

- (b) the class of protected area that it is proposed to become; and
 - (c) any other information the chief executive considers desirable.
- (3) The chief executive may keep the register in the way the chief executive considers appropriate, including, for example, in electronic form.
- (4) The chief executive must keep the register open for inspection during office hours on business days at—
 - (a) the department's head office; and
 - (b) each regional office of the department in whose area the proposed protected area is situated; and
 - (c) other places the chief executive considers appropriate.

700 Amendment of designation

- (1) The chief executive may, by an entry in the proposed protected area register, amend the designation of an area as a proposed protected area if subsections (2) to (5) have been complied with.
- (2) The chief executive must publish a notice of a proposed amendment in a newspaper likely to be read by people particularly affected by it.
- (3) The notice must state the following—
 - (a) the location of the area;
 - (b) the proposed amendment;
 - (c) that any entity may comment about the proposal to the chief executive;
 - (d) the period during which comments may be made.
- (4) The stated period must be at least 35 days after the publication of the notice.
- (5) The chief executive must consider any comment about the proposal made during the period.

Division 5**Miscellaneous provisions****70P References to State forest or timber reserve in other legislation**

- (1) A reference in another Act or in subordinate legislation to a State forest or timber reserve is, if the context permits, taken to include a forest reserve.
- (2) However, subsection (1) does not apply if—
 - (a) the reference is in or under the *Forestry Act 1959*;⁸ or
 - (b) the reference is only to the setting apart and dedication of an area as a State forest or timber reserve.

70Q References to Land Act reserves in other legislation

- (1) A reference in this or another Act or in subordinate legislation to a Land Act reserve is, if the context permits, taken to include a forest reserve.
- (2) However, subsection (1) does not apply if the reference is in or under the *Land Act 1994*.

70QA Prohibition on mining in forest reserves

A mining interest under section 27⁹ can not be granted in relation to land in a forest reserve.

Division 6**Expiry of pt 4A****70R Expiry**

This part expires on 31 December 2025.

8 For State forests or timber reserves, see section 70G(3) (State forest or timber reserve dedicated as a forest reserve).

9 Section 27 (Prohibition on mining)

Part 5 Wildlife and habitat conservation

Division 1 Basic concepts

71 Classes of wildlife to which Act applies

The classes of wildlife to which this Act applies are—

- (a) protected wildlife, that is—
 - (i) extinct in the wild wildlife; and
 - (ii) endangered wildlife; and
 - (iii) vulnerable wildlife; and
 - (iv) rare wildlife; and
 - (v) near threatened wildlife; and
 - (vi) least concern wildlife; and
- (b) international wildlife; and
- (c) prohibited wildlife.

72 Management of wildlife—general

- (1) Wildlife is to be managed in accordance with—
 - (a) the management principles prescribed by this division for the class of the wildlife; and
 - (b) the declared management intent for the wildlife; and
 - (c) any conservation plan for the wildlife.
- (2) The declared management intent for wildlife is the management intent applicable to the wildlife under the regulations.
- (3) The declared management intent for wildlife must contain a statement of—
 - (a) the significance of the wildlife to nature and its value; and
 - (b) the proposed management intent for the wildlife; and

- (c) the principles relating to any proposed taking and use of the wildlife.

73 Management principles of protected wildlife

Protected wildlife is to be managed to—

- (a) conserve the wildlife and its values and, in particular to—
 - (i) ensure the survival and natural development of the wildlife in the wild; and
 - (ii) conserve the biological diversity of the wildlife to the greatest possible extent; and
 - (iii) identify, and reduce or remove, the effects of threatening processes relating to the wildlife; and
 - (iv) identify the wildlife's critical habitat and conserve it to the greatest possible extent; and
- (b) ensure that any use of the wildlife—
 - (i) for scientific study and monitoring; or
 - (ii) for educational, recreational, commercial and authorised purposes; or
 - (iii) by Aboriginal people under Aboriginal tradition or Torres Strait Islanders under Island custom;

is ecologically sustainable.

74 Management principles of international wildlife

International wildlife is to be managed in accordance with the wildlife's international conservation significance and, in particular—

- (a) to ensure the protection of protected wildlife from any threatening process that may be posed by the wildlife; and
- (b) to prevent unlawful introduction of the wildlife into the State; and

- (c) prohibit the release of the wildlife into the wild except under a licence, permit or other authority issued or given under a regulation.

75 Management principles of prohibited wildlife

Prohibited wildlife is to be managed to—

- (a) prohibit the release of the wildlife into the wild except under a licence, permit or other authority issued or given under a regulation; and
- (b) identify and, if practicable, control any threatening process caused by the wildlife; and
- (c) reduce and, if possible, eliminate the population and distribution of the wildlife in the wild; and
- (d) encourage the humane taking and use of the wildlife.

Division 2 Classes of wildlife

76 Native wildlife may be prescribed as extinct in the wild wildlife

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

- (a) there have been thorough searches conducted for the wildlife; and
- (b) the wildlife has not been seen in the wild over a period that is appropriate for the life cycle or form of the wildlife.

77 Native wildlife may be prescribed as endangered wildlife

A regulation may prescribe native wildlife as endangered wildlife if—

- (a) there have not been thorough searches conducted for the wildlife and the wildlife has not been seen in the wild over a period that is appropriate for the life cycle or form of the wildlife; or

- (b) the habitat or distribution of the wildlife has been reduced to an extent that the wildlife may be in danger of extinction; or
- (c) the population size of the wildlife has declined, or is likely to decline, to an extent that the wildlife may be in danger of extinction; or
- (d) the survival of the wildlife in the wild is unlikely if a threatening process continues.

78 Native wildlife may be prescribed as vulnerable wildlife

- (1) A regulation may prescribe native wildlife as vulnerable wildlife if—
 - (a) the population size or distribution of the wildlife has declined, or is likely to decline, to an extent that the wildlife may become endangered because of a threatening process; or
 - (b) the population size of the wildlife has been seriously depleted and the protection of the wildlife is not secured; or
 - (c) the population of the wildlife is—
 - (i) low or localised; and
 - (ii) dependent on habitat that has been, or is likely to be, adversely affected, in terms of quantity or quality, by a threatening process.
- (2) In this section—

endangered, in relation to wildlife, means the wildlife falls within a description mentioned in section 77.

78A Native wildlife may be prescribed as rare wildlife

- (1) A regulation may prescribe native wildlife as rare wildlife if the wildlife is not threatened wildlife and—
 - (a) the population of the wildlife is represented by—
 - (i) a relatively large population in a restricted range; or

- (ii) relatively small populations thinly spread over a wide range; or
- (b) the survival of the wildlife in the wild is affected to an extent that the wildlife is in danger of becoming vulnerable.
- (2) Native wildlife may be prescribed as rare wildlife even if the wildlife is the subject of a threatening process.
- (3) This section expires 5 years after it commences.
- (4) In this section—
vulnerable, in relation to wildlife, means the wildlife falls within a description mentioned in section 78(1).

