used
Clause 247 provides definitions of the terms ***authorisation***, ***exemption***, ***offence*** and ***specified***, as they are used in this Division.

Clause 248. Presumption as to identity of alleged offender
Clause 248 provides that the name provided by the person at the time of the offence or immediately after and provided on the prosecution notice is to be taken to be the alleged offender in the absence of evidence to the contrary.

Clause 249. Presumption as to place of offence
Clause 249 provides that an allegation in the prosecution notice as to the particular type of land where the offence occurred (e.g. private land or Crown land) is, on the act being proved, taken to be also proved in the absence of evidence to the contrary.

Clause 250. Evidence as to authority or status
Clause 250 provides a list of matters in the prosecution notice relating to authority or status that are, in the absence of proof to the contrary, to be taken to be approved in the court proceedings. The listing (a) through (j) is self-explanatory.

Clause 251. Evidence as to type of organism, species, ecological community or habitat
Clause 251 provides a list of matters in the prosecution notice relating evidence as to type of organism, species, ecological community or habitat that are, in the absence of proof to the contrary, to be taken to be approved in the court proceedings. The listing (a) through (g) are self-explanatory.

Clause 252. Evidence of scientific matters
Clause 252 provides for the declaration of an authorised person as a person having relevant scientific knowledge in relation to scientific evidentiary matters and for the consideration of scientific evidence considered by such an authorised person.

Clause 252(1) provides a definition of '*authorised person'*, being a person declared by the Minister under subclause (2) in a notice published in the Gazette as a person who has relevant scientific knowledge.

Clause 252(3) provides that in proceedings for an offence, production of a certificate purporting to be signed by an authorised person is, without proof of the authorised person's signature, evidence of the facts stated in the certificate identifying, as specified in subclauses (a) through (f) that a specified thing is: a specific class or description of an animal or plant; belonged to a specified species or taxonomic grouping of species; a native species; an ecological community, habitat, or other biodiversity component; or, a specified carrier, as relevant to the proposed Act.

Clause 252(4) provides that subclause 3 only applies if written notice is provided to the accused at least 14 days before the hearing of the prosecutors intention to produce the authorised person's certificate and

the accused has not delivered to the prosecutor within 7 days of receiving the written notice a notice requiring that the authorised person's evidence be given in person.

Clause 252(5) provides that the court the proceedings mentioned above are held in may, in addition to any other order as to costs, may make an order it thinks fit as to the expenses and remuneration to be paid for the services of the authorised person.

Clause 253. Evidence as to authorisations, notices and other documents
Clause 253 applies to the identified list of documents, being, an authorisation, as exemption, a notice given under the proposed Act, and a code or other document that has been adopted under the regulations.

Clause 253(2) provides that a copy of a document identified in subclause (1) that is certified by the CEO as a true copy at any date or any period is proof of the contents of that document at that date or during the period in proceedings for an offence.

Clause 253(3) is self-explanatory.

Clause 254. Provisions in addition to *Evidence Act 1906*
Clause 254 provides that the evidentiary provisions of Division 4 of Part 13 of the proposed Act are in addition to the provisions of the *Evidence Act 1906* (WA) and will not affect that Act's operation. The Evidence Act is the principal legislation applying to evidence in legal proceedings in Western Australia. This provision is similar to section 124 of the BAM Act.

PART 14 — REGULATIONS, ORDERS AND GUIDELINES

Part 14 sets out regulation head powers, requirements applicable to Parliamentary tabling of orders made by the Minister, and the issuing of Ministerial guidelines.

Division 1 — Regulations

Part 16:
Division 1 sets out regulation making head powers.

Clause 255. Regulations: general power
Clause 255(1) empowers the Governor to make regulations under the proposed Act.

Clause 255(2) enables regulations to be made to provide for, prohibit, control, impose requirements in relation to, or otherwise regulate all or any of the matters referred to in Schedule 1.

Clause 255(3) identifies that the terms used in item 13 of Schedule 1 that are defined in the EPBC Act have the same meaning as in that Act.

Clause 255(4) enables offences to be prescribed for the contravention of a regulation, which may be subject to a fine not exceeding $50,000. Under the Wildlife Act section 28(1)(h) the maximum penalty that can be prescribed for an offence against the regulations is a fine of $2 000.

Clause 256. Regulations: licensing
Clause 256(1) requires a licensing scheme to be established under the regulations which will be administered by the CEO.

Clause 256(2) sets out matters that the licensing scheme may provide for under the regulations. These are self-explanatory.

Clause 256(3) relates to the regulation head power in subclause (2)(f), with the regulations to provide for licence conditions to impose requirements that bioprospecting be subject to a profit sharing arrangement with the CEO (which would be entered into under the CALM Act) or another person under another

arrangement; and to enable the quantity of fauna or flora that may be taken under any licence to be restricted.

Clause 256(4) relates to the regulation head power in subclause (2)(i), with the regulations to enable a relevant licence or permit granted under the CALM Act to be included in a BC Act licence.

Clause 256(5) prevents a person from claiming an entitlement to the grant, renewal or transfer of a licence as of right unless the regulations expressly provide for such an entitlement. A similar provision is provided in the Wildlife Act section 15(4) which states in part "no person shall be entitled to a grant, renewal or transfer of a licence as of right".

Clause 256(6) provides that if the regulations allow that a licence is transferable by the licence holder then, in accordance with paragraph (d) of the definition of licence in the *Personal Property Securities Act 2009* (Commonwealth) section 10, the licence is declared not to be personal property for the purposes of that Act.

Clause 257. Regulations may adopt codes or legislation

Clause 257 provides that the regulations made under the proposed Act may adopt any code of practice or similar document or subsidiary legislation from another jurisdiction.

Clause 257(1) provides definitions of the terms ***code*** and ***subsidiary legislation*** for this clause.

Clause 257(2) provides that the regulations may adopt in whole, part or with modifications any code or subsidiary legislation as specified for the regulation of matters covered under the regulation making powers of the proposed Act.

Clause 257(3) provides, where any code or subsidiary legislation is adopted under the regulations, it is adopted as existing or in force from time to time (as amended) unless a particular text of the code or subsidiary legislation is adopted.

Clause 257(4) provides that the particulars of any code or subsidiary legislation adopted under the regulations must be available publicly through the Department's website.

Division 2 — Orders

Part 14:
Division 2 sets out requirements applicable to tabling of orders made by the Minister.

Clause 258. Orders made by Minister

Clause 258 provides that where a provision of the proposed Act states that clause 258 applies, an order made by the Minister is subsidiary legislation for the purposes of the *Interpretation Act 1984*. In these circumstances the Minister must lay a copy of the order, or an order amending or repealing an order to which clause 258 applies, before each House of Parliament as soon as practicable after the order is published in the Government Gazette, unless the order is one identified in clause 259.

Clause 259. Certain orders subject to disallowance

Clause 259 provides that section 42 of the *Interpretation Act 1984* applies to the listed orders as if they were a regulation. This will require that the relevant orders must be laid before each House of Parliament within 6 sitting days of being published in the Gazette. Each House will then have an opportunity as identified in the Interpretation Act to disallow or amend the order as if it were a regulation.

The orders identified in the table under clause 259 include orders relating to: a determination as to whether an animal is fauna or not fauna, a non-indigenous plant is flora, an indigenous plant is not flora, a distinct population of organisms is a species; whether a species that is not an animal, plant or fungi is flora or fauna; a declaration of a species as an environmental pest; the area for which a species is declared to be an environmental pest; a declaration that property in fauna or flora of a particular class is not vested in the State; a sandalwood harvesting order; and, an order making exemptions from the proposed Act.

Division 3 — Guidelines

Part 14:
Division 3 sets out requirements applicable to the issuing of Ministerial guidelines.

Clause 260. Guidelines about listing
Clause 260 provides for the issuing of guidelines establishing criteria for the identified listings under the proposed Act including, threatened species, threatened ecological communities and critical habitats. These guidelines may provide for the making of nominations for threatened species and threatened ecological communities, the process for dealing with those nominations as well as the criteria and other matters relevant to the listings.

Clause 261. Other guidelines
Clause 261(1) provides that the Minister may issue guidelines setting out the matters the Minister considers important in respect of the performance of functions under the proposed Act by the CEO or any other person.

Clause 261(2) provides that the guidelines are intended to assist the CEO and others in performance of functions under the Act and provide information to the general community as well as to any person or body that may be affected by decisions under the Act and any person or body especially interested in species or ecological communities that may be affected by decisions taken under the Act, or in biodiversity conservation generally.

Clause 262. Publication, amendment and revocation of guidelines
Clause 262 provides that guidelines under clauses 261 and 262 must be published as prescribed. It also provides for the Minister to amend or revoke the guidelines and that any such amendment or revocation must also be published as prescribed.

Clause 263. Guidelines to be taken into account
Clause 263(1) provides that a person performing a function under the Act must take account of the guidelines that relate to the performance of that function.

Clause 263(2) provides that the provision in subclause (1) does not derogate from the relevant person's; duty to exercise discretion, their ability to take into account matters not set out in the guidelines. In addition nothing in subclause (1) requires a person undertaking a function to take into account guidelines that are inconsistent with the provision of the proposed Act that confers that function on the person.

Clause 264. Status of guidelines
Clause 264 establishes that guidelines issued under clauses 260 and 261 are not subsidiary legislation for the purposes of the *Interpretation Act 1984* and that if there is any inconsistency between the guidelines and a provision of the Act, the Act prevails.

PART 15 — MISCELLANEOUS

Part 15 sets out how documents are to be given to the CEO and other persons, and related matters. It also includes other miscellaneous provisions.

Division 1 — Documents

Part 15:
Division 1 sets out how documents are to be given to the CEO and other persons, and related matters.

Clause 265. Giving documents to CEO
Clause 265 provides for the means by which documents required under the proposed Act to be given to the CEO may be given. It includes direct lodgement, prepaid post and, where the regulations provide for them, the use of facsimile copies and other electronic means to a prescribed email address.