79 Native wildlife may be prescribed as near threatened wildlife

- (1) A regulation may prescribe native wildlife as near threatened wildlife if—
 - (a) the population size or distribution of the wildlife is small and may become smaller; or
 - (b) the population size of the wildlife has declined, or is likely to decline, at a rate higher than the usual rate for population changes for the wildlife; or
 - (c) the survival of the wildlife in the wild is affected to an extent that the wildlife is in danger of becoming vulnerable.
- (2) Native wildlife may be prescribed as near threatened wildlife even if the wildlife is the subject of a threatening process.
- (3) In this section—
vulnerable, in relation to wildlife, means the wildlife falls within a description mentioned in section 78(1).

80 Native wildlife may be prescribed as least concern wildlife

- (1) A regulation may prescribe native wildlife as least concern wildlife if the wildlife is common or abundant and is likely to survive in the wild.

- (2) Native wildlife may be prescribed as least concern wildlife even if—
- (a) the wildlife is the subject of a threatening process; or
 - (b) the population size or distribution of the wildlife has declined; or
 - (c) there is insufficient information about the wildlife to conclude whether the wildlife is common or abundant or likely to survive in the wild.

81 Wildlife may be prescribed as international wildlife

If the Governor in Council is of the opinion that wildlife included in appendix I or II of CITES is not indigenous to Australia, the wildlife may be prescribed as international wildlife.

82 Wildlife may be prescribed as prohibited wildlife

If the Governor in Council is of the opinion that wildlife is—

- (a) an unnatural hybrid or not indigenous to Australia; and
- (b) likely to constitute a threatening process to protected wildlife;

the wildlife may be prescribed as prohibited wildlife.

Division 3 Ownership of protected wildlife

83 Property in protected animals

- (1) Subject to subsections (2) to (5), sections 85 and 86 and the provisions of any captive breeding agreement, all protected animals are the property of the State.
- (2) A protected animal ceases to be the property of the State if—
 - (a) the animal is taken under a licence, permit or other authority issued or given under a regulation; and
 - (b) under a conservation plan property in the animal passes from the State on that taking of the animal.

- (3) A protected animal to which subsection (2) applies becomes the property of the holder of the authority, subject to the rights in the animal of any other person (other than the rights of the State under subsection (1)).
- (4) A protected animal that is the progeny of an animal to which subsection (2) applies is the property of the owner of the progeny's female parent, subject to the rights in the animal of any other person (other than the rights of the State under subsection (1)).
- (5) If—
 - (a) a person is keeping an animal that is not a protected animal; and
 - (b) the animal becomes a protected animal because of the making of a regulation under this Act;the animal and its progeny do not become the property of the State merely because of the making of the regulation.

84 Property in protected plants

- (1) Subject to subsections (2) to (4), section 86 and the provisions of any captive breeding agreement, all protected plants (other than protected plants on private land) are the property of the State.
- (2) A protected plant ceases to be the property of the State if—
 - (a) the plant is taken under a licence, permit or other authority issued or given under a regulation; and
 - (b) under a conservation plan property in the plant passes from the State on that taking of the plant.
- (3) A protected plant to which subsection (2) applies becomes the property of the holder of the authority, subject to the rights in the plant of any other person (other than the rights of the State under subsection (1)).
- (4) The progeny of a plant to which subsection (2) applies is the property of the owner of the plant from which the progeny is propagated, subject to the rights in the plant of any other person (other than the rights of the State under subsection (1)).
- (5) In this section—

private land means—

- (a) freehold land; or
- (b) land the subject of a lease under any Act containing an entitlement to a deed of grant in fee simple.

protected plant means a protected plant that is in the wild.

85 Property in newly protected animals

- (1) In this section—

commencing day means the day on which this division commences.

declaration day for an animal means the day on which the animal becomes a newly protected animal.

newly protected animal means a protected animal that, immediately before the commencing day, was not fauna under the *Fauna Conservation Act 1974*.

- (2) If a person is keeping a newly protected animal at the beginning of the declaration day, the animal and its progeny do not become the property of the State merely because of the animal becoming a protected animal.

86 Preservation of existing property rights

Sections 83 and 84 do not affect property rights a person (other than the State) has in native wildlife immediately before the wildlife becomes protected wildlife.

87 Liability of State

The State is not legally liable for an act or omission merely because protected animals and plants are the property of the State.

Division 4 Restrictions on activities relating to protected wildlife

88 Restrictions on taking protected animal and keeping or use of unlawfully taken protected animal

- (1) This section—
 - (a) is subject to section 93; and
 - (b) does not apply to the taking of protected animals in a protected area.¹⁰
- (2) A person must not take a protected animal unless the person is an authorised person or the taking is authorised under this Act.

Maximum penalty—

- (a) for a class 1 offence—3000 penalty units or 2 years imprisonment; or
 - (b) for a class 2 offence—1000 penalty units or 1 year's imprisonment; or
 - (c) for a class 3 offence—225 penalty units; or
 - (d) for a class 4 offence—100 penalty units.
- (3) It is a defence to a charge of taking a protected animal in contravention of subsection (1) to prove that—
 - (a) the taking happened in the course of a lawful activity that was not directed towards the taking; and
 - (b) the taking could not have been reasonably avoided.
- (4) Subsection (3) does not allow a person to keep or use the animal.
- (5) A person must not keep or use an animal that is either of the following unless the person is an authorised person or the keeping or use is authorised under this Act—

10 Section 93 (Aborigines' and Torres Strait Islanders' rights to take etc. protected wildlife)

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

(a) a protected animal if, at any time, it has been taken and the taking was not authorised under this Act or a law of another State;

(b) a descendant of an animal mentioned in paragraph (a).

Maximum penalty—

(a) for a class 1 offence—3000 penalty units or 2 years imprisonment; or

(b) for a class 2 offence—1000 penalty units or 1 year's imprisonment; or

(c) for a class 3 offence—225 penalty units; or

(d) for a class 4 offence—100 penalty units.

(6) In this section—

Class 1 offence means an offence against this section that involves—

(a) 1 or more animals that are extinct in the wild or endangered wildlife; or

(b) 5 or more animals that are vulnerable or near threatened wildlife; or

(c) 10 or more animals that are rare wildlife; or

(d) 1 or more echidna, koala or platypus.

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

(a) 3 or 4 animals that are vulnerable or near threatened wildlife; or

(b) 4 or more, but no more than 9, animals that are rare wildlife; or

(c) 10 or more animals that are common wildlife.

Class 3 offence means an offence against this section that is not a class 1 or class 2 offence and involves—

(a) 1 or 2 animals that are vulnerable or near threatened wildlife; or

(b) 2 or 3 animals that are rare wildlife; or

- (c) 5 or more, but less than 10, animals that are common wildlife.

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

88A Restriction on keeping or use of lawfully taken protected animal

- (1) Subject to section 93, a person, other than an authorised person, must not keep or use a protected animal that is either of the following unless the keeping or use is authorised under this Act—
 - (a) a protected animal, if the animal has, at any time, been taken and the taking was authorised under this Act or a law of another State;
 - (b) a descendant of an animal mentioned in paragraph (a).