Clause 266. Giving documents generally
Clause 266(1) describes how documents required under the proposed Act to be given to a person, other than the CEO, may be given to that person. It is constructed to provide for both current and future technology to be used to convey documents.

Clause 266(2) provides for situations where the address for service of a document cannot be identified. In these circumstances the document is to be advertised at least twice by a means prescribed in the regulations.

Clause 266(3) provides that documents may be provided to a person in different ways in that providing a document in one way does not limit the means of providing documents in future.

Clause 266(4) provides that failure to give a document to one person does not affect whether it is properly given to another person.

Clause 267. Giving documents to owner or occupier of land.
Clause 267(1) provides that a document may be given to an owner or occupier of land by simply addressing it to "the owner" or, "the occupier", of the land at the address of the land.

Clause 267(2) provides that if there are several owners or occupiers, a document is given to all of them if delivered to one, with the word "and others" or "and another" as is relevant.

Clause 267(3) provides that a document may be given to an owner by addressing it to the occupier.

Clause 267(4) provides that a document may be given to an owner or occupier of land by affixing it firmly to conspicuous part of the land.

Clause 267(5) provides that the options in subclauses (3) and (4) only apply where it is not reasonably practical to use any of the ways provided in clause 266.

Clause 268. Giving certain notices
Clause 268 applies to environmental pest notices or a notice as to the presence of a threatened species or threatened ecological community.

Clause 268(2) provides that a notice covered by this clause may be given by publishing it in a manner prescribed if it is not practicable to give the notice in person under clause 266.

Clause 268(3) provides that a notice covered by this clause may be directed to a number of owners and occupiers and is taken to have been given to the owner and occupier once it has been given according to the regulations.

Clause 269. Time when document given
Clause 269 provides that a document is taken to have been given to an owner or occupier on the following business day to it having been posted, faxed, emailed, or left for the person it was addressed to. Exceptions are provided when the document is sent to a person outside the State, given personally, or the contrary delivery is proven.

Clause 270. Defects in document
Clause 270 provides that a document remains effective even if it has a minor error, mis-description or irregularity in the document or in the way it is addressed that is not likely to mislead or does not mislead.

Division 2 — Other matters

Part 15:
Division 2 sets out other miscellaneous matters in respect of exemptions; powers and duties of public authorities; registration of certain documents; liability; information sharing; confidentiality; and a review of the proposed Act as passed.

Clause 271. Exemptions from Act
Clause 271 provides for the Minister to grant exemptions from the provisions of the Act.

Clause 271(1) provides a definition of the term ***specified*** as used in this clause.

Clause 271(2) provides that the Minister may exempt from a specified provision of the Act; a specified person or class (group) of persons; a specified activity or class of activity; a specified place, vehicle or thing, or a specified class of places, vehicles or things.

Clause 271(3) provides that an exemption may be granted on the initiative of the Minister or after an application made to the Minister.

Clause 271(4) provides that the exemption may be granted for a specified time period or indefinitely.

Clause 271(5) provides that an exemption may be granted to apply generally, in specified circumstances or in respect of a particular specified area within the State.

Clause 271(6) provides that the Minister may grant an exemption subject to specified conditions.

Clause 271(7) provides that an exemption that has conditions specified has no effect at any time when a condition is contravened.

Clause 271(8) provides a penalty for a person granted an exemption who contravenes a condition of that exemption of a fine of $50,000.

Clause 271(9) provides that clause 271 does not affect the operation of section 43(8)(d) of the *Interpretation Act 1984*, which covers the inclusion of exemptions from subsidiary legislation in subsidiary legislation.

Clause 271(10) provides that an exemption under clause 271 is subject to clause 258, meaning the exemption is subsidiary legislation. An exemption under clause 271(2) is disallowable as a regulation under clause 259.

Clause 272. Resolution of matters relating to powers and duties of public authorities
Clause 272 is modelled on section 9 of the Wildlife Act, which only applies to the provisions relating to flora. It has been expanded in the proposed Act to apply more generally across the coverage of the proposed Act. It provides for resolution of disputes with public authorities in the implementation of the proposed Act by negotiation between the relevant Ministers and, if this is unsuccessful, for the Governor to determine a resolution.

Clause 273. Protection from liability for wrongdoing
Clause 273 provides a standard protection from liability to a person performing a function under the proposed Act and for the State.

Clause 274. Information sharing
Clause 274 provides for sharing of information relevant to the administration or enforcement of the proposed Act between government agencies.

Clause 274(1) provides definitions of the terms: ***authorised officer*****,** ***guidelines*****,** and, ***information sharing agency*****,** ***officer*** and ***relevant information***, as used in this clause. The information sharing agencies are identified in subclauses (a) through (o) under the definition of *'information sharing agency'*.

Clause 274(2) provides that the CEO (an authorised officer) may designate in writing a person employed in the Department to be an authorised person for this clause.

Clauses 274(3) and (4) provide that an authorised officer may disclose, in accordance with the guidelines, relevant information to an officer of an identified information sharing agency and may, in accordance with the guidelines, request a public authority that holds relevant information to disclose the information to the authorised officer.

Clause 274(5) provides that information under subclause (3) may be disclosed in compliance with a request under subclause (4) despite any written law relating to confidentiality or secrecy.

Clause 274(6) provides that if information is disclosed in good faith under subclause (3) or in compliance with a request under subclause (4) there is no criminal liability for the disclosure which is not to be regarded as a breach of any duty of confidentiality or secrecy imposed by law and also not to be regarded as a breach of professional ethics or standards or as unprofessional conduct.

Clause 274(7) provides that the CEO must issue guidelines as to disclosure of information and requesting of information as relevant under subclauses (3) and (4).

Clause 274(8) provides that the regulations may include provisions about receiving and storing information disclosed for the purposes of the proposed Act and restricting access to information.

Clause 275. Confidentiality

Clause 275(1) provides for persons who have performed functions under the proposed Act to keep the information obtained in the course of that duty confidential except for the purposes of performing those functions, as required or allowed under the Act or other written law, for the purposes of legal proceedings under the proposed Act, with the written consent of the person to whom the proposed Act relates or in prescribed circumstances.

Clause 275(2) provides an exception to the restrictions in subclause (1) in relation to recording, disclosure or use of statistical or other information that could not reasonably be expected to lead to the identification of any person to whom it relates.

Clause 276. Certain information may be kept confidential

Clause 276 provides for some information may be kept confidential where considered necessary for the survival of a native species or ecological community.

Clause 276(1) provides a definition for the term ***strategic document*** for the purposes of this clause.

Clause 276(2) and (3) provide that, where the Minister considers the survival of a native species or ecological community could be threatened by the disclosure of information relating to the precise location of a species or community or any other information about a species or community, a relevant strategic document may include only a general description of the location of the native species or ecological community. Similarly the same level of generalised information may be included in another instrument made or issued under the proposed Act.

Clause 277. Review of Act

Clause 277 provides for 5 yearly reviews of the operation and effectiveness of the proposed Act and identifies the matters the Minister must have regard to in each review. The Minister will also be required under subclause (3) prepare a report based on each review and, as soon as is practicable after the report is prepared, cause it to be laid before each House of Parliament.

PART 16 — Repeals and transitional provisions

Part 16 provides for repeal of the *Wildlife Conservation Act 1950* and legislative instruments made under that Act, as well as the repeal of the *Sandalwood Act 1929* and the legislative instruments made under that Act.

Division 1 — Repeal of *Wildlife Conservation Act 1950*

Part 16:
Division 1, Subdivision 1 provides for repeal of the *Wildlife Conservation Act 1950* and legislative instruments made under that Act.

Subdivision 1 — Repeals

Clause 278. *Wildlife Conservation Act 1950* repealed
Clause 278 repeals the Wildlife Act.

Clause 279. Subsidiary legislation repealed
Clause 279 repeals the *Wildlife Conservation Regulations 1970*; the *Wildlife Conservation (Reptiles and Amphibians) Regulations 2002*; along with any notice made under the *Wildlife Conservation Act 1950* section 6(2), (4) or (6), section 14(2) or (4), section 18(1) or section 23F(2) that is in force immediately before the day on which clause 278 comes into operation.

Subdivision 2 — Transitional provisions

Part 16:
Division 1, Subdivision 2 provides for transitional arrangements subsequent to the repeal of the *Wildlife Conservation Act 1950* and legislative instruments made under that Act.

Clause 280. Consents under *Wildlife Conservation Act 1950* s. 23F
Clause 280 provides that a consent on the day on which clause 278 comes into effect to take rare flora under the Wildlife Act continues as an authorisation under clause 40 of the proposed Act to take that flora.

Division 2 — Repeal of *Sandalwood Act 1929*

Part 16:
Division 2 provides for repeal of the *Sandalwood Act 1929* and legislative instruments made under that Act.

Subdivision 1 — Repeals

Part 16:
Division 2 Subdivision 1 provides for repeal of the *Sandalwood Act 1929* and legislative instruments made under that Act.

Clause 281. *Sandalwood Act 1929* repealed
Clause 281 repeals the Sandalwood Act.

Clause 282. *Sandalwood Regulations 1993* repealed
Clause 282 repeals the *Sandalwood Regulations 1993.*

Subdivision 2 — Transitional provisions

Part 16:
Division 2, Subdivision 2 provides for transitional arrangements subsequent to the repeal of the *Sandalwood Act 1929* and legislative instruments made under that Act. .

Clause 283. Licences under *Sandalwood Act 1929*
Clause 283 provides that a sandalwood licence in force immediately before the commencement day of clause 281 is taken to be a licence granted under the proposed Act and any application for a licence under the Sandalwood Act that was not determined before commencement day may be determined under the proposed Act and regulations.

Division 3 — Transitional regulations

Part 16:
Division 3 provides for transitional regulations to be made to deal with the transition from the *Wildlife Conservation Act 1950* and *Sandalwood Act 1929* to the proposed Biodiversity Conservation Act.

Clause 284. Transitional regulations
Clause 284(1) provides definitions for the following terms used in this clause; ***publication day, relevant commencement day, specified, transitional matter*****,** and, ***transitional regulations***.