Maximum penalty—

- (a) generally—1000 penalty units; or
 - (b) if a circumstance mentioned in subsection (2) applies—100 penalty units.
- (2) For subsection (1), the circumstances are that—
 - (a) in the 12 months before the commission of the offence, the person held a licence, permit or other authority (the ***former authority***) under this Act and—
 - (i) the former authority is no longer in force; and
 - (ii) had the former authority still been in force, the offence would not have been committed; and
 - (iii) the former authority ceased to be in force for a reason other than its cancellation or suspension; and
 - (iv) an application to renew the former authority has not been refused; or
 - (b) the offence only relates to moving the animal.

88B Offence to keep or use native wildlife reasonably suspected to have been unlawfully taken

- (1) A person must not keep or use native wildlife if a reasonable person in the person's circumstances ought to have suspected that the wildlife may have been unlawfully taken unless—
- (a) the person is an authorised person; or
 - (b) the State has, under this Act, disposed of the native wildlife to the person.¹¹

Maximum penalty—

- (a) if the wildlife ought to have been suspected to have been taken in contravention of section 88(2), 89 or 97¹²—the maximum penalty under that section that applies to an unlawful taking of the wildlife; or
- (b) if the wildlife ought to have been suspected to have been taken in contravention of a law of another State—the maximum penalty under that law that applies to the unlawful taking of the wildlife.

Examples of when an offence is committed under subsection (1)—

A buys and keeps the native wildlife mentioned in item 1 or 2, under the circumstances mentioned in the item. A is not an authorised person. A did not buy the wildlife from the State. A reasonable person in A's circumstances ought to have suspected that the wildlife may have been unlawfully taken.

- 1 A buys protected wildlife from B at a market stall. Before buying the wildlife A asked B for evidence that it had been lawfully taken. In response, B replied that B did not have that evidence and that B bought the wildlife from someone else whom B did not know.
- 2 A holds a licence under this Act to keep particular protected wildlife. A buys protected wildlife of that type from B. Under this Act, to keep or deal with the wildlife, B must hold a particular type of licence. A regulation requires that B must, before the sale is completed, fill in a movement advice in the approved form for the movement of the wildlife because of the sale. The approved form

11 See sections 171 (Disposal of cultural or natural resources and protected wildlife owned by State) and 172 (Disposal of wildlife etc. not owned by State).

12 Section 88 (Restrictions on taking protected animal and keeping or use of unlawfully taken protected animal), 89 (Restriction on taking etc. particular protected plants) or 97 (Restriction on taking etc. of native wildlife in areas of major interest and critical habitats)

requires a written acknowledgement by A as the person to whom the wildlife is being moved. B has not shown to A that B holds a licence to keep and deal with the wildlife. A did not give the acknowledgement.

- (2) If a person is charged with an offence against subsection (1), it is a defence to the charge if the person satisfies the court that the person had no reasonable grounds for suspecting the wildlife was unlawfully taken.
- (3) In this section—
unlawfully taken means taken in contravention of section 88(2), 89 or 97 or of a law of another State.

89 Restriction on taking etc. particular protected plants

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

Maximum penalty—3000 penalty units or 2 years imprisonment.

- (2) Subsection (1) does not apply to the taking of protected plants in a protected area.¹³
- (3) It is a defence to a charge of taking a protected plant in contravention of subsection (1) to prove that—
 - (a) the taking happened in the course of a lawful activity that was not directed towards the taking; and
 - (b) the taking could not have been reasonably avoided.
- (4) A person must not use or keep a protected plant that has been taken in contravention of subsection (1).

Maximum penalty—3000 penalty units or 2 years imprisonment.

- (5) In this section—

¹³ Section 62 deals with the taking of protected animals in a protected area.

protected plant means a protected plant that—

- (a) is prescribed under this Act as threatened, rare or near threatened wildlife; and
- (b) is in the wild.

90 Restriction on using particular protected plants

Subject to section 93, a person, other than an authorised person, must not use a protected plant that is threatened, rare or near threatened wildlife other than under—

- (a) a licence, permit or other authority issued under a regulation; or
- (b) an exemption under a regulation.

Maximum penalty—1000 penalty units.

91 Restriction on release etc. of international and prohibited wildlife

- (1) A person, other than an authorised person, must not, unless authorised under this Act—

- (a) abandon or release international or prohibited wildlife into the wild; or
- (b) introduce international or prohibited wildlife into the State; or
- (c) keep or use international or prohibited wildlife that, in contravention of paragraph (b), has been introduced into the State.

Maximum penalty—3000 penalty units or 2 years imprisonment.

- (2) A person, other than an authorised person, must not otherwise keep or use international or prohibited wildlife unless—

- (a) the wildlife is dead and, if the wildlife is international wildlife, an approved tag is, under a regulation, attached to the animal or the part of the animal that is being kept or used; or

- (b) the keeping or use is the keeping or use of milk obtained from prohibited wildlife; or
- (c) the keeping or use is otherwise authorised under this Act.

Maximum penalty—100 penalty units.

92 Restriction on breeding etc. hybrids of protected animals

- (1) A person must not—
 - (a) knowingly breed a hybrid or mutation of a protected animal; or
 - (b) abandon a hybrid or mutation of a protected animal in the wild;

other than under a regulation or exemption under a regulation.

Maximum penalty—165 penalty units.

- (2) A person must not release a hybrid or mutation of a protected animal into the wild other than under a conservation plan for the protected animal.

Maximum penalty—165 penalty units or 1 year's imprisonment.

93 *Aborigines' and Torres Strait Islanders' rights to take etc. protected wildlife*

- (1) *Despite any other Act, an Aborigine or Torres Strait Islander may take, use or keep protected wildlife under Aboriginal tradition or Island custom.*
- (2) *Subsection (1) applies subject to any provision of a conservation plan that expressly applies to the taking, using or keeping of protected wildlife under Aboriginal tradition or Island custom.*
- (3) *An Aborigine or Torres Strait Islander who takes, uses or keeps protected wildlife in contravention of a provision of a conservation plan that expressly prohibits the taking, using or keeping of protected wildlife under Aboriginal tradition or Island custom commits an offence against this Act.*

- (4) *Subsection (1) does not apply to the taking, using or keeping of protected wildlife in a protected area.*¹⁴

*Maximum penalty—3000 penalty units or imprisonment for 2 years.*¹⁵

94 Conservation officers prohibited in dealing with protected wildlife

A conservation officer must not acquire or hold an interest in—

- (a) a licence, permit or other authority issued or given under a regulation for the purpose of conducting the business of dealing in protected wildlife; or
- (b) any business dealing in protected wildlife; or
- (c) any place at or in which the business of dealing in protected wildlife is conducted; or
- (d) any contract or arrangement made for the purpose of dealing in protected wildlife.

Maximum penalty—50 penalty units.

Division 5 Conservation value for protected wildlife

95 Payment of conservation value

- (1) Subject to subsection (8), there is payable to the State for protected wildlife taken under a licence, permit or other authority issued or given under a regulation, the conservation value (if any) prescribed under this Act for the wildlife.
- (2) The conservation value of protected wildlife is an expression in monetary terms of the State's conservation concern for the wildlife.

14 Section 62 deals with, among other things, the taking, using or keeping of protected wildlife in a protected area.

15 This provision had not commenced on or before the reprint date.

- (3) Despite any Act or law, payment of the conservation value does not, of itself, transfer property in protected wildlife from the State.