Clause 284(2) provides that if there is no sufficient provision in Part 16 of the proposed Act for dealing with a transitional matter, the regulations may prescribe matters for the of dealing with the transitional matter or necessary or convenient to be prescribed for the purpose of dealing with the matter.

Clause 284(3) provides that the transitional regulations may provide that specific parts of this proposed Act do not reply in relation to a specified matter or apply with specified modifications.

Clause 284(4) provides that, where regulations provide that a state of affairs was to have existed or not existed on a day earlier that the day the regulations were published, but not earlier than the commencement day of the relevant Division (repeal of the relevant Act), the regulations have effect according to their terms.

Clause 284(5) provides that the provisions in regulations referred to in subclause (4) do not operate to affect in a prejudicial manner the rights of a person existing before publication of the regulations or to impose liabilities on a person in respect of anything done or omitted to be done before publication day for those regulations.

Clause 284(6) provides that transitional regulations can only made within 24 months from the day on which the Act receives Royal Assent.

Division 4 — General

Part 16:
Division 4 provides that Part 16 of the proposed Act does not limit or affect the operation of the *Interpretation Act 1984* in relation to the repeals affected by Divisions 1 and 2.

Clause 285. *Interpretation Act 1984* not affected
Clause 285 provides that Part 16 of the proposed Act does not limit or affect the operation of the *Interpretation Act 1984* in relation to the repeals affected by Divisions 1 (Wildlife Act) and 2 (Sandalwood Act).

PART 17 — CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

Part 17 provides consequential amendments to the *Conservation and Land Management Act 1984*, eleven other Acts, and one set of regulations.

Division 1 — *Conservation and Land Management Act 1984* amended

Part 17:
Division 1 provides consequential amendments to the *Conservation and Land Management Act 1984*.

Clause 286. Act amended
Clause 286 provides that the *Conservation and Land Management Act 1984* (WA) will be amended by the proposed Act.

Clause 287. Long title amended
Clause 287 provides that the Long Title will be amended to reflect the importance of the amendments intended to be made to the CALM Act under the proposed Biodiversity Conservation Act. For example, the new and amended functions of the CEO provided in clause 292 (section 33 amended).

Clause 288. Section 3 amended
Clause 288(1) deletes definitions for *biodiversity*, *biodiversity components*, *fauna*, and *flora* from CALM Act section 3 because the BC Bill clause 5(1) definitions for these terms will be inserted by clause 288(2). In addition, to the definitions being replaced (see above) clause 288(2) provides a definition for the term *conserve* which is in the same terms as that provided in clause 5(1).

Clause 289. Section 13A amended
Clause 289(a) will delete the words "and restoration" from CALM Act section 13A(1) because the new definition of *conserve* provided in clause 288(2) includes the element "to restore".

Clause 289(b) will delete "indigenous" from CALM Act section 13A(1) because it is superfluous given that *fauna* and *flora* will take the meaning given in clause 5(1) to these terms which are inclusive of the State's native fauna and flora, as the case requires.

Clause 290. Section 13B amended
Clause 290(a) will delete the words "and restoration" from CALM Act section 13B(1) because the new definition of *conserve* provided in clause 288(2) includes the element "to restore".

Clause 290(b) will delete "indigenous" from CALM Act section 13B(1) because it is superfluous given that *fauna* and *flora* will take the meaning given in clause 5(1) to these terms which are inclusive of the State's native fauna and flora, as the case requires.

Clause 291. Section 19 amended
Clause 291(a) amends a Conservation Commission function in CALM Act section 19(1)(d) by adding the additional element of protection to the policy advice function for consistency with the Objects of the proposed Biodiversity Conservation Act (cf. clause 3(1)(a)).

Clause 291(b) provides a new function for the Conservation Commission (new section 19(1)(haa)) so that the Commission may participate in the preparation of certain strategic documents that may be prepared under the proposed Biodiversity Conservation Act, i.e.. draft biodiversity management programmes; draft recovery plans; and interim recovery plans.

Clause 292. Section 33 amended
Clause 292 provides amendments to, and new provisions in, the CEO's functions in CALM Act section 33.
Clause 292(1)(a) provides a revised section 33(1)(ca) to add fauna, and related elements, to a function that previously only applied to flora. The function is relevant to bioprospecting activity.

Clause 292(1)(b) provides a revised section 33(1)(cc) that reflects the objects of the proposed Biodiversity Conservation Act.

Clause 292(1)(c) provides a revised section 33(1)(d) that reflects the objects of the proposed Biodiversity Conservation Act, and two new functions - new sections 33(1)(daa) and (dab).

New section 33(1)(daa) is applicable to providing the State with a comprehensive, adequate and representative system of reserves consistent with the objects of the proposed Biodiversity Conservation Act.

New section 33(1(dab) is applicable to nature-based tourism under the CALM Act and the proposed Biodiversity Conservation Act.

Clause 292(1)(d) provides a revised section 33(1)(e)(ii) that reflects the objects of the proposed Biodiversity Conservation Act.