- (4) The person who lawfully takes protected wildlife must pay the conservation value for the wildlife within 30 days after the wildlife is taken.

Maximum penalty—50 penalty units.

- (5) A person who lawfully takes protected wildlife must not give up or surrender possession of the wildlife unless the conservation value for the wildlife has been paid.

Maximum penalty—50 penalty units.

- (6) A person must not keep protected wildlife knowing that the conservation value for the wildlife has not been paid.

Maximum penalty—50 penalty units.

- (7) If a person lawfully takes wildlife, subsection (6) does not apply to the keeping of the wildlife by the person during the period allowed under subsection (4) for the payment of the conservation value for the wildlife.

- (8) The conservation value of wildlife is not payable by a person if the person—

- (a) is exempt from the payment under a regulation; or
- (b) takes the wildlife for an authorised purpose under a conservation plan applicable to the wildlife; or
- (c) takes the wildlife under a captive breeding agreement and pays the amount that the agreement provides must be paid for the taking of the wildlife.

96 Recovery of unpaid conservation value

- (1) An amount of conservation value payable under this Act is a debt due to the State and may be recovered in a court having jurisdiction for the recovery of debts up to the amount concerned.
- (2) A proceeding may be instituted against a person for the recovery of an amount of conservation value payable under this Act whether or not—

- (a) a prosecution has been instituted against the person for an offence in relation to the nonpayment; or
- (b) the person has been convicted of an offence in relation to the nonpayment.

Division 6 Specific restriction on activities relating to native wildlife

97 Restriction on taking etc. of native wildlife in areas of major interest and critical habitats

- (1) This section applies to native wildlife (other than protected wildlife)¹⁶ in an area that is identified under a conservation plan as, or including—
 - (a) a critical habitat; or
 - (b) an area of major interest.
- (2) A person, other than an authorised person, must not take, use, keep or interfere with the wildlife, other than under—
 - (a) the conservation plan; or
 - (b) a licence, permit or other authority issued or given under a regulation.

Maximum penalty—3000 penalty units or 2 years imprisonment.
- (3) It is a defence to a charge of taking or interfering with wildlife in contravention of subsection (2) to prove that—
 - (a) the taking or interference happened in the course of a lawful activity that was not directed towards the taking or interference; and
 - (b) the taking or interference could not have been reasonably avoided.
- (4) Subsection (3) does not allow a person to use or keep the wildlife.

¹⁶ Sections 62, 88 and 89 deal with the taking, using and keeping of protected wildlife.

97A Additional restriction on hunting native ducks or native quails

- (1) A regulation or conservation plan under this Act does not and can not authorise, whether directly or indirectly—
 - (a) the recreational hunting of native ducks or native quails; or
 - (b) the issue or giving of a licence, permit or other authority authorising the recreational hunting of native ducks or native quails; or
 - (c) the entry into an agreement or other arrangement authorising the recreational hunting of native ducks or native quails.
- (2) The recreational hunting of native ducks or native quails is not and can not be authorised, for section 62(1), 88(2) or another provision of this Act, in any other way provided for under this Act, including, for example, under anything mentioned in section 62(1)(a), (b), (c), (d) or (e).
- (3) An authorisation, however called, under this Act that is in existence immediately before the commencement of this section is of no legal effect to the extent it authorises, or purports to authorise, the recreational hunting of native ducks or native quails.
- (4) In this section—

recreational hunting, of native ducks or native quails, means hunting directed at killing (including, for example, by shooting) native ducks or native quails for a recreational purpose.

Division 7 Provisions for land-holders**98 No right to enter land**

Nothing in this Act gives—

- (a) the holder of a licence, permit or other authority issued or given under a regulation; or
- (b) an Aborigine or Torres Strait Islander;

the right to enter any land for the purpose of taking wildlife without the land-holder's consent.

99 Offence to trespass—general

- (1) A person must not—
 - (a) take wildlife on any land; or
 - (b) enter or be on any land for the purpose of taking wildlife;without the land-holder's consent.
Maximum penalty—165 penalty units.
- (2) Subsection (1) does not apply to a conservation officer who—
 - (a) has entered the land under part 9; and
 - (b) exercises a power under the part.

100 Offence to trespass—land-holders' rights

- (1) This section applies to a person who a land-holder suspects on reasonable grounds—
 - (a) is trespassing on the land-holder's land; and
 - (b) is committing on the land, has committed on the land or is on the land for the purpose of committing, an offence against this Act.
- (2) The land-holder may—
 - (a) require the person to state—
 - (i) the person's name and address; and
 - (ii) the person's purpose for being on the land; and
 - (b) if the person is on the land without lawful authority—require the person to leave the land immediately.
- (3) If—
 - (a) the person fails to give—
 - (i) his or her name and address; or

- (ii) the person's purpose for being on the land; if required to do so by the land-holder; or
 - (b) the person—
 - (i) is on the land without lawful authority; and
 - (ii) fails to leave the land immediately if required to do so by the land-holder;
- the person commits an offence against this Act.
- Maximum penalty—165 penalty units.
- (4) This section does not affect any other right or remedy that the land-holder may have against the trespasser.

Division 8 Captive breeding agreements and captive breeding for conservation

Subdivision 1 Preliminary

100A Main purpose of div 8 and its achievement

- (1) The main purpose of this division is to facilitate the conservation of native wildlife in the wild through captive breeding programs and the introduction of captive-bred wildlife into the wild.
- (2) The purpose is achieved by—
 - (a) providing for agreements between the State and other entities about captive breeding; and
 - (b) authorise the taking of protected wildlife in the wild for use in captive breeding programs.

Subdivision 2 Captive breeding agreements

100B Minister's power to enter into captive breeding agreement

- (1) The Minister may, for the State, enter into an agreement (a ***captive breeding agreement***) with someone else about captive breeding of protected wildlife to—
 - (a) reintroduce it into the wild, in the State or elsewhere; or
 - (b) otherwise ensure the survival in the wild of the protected wildlife or another species of wildlife.
- (2) However, the agreement may provide for the reintroduction of the protected wildlife only if the Minister is satisfied—
 - (a) suitable habitat exists, or will exist, for the wildlife at the place where it is to be released; and
 - (b) threatening processes for the wildlife or its habitat will be minimised at the place.
- (3) The agreement may be made even though no conservation plan or recovery plan has been made for the wildlife.
- (4) In this section—

captive breeding, of protected wildlife, means doing, in the State or elsewhere, any of the following for a purpose mentioned in subsection (1)—

- (a) growing or propagating protected plants under controlled conditions;
- (b) breeding, hand-rearing or incubating protected animals in captivity;
- (c) removing eggs, sperm or other reproductive material from protected wildlife in captivity or the wild for embryo transfer, fertilisation, artificial insemination or incubation.

protected wildlife includes wildlife that, under a law of another State, is an equivalent (however called) of protected wildlife as defined under this Act.

recovery plan, for wildlife, is a document stating what research and management is necessary to stop the decline,

support the recovery, or enhance the chance of long-term survival in the wild, of the wildlife.

Example—

a recovery plan made or adopted under the *Environment Protection and Biodiversity Act 1999* (Cwlth), section 269A¹⁷

reproductive material, of protected wildlife, means any part of the wildlife that is capable of, or contributes to, asexual or sexual reproduction.

Examples of reproductive material of a plant—

all or part of a bulb, rhizome, root, seed, stolon or tuber

100C Things a captive breeding agreement may provide for

- (1) A captive breeding agreement may do any of the following in relation to protected wildlife to which the agreement applies—
 - (a) authorise, for this Act, a party to the agreement to—
 - (i) take the wildlife in a protected or other area; or
 - (ii) keep or use the wildlife;
 - (b) provide for the passing of property rights in relation to the wildlife to a party to the agreement.
- (2) However, the authorisation is subject to section 100E.
- (3) A captive breeding agreement may provide that wildlife that is the property of the State is, under the agreement, to pass to another party to the agreement.

100D Required provisions for captive breeding agreement

- (1) A captive breeding agreement must state or provide for each of the following—
 - (a) the species of wildlife to which the agreement applies;
 - (b) how many of the wildlife are to be taken in the wild, their sex and place of taking;

¹⁷ *Environment Protection and Biodiversity Act 1999* (Cwlth), section 269A (Making or adopting a recovery plan)

- (c) whether the conservation value or a stated different amount must be paid for any of the wildlife that, under the agreement, is to be taken in the wild;
 - (d) arrangements to be made to distinguish the wildlife from others of the same species;
 - (e) the taking of tissue samples of the wildlife for genetic typing;
 - (f) where the wildlife are to be kept;
 - (g) requirements for keeping stud books and other records;
 - (h) arrangements to be made for releasing the wildlife or their descendants or to dispose of any of the wildlife that are no longer suitable for breeding or release;
 - (i) how the agreement may be enforced or terminated;
 - (j) any other matter prescribed under a regulation.
- (2) To remove any doubt, it is declared that subsection (1) does not limit section 100B(1).

100E Restriction on the taking, under a captive breeding agreement, of wildlife in the wild

A person who, under a captive breeding agreement, takes wildlife in the wild must carry a copy of the agreement while taking or moving the wildlife.¹⁸

Maximum penalty—50 penalty units.

100F Additional provisions for termination of captive breeding agreement

- (1) The Minister may, by written notice to each other party to a captive breeding agreement, terminate the agreement if a party to the agreement is convicted of an offence against section 88, 88A or 89.¹⁹

¹⁸ See also section 99 (Offence to trespass—general).

¹⁹ Section 88 (Restrictions on taking protected animal and keeping or use of unlawfully taken protected animal), 88A (Restriction on keeping or use of lawfully taken protected animal) or 89 (Restriction on taking etc. particular protected plants)

- (2) A regulation may terminate a captive breeding agreement.
- (3) This section—
 - (a) applies despite any provision of a captive breeding agreement; and
 - (b) does not limit the ways in which a captive breeding agreement may be terminated.

100G Obligation to surrender protected wildlife on termination of captive breeding agreement

- (1) If a captive breeding agreement is terminated, the chief executive may give a written notice to any person who is, or who appears to be, in charge of protected wildlife that, under the agreement, is the property of the State, to surrender the wildlife to the State.
- (2) The notice may be given even if the wildlife is being kept or used at a place outside the State.
- (3) The person must comply with the notice.
Maximum penalty—1000 penalty units.
- (4) This section does not limit—
 - (a) section 88, 88A or 89; or
 - (b) the State's property in the wildlife; or
 - (c) a conservation officer's powers in relation to the wildlife.

Subdivision 3 Chief executive's power for captive breeding

100H Powers

The chief executive may take, keep or use protected wildlife for captive breeding or to give effect to a captive breeding agreement.

Part 6 Interim conservation orders

101 Definitions

In this part—

land-holder includes a person having an interest in land.

protected area includes the Wet Tropics Area within the meaning of the *Wet Tropics World Heritage Protection and Management Act 1993*.

102 Issue of order

If the Minister is of the opinion that—

- (a) threatened, rare or near threatened wildlife; or
- (b) a protected wildlife habitat that is, in the Minister's opinion, a critical habitat; or
- (c) an area of major interest; or
- (d) a protected area;

is subject to a threatening process that is likely to have significant detrimental effect on the wildlife, habitat or area, the Minister may make an interim conservation order for the conservation, protection or management of the wildlife, habitat or area.

103 Effect of order

- (1) An interim conservation order may provide for—
 - (a) the prohibition or control of a specified threatening process; or
 - (b) such other matters as are prescribed.
- (2) An order may be made in relation to land even though—
 - (a) the wildlife or habitat is not within the land; or
 - (b) the land is not within an area of major interest or protected area.

104 Notice of order

- (1) On the day an interim conservation order is made, the Minister must give or send written notice to—
 - (a) all land-holders of land to which the order relates; and
 - (b) the local government for the area in which the land is situated;that the order has been made and of the terms of the order.
- (2) It is sufficient compliance with subsection (1)(a) in relation to a land-holder if the Minister gives notice of the order to the land-holder by displaying the notice in a prominent place on the land.

105 Duration of order

- (1) An interim conservation order has effect from the time it is made and continues in force for not more than 60 days.
- (2) The Governor in Council may, by gazette notice, extend the order by not more than 90 days.

106 Orders prevail over planning schemes

If there is any conflict between an interim conservation order and a planning scheme, the order prevails over the planning scheme.

107 Suspension of licences etc.

- (1) If a licence, permit or other authority issued or given under any Act permits the holder to do an act that would contravene an interim conservation order, the Minister may, by order, suspend the operation of the authority to the extent that it permits the doing of the act.
- (2) The Minister must give written notice of the order to the authority holder.
- (3) If the Minister considers that it is impracticable to give notice to each holder of a particular class of authority, it is sufficient compliance with subsection (2) if the Minister gives notice of

the order to the authority holders by publishing a notice in such newspapers as the Minister determines.

- (4) The suspension—
 - (a) takes effect from—
 - (i) if notice is given under subsection (2)—the day the notice is received by the holder; or
 - (ii) if notice is given under subsection (3)—the day the notice is first published in a newspaper; or
 - (iii) if a later day is specified in the notice—the later day; and
 - (b) ends—
 - (i) when the interim conservation order ends; or
 - (ii) if an earlier day is specified in the notice—the earlier day.
- (5) This section applies despite any other Act.

108 Compensation

- (1) A land-holder of land subject to an interim conservation order is entitled to be paid by the State such reasonable compensation because of the making of the order as is agreed between the State and the land-holder or, failing agreement, as is determined by the Land Court.
- (2) A claim for compensation must—
 - (a) be made in a form approved by the chief executive; and
 - (b) be made to the chief executive within 6 months after the making of the order or the longer period the chief executive or the Land Court in special circumstances allows.

109 Compliance with order

A person must not contravene an interim conservation order.

Maximum penalty—3000 penalty units or 2 years imprisonment.

Part 7 Management and conservation plans

110 Meaning of *land-holder* in part

In this part—

land-holder includes a person having an interest in land.