Clause 292(1)(e) provides two new functions – new sections 33(1)(fa) and (fb).
New section 33(1)(fa) is applicable to surveys of biodiversity and biodiversity components.
New section 33(1)(fb) will enable any bilateral agreements made under the EPBC Act with the Commonwealth Government to be implemented.

Clause 292(1)(f) provides two new functions - new sections 33(1)ha) and (hb).
New section 33(1)(ha) is applicable to entering into collaborative arrangements to achieve most of the functions set out in section 33(1).

New section 33(1)(hb) establishes that the CEO's functions include those given to that office under the proposed Biodiversity conservation Act.

Clause 292(2) provides new section 33(2A) which comprises a definition for the term *use* for the purpose of revised section 33(1)(ca) (see clause 292(1)() above). This term is presently defined in CALM Act section 33(8), which is to be deleted under clause 292(4).

Clause 292(3) provides a revised section 33(6) and new sections 33(7A) and (7B).
Section 33(6) has been revised because bioprospecting activity and related agreements under the CALM Act will apply to both fauna and flora, instead of just flora.
New section 33(7A) aligns the terminology used in revised section 33(6) with terms used in the proposed Biodiversity Conservation Act, that is the terms *occupier*, *private land*, and *take*. The terms *fauna* and *flora* also take their meaning from the proposed new Act (see clause 288(2)).
New section 33(7B) is derived in part from section 34A(1)(c) and enables the sharing of profits to be a condition of entering into an agreement under section 33(6).

Clause 292(4) will delete section 33(8) because its provisions will be replaced by new section 33(2A) (clause 292(2)) and new section 33(7A) (clause 292(3)).

Clause 292(5) will insert the word *'and'* between the relevant subclauses to clarify that each is a function of the CEO

Clause 293. Section 34A amended
Clause 293(1) is a technical amendment to clarify that the business undertakings of the CEO must be related to the performance of a function of the CEO as indicated.

Clause 293(2) will amend the definition of business undertakings in the identified section by deleting reference to "engage in any scheme, project or operation referred to in subsection (1)" and inserting specific references to a scheme for the establishment, management or utilisation of tree plantations or an activity related to the identified functions.

Clause 294. Section 37 amended
Clause 294 is a technical amendment to update reference to the proposed Act, replacing the Act to be repealed.

Clause 295. Section 45 amended
Clause 295 is a technical amendment to provide for the new wildlife officer powers to be provided in the proposed Act to be recognised in the CALM Act.

Clause 296. Section 46 amended
Clause 296 is a technical amendment to update reference to the proposed Act, replacing the Act to be repealed.

Clause 297. Section 48 amended
Clause 297 is a technical amendment to update reference to the proposed Act, replacing the Act to be repealed.

Clause 298. Section 56 amended
Clause 298(a) is a modernisation provision that will be replacing a reference to prepare management plans for national parks and conservation parks consistent with the "maintenance and restoration" of the natural environment with a requirement that the plans are consistent with the "conservation" of the natural environment.

Clause 298(b) and (d) will effectively replace a provision relating to indigenous flora and fauna with a provision relating to fauna and flora.

Clause 298(c) will carry forward a change similar to that in subclause (a), above, but relating to planning for nature reserves.

Clause 299. Section 68 replaced
Clause 299 will update and replace the current provision for the Nature Conservation and National Parks trust Account, with a provision for a proposed Biodiversity Conservation Account, which will have the same overall function and purpose.

Clause 300. Section 87 amended
Clause 300 is a technical amendment to ensure that the definition of forest produce does not include resin, sap or seeds. In the current definition it is not clear that seeds are excluded from the definition.

Clause 301. Section 101B amended
Clause 301(1) is a technical amendment necessary with the repeal of the Wildlife Act, with the replacement provision clarifying that taking of flora and fauna may be undertaken in accordance with a licence or authorisation under the proposed Act or the regulations under the proposed Act.

Cause 301(2) is a technical amendment to update reference to the proposed Act, replacing reference to the Act to be repealed.

Clause 302. Section 103A amended
Clause 302 is a technical amendment to update reference to the proposed Act, replacing reference to the Act to be repealed.

Clause 303. Section 106 amended
Clause 303 is an updating amendment removing the unnecessary term “indigenous” related to fauna.

Clause 304. Section 121 Amended
Clause 304 is a technical amendment relating to the inclusion of the proposed new section 125. Relating to enforcement officer powers.

Clause 305. Section 124 amended
Clause 305 is a technical amendment required as the offices of ‘ranger’ and ‘conservation and land management officer’ will be covered under the amendment proposed to section 125.

Clause 306. Section 125 replaced
Clause 306 provides for a new section 125 and new section 126A to be inserted in the CALM Act in place of current section 125. Under proposed section 125, compliance officers under the CALM Act will be authorised to operate in keeping with standardised powers under the *Criminal Investigation Act 2006* and *Criminal Investigation (Identifying People) Act 2002*. The clause covers wildlife officers, forest officers, rangers and conservation and land management officers. This is a modernisation of the current powers.

Proposed section 125(2) identifies the specific powers under the CI Act, including: stopping vehicles; entering and searching places; obtaining business records; basic searches of people (frisking and external inspection of a clothed person); non-intimate forensic searches; and, basic arrest powers.