111 Management plans

(1) The Minister must, as soon as practicable after—

(a) the dedication of—

(i) a national park (scientific); or

(ii) a national park; or

(iii) a national park (recovery); or

(iv) a conservation park; or

(v) a resources reserve; or

(b) the declaration of—

(i) a nature refuge, under section 49;²⁰ or

(ii) a coordinated conservation area; or

(iii) a wilderness area;

prepare a management plan for the area.

(2) Subsection (1) does not apply if—

(a) the dedication or declaration is a dedication or declaration of a change in the class of a protected area; and

(b) the regulation dedicating or declaring the area declares that the management plan for the area continues to apply.

(3) Subsection (1) does not apply if—

20 Section 49 (Compulsory declaration of nature refuge)

- (a) on the dedication or declaration of a protected area (the *new area*), the new area is amalgamated with another protected area for which a management plan is in force; and
 - (b) the regulation dedicating or declaring the new area declares that the management plan applies to the amalgamated area.
- (4) If—
 - (a) on or after the dedication or declaration of a protected area (the *new area*), the new area is amalgamated with another protected area (the *original area*) for which a management plan is in force; and
 - (b) a management plan is required to be prepared for the new area under this section;

the Minister may prepare a management plan for the amalgamated area or a management plan amending the plan for the original area to apply the plan to the new area.
- (5) If—
 - (a) on or after the dedication or declaration of a protected area, the area is included in an aggregation of protected areas assigned a name under section 64; and
 - (b) a management plan is required to be prepared for the area under this section;

the Minister may prepare a management plan for the aggregation of areas instead of a plan for the area (whether or not plans have been prepared for other areas included in the aggregation of areas).
- (6) If the Minister decides to prepare a management plan for an amalgamated area or aggregation of areas, this part applies to the preparation and approval of the plan with any necessary changes and any changes prescribed by regulation.
- (7) The Minister may after the declaration of a nature refuge, other than under section 49, prepare a management plan for the area of the refuge if the land-holder of the area agrees.

112 Conservation plans

- (1) The Minister may prepare a conservation plan for any native wildlife, class of wildlife, native wildlife habitat or area that is, in the Minister's opinion, an area of major interest.
- (2) If a person applies for a licence, permit or other authority under a regulation to—
 - (a) take or use protected wildlife; or
 - (b) release international or prohibited wildlife into the wild; or
 - (c) introduce international or prohibited wildlife into the State;the Minister may, before the authority is given—
 - (d) require the person, at the person's cost, to prepare a draft conservation plan; or
 - (e) prepare a draft conservation plan;for the taking, use, release or introduction of the wildlife.
- (3) The procedures applying to the preparation and approval of plans under this part (other than sections 113 and 114) apply to a draft conservation plan prepared under subsection (2).
- (4) The Minister may require the person to pay—
 - (a) if subsection (2)(d) applies—the reasonable costs incurred by the Minister in relation to the preparation and approval of a final conservation plan; or
 - (b) if subsection (2)(e) applies—the reasonable costs incurred by the Minister in relation to—
 - (i) the preparation of the draft and final conservation plans; and
 - (ii) the approval of the final conservation plan.
- (5) A conservation plan may make provision about the following matters—
 - (a) any matter for which a regulation may be made under this Act, including, for example, prescribing offences for contraventions of the plan, and fixing a maximum

penalty of a fine of not more than 165 penalty units for the contravention;

- (b) the use or development of land, and activities, in an area identified under the plan as, or including, a critical habitat or an area of major interest.

113 Notice of proposal to prepare draft plan

- (1) The Minister must give public notice that the Minister proposes to prepare a draft management or conservation plan (other than a plan for a nature refuge that is subject to a conservation agreement).
- (2) The notice must—
 - (a) be published in such newspapers as the Minister determines; and
 - (b) specify the protected area, area of major interest, wildlife or native wildlife habitat concerned; and
 - (c) invite submissions from land-holders, local governments, interested groups and persons, including Aborigines and Torres Strait Islanders and members of the public; and
 - (d) specify a day by which submissions may be made to the Minister.

114 Preparation of draft plan

When preparing a draft management or conservation plan, the Minister must consider all submissions properly made to the Minister.

115 Notice of preparation of draft plan

- (1) The Minister must give public notice when a draft management or conservation plan has been prepared (other than a plan for a nature refuge that is subject to a conservation agreement).
- (2) The notice must—

- (a) be published in such newspapers as the Minister determines; and
 - (b) specify the protected area, area of major interest, wildlife or native wildlife habitat concerned; and
 - (c) specify the addresses at which copies of the draft plan may be inspected and, on payment of the appropriate fee, purchased; and
 - (d) invite submissions from land-holders, local governments, interested groups and persons, including Aborigines and Torres Strait Islanders and members of the public; and
 - (e) specify a day by which submissions may be made to the Minister.
- (3) The fee for the purchase of a copy of a draft plan is the amount that—
- (a) the chief executive considers to be reasonable; and
 - (b) is not more than the reasonable cost of preparing the plan.

116 Submissions to be considered when preparing final plans

When preparing a final management or conservation plan, the Minister must consider all submissions properly made to the Minister.

117 Final management plans

- (1) A final management plan for a protected area must—
- (a) be consistent with the management principles for the class of the area and, if the area is a nature refuge, coordinated conservation area or wilderness area, any conservation agreement or covenant for the area; and
 - (b) specify management outcomes for the protection, presentation and use of the area and the policies, guidelines and actions to achieve the outcomes.

- (1A) A final management plan for a protected area may be inconsistent with a wild river declaration that applies to a part or all of the protected area only to the extent the management plan provides for a greater level of protection for the area than is provided for in the declaration.
- (2) A final management plan for a protected area may divide the area into management zones.

118 Final conservation plans

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

119 Approval of final plan

- (1) A final management or conservation plan does not have effect until it has been approved by the Governor in Council.
- (2) A final conservation plan is subordinate legislation.
- (3) The chief executive must keep the approved plan open for inspection by members of the public during office hours on business days at—
 - (a) the department's head office; and
 - (b) each regional office of the department; and
 - (c) such other places as the chief executive considers appropriate.

120 Implementation of approved plan

- (1) On approval of a management plan for a protected area—
 - (a) if the area is a national park (Aboriginal land) or national park (Torres Strait Islander land)—the board of management for the area; or
 - (b) if the area is under the control of trustees—the trustees; or

(c) if paragraphs (a) and (b) do not apply—the chief executive;

must give effect to the plan.

- (2) On approval of a conservation plan for wildlife, native wildlife habitat or area of major interest, the chief executive must give effect to the plan.

121 Plan replaces interim or declared management intent

- (1) A management plan for a coordinated conservation area or wilderness area replaces the interim or declared management intent for the area.
- (2) A conservation plan for wildlife, or a class of wildlife, replaces the declared management intent for the wildlife, or class of wildlife, unless the plan declares that this subsection does not apply to the plan.

122 Conservation plans and regulations prevail over planning schemes

If there is any conflict between a conservation plan, or regulation giving effect to a management plan, and a planning scheme (whether made before or after the plan or regulation), the plan or regulation prevails over the planning scheme.

123 Local governments' decisions to be consistent with plans

- (1) This section applies to land in—
- (a) a protected area for which a regulation is in force giving effect to a management plan for the area; or
- (b) an area identified under a conservation plan as, or including, a critical habitat or an area of major interest.
- (2) A local government must not issue or give any approval, consent, permit or other authority for a use of, or a development on, the land that is inconsistent with the regulation or plan.