Proposed section 125(3) provides that a wildlife officer is not authorised to conduct a strip search of a person.

Proposed section 125(4) provides that the identified compliance officers, including honorary officers identified are public officers for the purposes of the CI(IP) Act. These officers are able to request the identification details of a person under the provisions of that Act.

Proposed section 126A provides that the Department administering the CALM Act will be a prescribed agency for the *Criminal and Found Property Disposal Act 2006*. This Act covers standardised approach to management of the disposal of seized criminal property and found property across prescribed agencies.

Clause 307. Section 127 amended
Clause 307 amends current section 127 by inserting a new subsection (2) to provide that the CALM Act regulations may provide for a single document to be a licence or permit for the purposes of both the CALM Act and proposed Biodiversity Conservation Act.

Clause 308. Section 132 amended
Clause 308 is a technical amendment removing reference to the Wildlife Act, which will be repealed.

Clause 309. Section 133 amended
Clause 309 will replace a provision relating to delegation of powers under the Wildlife Act with delegations relating to the proposed Act.

Division 2 — Other Acts amended

Part 19:
Division 2 provides for consequential amendments to be made to eleven Acts.

Clause 310. *Animal Welfare Act 2002* amended
Clause 310 will provide for technical updates to the Animal Welfare Act arising from the replacement of the Wildlife Conservation Act with the proposed Biodiversity Conservation Act. The amendments will not change the substance of the operation of the EP Act. The amendments will include updating definitions and references in that Act for the agency *'CALM'* and the term *'fauna'*, to cover the agency administering the proposed Act and the term *'fauna'* to be as defined in the proposed Act. It will also insert a new definition of *'lawfully taken'* in relation to fauna to be in keeping with '*fauna lawfully taken'* as arising under the proposed Biodiversity Conservation Act. Elsewhere references to the *Wildlife Conservation Act 1950* will be updated to references to the proposed Act.

Clause 311. *Biosecurity and Agriculture Management Act 2007* amended
Clause 311 will provide for technical updates to the BAM Act arising from the replacement of the Wildlife Conservation Act with the proposed Biodiversity Conservation Act. The amendments will not change the substance of the operation of the BAM Act.

Clause 312. *Bush Fires Act 1954* amended
Clause 312 will provide for technical updates to the BF Act arising from the replacement of the Wildlife Conservation Act with the proposed Biodiversity Conservation Act. The amendments will not change the substance of the operation of the BF Act.

Clause 313. *Constitution Acts Amendment Act 1899* amended
Clause 313 is a technical update as the Western Australian Wildlife Authority that was previously established under the Wildlife Act no longer exists and will not be established under the proposed Act.

Clause 314. *Environmental Protection Act 1986* amended
Clause 314 will provide for technical updates to the EP Act arising from the replacement of the Wildlife Conservation Act with the proposed Biodiversity Conservation Act. The amendments will not change the substance of the operation of the EP Act.

Clause 315. *Financial Management Act 2006* amended
Clause 315 will provide a technical amendment to the FM Act. As the proposed Act will remove the concept of a royalty on fauna, reference to such a royalty in the FM Act will not be required once the proposed Act is in place.

Clause 316. *Firearms Act 1973* amended
Clause 316 will provide for a technical update to the Firearms Act arising from the replacement of the Wildlife Conservation Act with the proposed Biodiversity Conservation Act. The amendment will not change the substance of the operation of the Firearms Act.

Clause 317. *Forest Products Act 2000* amended
Clause 317 will provide for a technical update to Forest Products Act arising from the replacement of the Wildlife Conservation Act with the proposed Biodiversity Conservation Act. The amendment will not change the substance of the operation of the Forest Products Act.

Clause 318. *Land Administration Act 1997* amended
Clause 318 will provide for a technical update to the LA Act arising from the replacement of the Wildlife Conservation Act with the proposed Biodiversity Conservation Act. The amendment will not change the substance of the operation of the LA Act.

Clause 319. ***Land Tax Assessment Act 2002*** **amended**

Clause 319 will insert a new section 42A in the LTA Act recognising that nature conservation covenants that are currently covered under section 41 will, once the proposed Act is in place, be dealt with as biodiversity conservation covenants under the proposed Act. The amendment will not change the substance of the operation of the LTA Act in relation to covenants or provide any new impact on land tax exemptions.

Clause 320. ***Soil and Land Conservation Act 1945*** **amended**

Clause 320 will provide for a technical update to the SLC Act arising from the replacement of the Sandalwood Act with the proposed Biodiversity Conservation Act. The amendment will not change the substance of the operation of the SLC Act.

SCHEDULE 1 — MATTERS FOR WHICH REGULATIONS MAY BE MADE

Schedule 1 lists matters for which regulations may be made under the regulation head power described in clause 255(2).

Item 1. Self-explanatory. Relevant terms defined in clause 5(1) are: *keep*, *import*, *export*, *supply*, *vehicle* (in respect of transportation), and *fauna*. See also Part 10 – Fauna and flora, Division 1- Protection of fauna.