124 Amendment of plans

- (1) The Governor in Council may amend a management or conservation plan by a subsequent management or conservation plan only if the procedures applying to the preparation and approval of plans under this part (other than sections 113 and 114) are followed.
- (2) However, subsection (1) does not apply to the amendment of a management or conservation plan to—
 - (a) correct an error in the plan; or
 - (b) make a change (other than a change of substance) in the plan; or
 - (c) if the plan or a regulation provides that an amendment of a stated type may be made to the plan by amendment under this subsection—make an amendment of that type.

125 Review of plans

- (1) The Minister must review the operation of each management and conservation plan not later than 10 years after its approval.
- (2) The procedures applying to the preparation and approval of plans under this part apply to the review of plans with any necessary changes and any changes prescribed by regulation.

126 Compensation

- (1) This section applies if—
 - (a) a conservation plan is approved for an area identified under the plan as, or including, a critical habitat or an area of major interest; and
 - (b) a land-holder's interest in land in the area is injuriously affected by a restriction or prohibition imposed under the plan on the land-holder's existing use of the land.
- (2) The land-holder is entitled to be paid by the State the reasonable compensation because of the restriction or prohibition that is agreed between the State and the land-holder or, failing agreement, decided by the Land Court.

- (3) The land-holder's interest in the land is not injuriously affected if the restriction or prohibition under the conservation plan is the same, or to the same effect, as a provision of another law applying to the land immediately before the commencement of the plan.
- (4) Compensation is not payable if compensation has already been paid for—
 - (a) the restriction or prohibition; or
 - (b) a restriction or prohibition to the same effect.
- (5) A claim for compensation must—
 - (a) be made in a form approved by the chief executive; and
 - (b) be made to the chief executive within 6 months after the approval of the conservation plan or the longer period the chief executive or Land Court in special circumstances allows.
- (6) In making a determination, the Land Court must have regard to the following matters—
 - (a) the capacity of the land to sustain the existing use;
 - (b) any change in the value of the land because of the approval of the conservation plan;
 - (c) any change in the profitability of the land because of the approval of the conservation plan;
 - (d) any conservation agreement with the land-holder.
- (7) Subsection (6) does not limit the matters to which the Land Court may have regard in making a determination.
- (8) In this section—

existing use of land includes a lawful use made of the land immediately before the commencement of the conservation plan that restricts or prohibits the use.

Part 8 Administration

127 Appointment of conservation officers

- (1) The Minister may—
 - (a) appoint an employee of the department; or
 - (b) appoint an officer of the public service; or
 - (c) appoint a police officer;²¹ or
 - (d) with the person's consent, appoint another person; to be a conservation officer.
- (2) The Minister may appoint a conservation officer, who has satisfactorily completed a course of training approved by the Minister, to be a special conservation officer.
- (3) An appointment under subsection (1) or (2) must be in, or evidenced by, writing signed by the Minister.
- (4) A conservation officer appointed under subsection (1)(a) or (b) holds office subject to the conditions specified in the instrument of appointment.
- (5) A conservation officer appointed under subsection (1)(d)—
 - (a) holds office for the term, and subject to the conditions, specified in the instrument of appointment; and
 - (b) may resign office by writing signed and given to the Minister.

128 Appointment of honorary protectors

- (1) The Minister may, by signed writing, appoint a qualified person, with the person's consent, to be an honorary protector.
- (2) An honorary protector—
 - (a) holds office for the term, and subject to the conditions, specified in the instrument of appointment; and

²¹ A proposed appointment must have the approval of the commissioner of the police service under the *Police Powers and Responsibilities Act 2000*, section 12.

- (b) has the powers of a conservation officer under section 151 and such other powers as may be prescribed; and
 - (c) may resign by writing signed and given to the Minister.
- (3) In this section—
- qualified person*** means a person who—
- (a) in the Minister's opinion, has the necessary expertise or experience to be an honorary protector; or
 - (b) has satisfactorily completed a course of training approved by the Minister.

129 Minister may inquire into suitability of proposed appointees

- (1) Before appointing a person as a conservation officer or honorary protector, the Minister may inquire into the suitability of the person.
- (2) The Minister may obtain a report from the commissioner of the police service about the criminal history of the person.
- (3) The report must include reference to, or disclosure of, convictions mentioned in the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 6.

130 Identity cards

- (1) The Minister must issue an identity card to—
 - (a) each conservation officer, other than a police officer or an officer of a prescribed class; and
 - (b) each honorary protector.
- (2) The identity card must—
 - (a) contain a recent photograph of the conservation officer or honorary protector; and
 - (b) be in a form approved, in writing, by the Minister; and
 - (c) in the case of a conservation officer who is a special conservation officer—state that the officer is a special conservation officer; and

- (d) be signed by the conservation officer or honorary protector.
- (3) A person who ceases to be a conservation officer or honorary protector must, as soon as practicable, return his or her card to the Minister.

Maximum penalty for subsection (3)—50 penalty units.

131 Proof of authority

A conservation officer (other than an officer who is in uniform) or an honorary protector must not exercise any power under this Act in relation to a person unless the conservation officer or honorary protector first produces his or her identity card for inspection by the person.

132 Advisory committees

- (1) The Minister may establish as many advisory committees as the Minister considers appropriate for the purposes of the administration of this Act, including, for example—
 - (a) scientific advisory committees; and
 - (b) wilderness area advisory committees; and
 - (c) protected area management advisory committees; and
 - (d) wildlife management advisory committees.
- (2) An advisory committee is to have the functions that the Minister specifies, including, for example, the function of advising the Minister on—
 - (a) the management intent of, and the identification of areas that are suitable for declaration as, wilderness areas; and
 - (b) the identification, classification and management of protected areas; and
 - (c) the classification of wildlife; and
 - (d) the suitability of management and conservation plans.
- (3) A member of an advisory committee may be paid such fees and allowances as are approved by the Governor in Council.

133 Chief executive to keep register

- (1) The chief executive must keep a register of—
 - (a) leases granted under sections 34 to 37; and
 - (b) conservation agreements; and
 - (c) management and conservation plans; and
 - (d) critical habitats; and
 - (e) areas of major interest; and
 - (f) captive breeding agreements that are in force; and
 - (g) interim conservation orders; and
 - (h) conservation officers; and
 - (i) honorary protectors.
- (2) Subject to subsection (3), the chief executive must—
 - (a) keep the registers open for inspection by members of the public during office hours on business days at—
 - (i) the department's head office; and
 - (ii) such other places as the chief executive considers appropriate; and
 - (b) on payment of the prescribed fee by a person—
 - (i) permit the person to take extracts from a register; or
 - (ii) give the person a copy of a part of a register.
- (3) A person must not be given information that is declared under section 136 to be confidential information.

134 Records to be maintained by registrar

- (1) The chief executive must, within 14 days after—
 - (a) a registrable conservation agreement is entered into; or
 - (b) a nature refuge is declared under section 49; or
 - (c) a regulation giving effect to a management plan for a World Heritage management area or international agreement area commences; or

(d) an area is identified under a conservation plan as, or including—

- (i) a critical habitat; or
- (ii) an area of major interest;

give written notice to the registrar that the agreement has been entered into, the declaration made, the regulation has commenced or the plan approved, in relation to specified private land.