Item 2. Self-explanatory. Relevant terms defined in clause 5(1) are: *process* (in relation to fauna*), fauna, fish, pearl oyster, commercial purpose, and fauna processing establishment*. The narrower definition of *fauna* in clause 159(1) is also relevant. See also Part 10 – Fauna and flora, Division 1- Protection of fauna.

Item 3. Self-explanatory. Relevant terms defined in clause 5(1) are: *supply*, *vehicle* (in respect of transportation), and *flora*. See also Part 10 – Fauna and flora, Division 2- Protection of flora.

Item 4. Self-explanatory. Relevant terms defined in clause 5(1) are: *biological resources*, *bioprospecting activity, ecosystem, fauna, flora, organism,* and *take*. See also clause 256(3)(a) re licensing conditions and bioprospecting activity. See also Part 10 – Fauna and flora, Division 1- Protection of fauna.

Item 5. Self-explanatory. Relevant terms defined in clause 5(1) are: *fauna*, *flora*, and *habitat*. See also Part 10 – Fauna and flora.

Item 6. Self-explanatory. Relevant terms defined in clause 5(1) are: *fauna*, *flora*, *licence*, and *take*. Exemptions can be granted under clause 271.

Item 7. Self-explanatory.. Relevant terms defined in clause 5(1) are: *ecological community* and *threatened ecological community*. The term *modify*, in relation to an occurrence of a threatened ecological community, is defined in clause 44.

Item 8. Self-explanatory. Relevant terms defined in clause 5(1) are: *conserve*, *ecological community*, *specially protected species*, *species*, *threatened species*, and *threatened ecological community*. See also Part 2 – Listing of native species, ecological communities and threatening processes, Division 2 – Ecological communities; and Part 3 – Threatened Species and threatened ecological communities, Division 2 – Threatened ecological communities.

Item 9. Self-explanatory. Relevant terms defined in clause 5(1) are: *ecological community*, *native species*, *threatening process*, and *key threatening process*. See also Part 2 – Listing of native species, ecological communities and threatening processes, Division 3 – Threatening processes; and clause 83(3)(g) with regard to the obligatory content of a recovery plan addressing key threatening processes.

Item 10. Self-explanatory. Relevant terms defined in clause 5(1) are: *control*, *environmental pest*, *environmental pest notice*, and *species*. See also Part 9 – Control of environmental pests.

Item 11. Self-explanatory. Relevant terms defined in clause 5(1) are: *environmental pest*, *keep*, *import*, *potential carrier*, *supply*, and *vehicle* (in respect of transportation). See also Part 9 – Control of environmental pests.

Item 12. Self-explanatory. Relevant terms defined in clause 5(1) are: *biodiversity*, and *biodiversity components*.
This replaces the regulation head power provided in the Wildlife Act section 28(1)(f) which enables a regulation for the protection of research programmes to be prescribed (see the *Wildlife Conservation Regulations 1970* regulation 59).

Item 13. Enables regulations to be prescribed for the conservation, protection and management of the natural heritage values of any World Heritage properties, National Heritage places, Ramsar wetlands, and Biosphere reserves in the State, in particular in relation to the significant biodiversity values of these places (cf. the Objects of the proposed Biodiversity Conservation Act set out in clause 3 and the definitions of *biodiversity* and *biodiversity components* in clause 5(1)).

Item 14. Self-explanatory. Relevant terms defined in clause 5(1) are: *environmental pest, fauna*, *flora*, and, *place*, See also Part 9 – Control of environmental pests; and Part 10 – Fauna and flora.

Item 15. Self-explanatory. Relevant terms defined in clause 5(1) are: *apply* (in relation to an *identifier*), *disturb* (paragraph (a)(ii)), *fauna*, *flora*, *identifier*, and *organism*. See also clause 188(4)(c) and (d) with regard to the application of identifiers and the payment of charges; and clause 203(j) with regard to the power of wildlife officers to apply an identifier to an organism.

Item 16. Self-explanatory. The application of this regulation head power does not limit the *Interpretation Act 1984* section 45 which enables a range of matters to be prescribed with respect to fees and charges.

Item 17. Self-explanatory.

Item 18. Self-explanatory. The CALM Act section 68 account referred to is the Biodiversity Conservation Account, an agency special purpose account to be established by the consequential amendment to the CALM Act provided in clause 299. The account will be used to fund scientific research relating to biodiversity and biodiversity components in the State.

Item 19. Self-explanatory.

Item 20. It is intended that the proposed Biodiversity Conservation Act will become a prescribed Act for the purposes of the *Criminal Procedure Act 2004* (CP Act) Part 2 so that infringement notices can be dealt with under the CP Act.

Item 21. Self-explanatory. See also clause 256(2)(c) with regard to regulations requiring the provision of information, etc. by a licence applicant. Under section 170(1) of *The Criminal Code* it is an offence to knowingly give information that is false in a material particular where the information is required to be given under a written law. Section 169(2) of *The Criminal Code* makes it in offence to knowingly make a false statement in a material particular in a statutory declaration. A statutory declaration has to be made in accordance with the requirements of the *Oaths, Affidavits and Statutory Declaration Act 2005*.