(2) The registrar must maintain records that—

(a) show that the land specified in the notice is—

- (i) the subject of a registrable conservation agreement; or
- (ii) subject to a conservation covenant; or
- (iii) the subject of a management plan and the regulation giving effect to it; or
- (iv) the subject of a conservation plan; and

(b) state the places where—

- (i) particulars of the agreement; or
- (ii) particulars of the conservation covenant applying to the declaration; or
- (iii) the management plan for the area and regulation; or
- (iv) the conservation plan for the area;

may be inspected.

(3) The registrar must maintain the records in such a way that a search of the register maintained by the registrar under any Act relating to the land will show the existence of—

- (a) the registrable conservation agreement; or
- (b) the conservation covenant; or
- (c) the management plan and regulation; or
- (d) the conservation plan.

(4) The chief executive must, within 14 days after—

- (a) a registrable conservation agreement is terminated; or
- (b) the declaration of a protected area is revoked; or
- (c) a regulation giving effect to a management plan is repealed; or
- (d) a conservation plan is revoked; or
- (e) an area is removed from the operation of the conservation plan;

give written notice to the registrar of the termination, revocation, repeal or removal.

- (5) The registrar must, on receipt of a notice under subsection (4), remove the particulars of the land from the registrar's records.
- (6) In this section—

private land means land other than State land.

registrable conservation agreement means a conservation agreement expressed to be binding on the land-holder's successor's in title and other persons who have an interest in the land the subject of the agreement.

135 Chief executive may inquire into applications

- (1) The chief executive may, in relation to—
 - (a) an application for, or for the renewal of, a lease, agreement, licence, permit or other authority; or
 - (b) an application for the consent of the Minister to, or to the renewal of, a lease, agreement, licence, permit or other authority;

inquire into—

- (c) if the applicant is an individual—the fame, character and suitability of the applicant; or
 - (d) if the applicant is a corporation—the fame, character and suitability of each executive officer of the corporation.
- (2) The chief executive may obtain—
 - (a) a report from the commissioner of the police service in respect of the criminal history of the applicant and, if the

applicant is a corporation, in respect of each executive officer of the corporation; and

- (b) if the applicant, or an executive officer of a corporation that is an applicant, holds or previously held in another State a relevant lease, licence, permit or other authority—a report from the appropriate authority in the State.
- (3) A report under subsection (2)(a) must include reference to or disclosure of convictions mentioned in of the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 6.
- (4) In this section—

applicant, in relation to an expression of interest, means the person who has submitted to the chief executive the expression of interest.

application, for a lease, agreement, licence permit or other authority, includes an expression of interest for the lease, agreement, licence, permit or other authority.

136 Confidentiality of information

- (1) The chief executive may declare information acquired in the administration of this Act to be confidential information if the chief executive is of the opinion that disclosure of the information may result in an unreasonable level of risk to the wellbeing of a cultural or natural resource or critical habitat.
- (2) If, while performing duties under, or in relation to, this Act, a person gets—
 - (a) confidential information; or
 - (b) information obtained under section 129 or 135;

the person must not, whether directly or indirectly, disclose or make use of the information except to the extent necessary to perform the person's duties under or in relation to this Act.

Maximum penalty—165 penalty units.

- (3) In this section—
this Act includes the Acts repealed by this Act.

137 Licences to be consistent with management principles, and management intent or plan

- (1) A licence, permit or other authority issued or given under a regulation or another Act to take, use, keep or interfere with a cultural or natural resource of a protected area must be consistent with—
 - (a) the management principles for the area; and
 - (b) the interim or declared management intent, or management plan, for the area.
- (2) A licence, permit or other authority issued or given under a regulation to—
 - (a) take, use or keep protected wildlife; or
 - (b) abandon, release, keep, use or introduce international or prohibited wildlife;must be consistent with—
 - (c) the management principles for the wildlife; and
 - (d) the declared management intent, or conservation plan, applicable to the wildlife.

138 Compensation not payable

- (1) In this section—

authority means a licence, permit or other authority issued or given under a regulation or conservation plan.
- (2) Compensation is not payable if, under a regulation or conservation plan—
 - (a) the renewal of an authority is refused; or
 - (b) conditions are imposed on an authority, or anything previously permitted under an authority is prohibited or regulated; or
 - (c) an authority is amended, or anything previously permitted under an authority is prohibited or regulated; or
 - (d) an authority is suspended or cancelled.

- (3) However, subsection (2) does not prevent a regulation or conservation plan providing for payment of compensation.

139 Annual report

- (1) The chief executive must, within 4 months after the end of each financial year, give to the Minister a report on the administration of this Act during the year.
- (2) The Minister must lay a copy of the report before the Legislative Assembly within 14 sitting days after its receipt by the Minister.

140 Delegation by Minister

The Minister may delegate to an officer of the public service powers under this Act (other than sections 102 and 107).

141 Delegation by chief executive

- (1) The chief executive may delegate the chief executive's powers under this Act to a conservation officer or an officer of the public service.
- (2) However, the chief executive may not delegate powers under the following sections—
- section 34
 - section 35
 - section 36
 - section 37
 - section 38
 - section 136.

142 Protection from liability

- (1) This section applies to—
- (a) the Minister or chief executive; and
 - (b) a conservation officer; and

- (c) a person acting under the direction of a person mentioned in paragraph (a) or (b).
- (2) A person to whom this section applies does not incur civil liability for an act or omission done or omitted to be done honestly and without negligence under, or for the purposes of, this Act.
- (3) A liability that would, but for this section, attach to a person to whom this section applies attaches instead to the State.

143 Immunity from prosecution

- (1) A conservation officer is not liable to be prosecuted for an offence against this Act for anything done or omitted to be done—
 - (a) under the direction of the Minister or chief executive; or
 - (b) in the exercise of a power or performance of a function conferred or imposed on the officer under this Act.
- (2) A person acting under the direction of the Minister, chief executive or a conservation officer is not liable to be prosecuted for an offence against this Act for anything done or omitted to be done under the direction.

Part 9 Investigation and enforcement

144 Power to stop and search vehicles etc.

- (1) This section applies if a conservation officer suspects on reasonable grounds that—
 - (a) a vehicle, boat or aircraft is being, or has been, used in the commission of an offence against this Act; or
 - (b) a vehicle, boat or aircraft, or anything on or in, a vehicle, boat or aircraft may afford evidence of the commission of an offence against this Act.
- (2) The conservation officer may, with such assistance and by such force as is necessary and reasonable—

- (a) enter or board the vehicle, boat or aircraft; and
 - (b) exercise the powers set out in section 147.
- (3) If—
 - (a) the vehicle or boat is moving or about to move; or
 - (b) the aircraft is moving, or about to move, on the ground;the conservation officer may signal the driver or the person in command or control, or who appears to be in command or control, of the vehicle, boat or aircraft, to stop or not to move the vehicle, boat or aircraft.
- (4) A person must not, without reasonable excuse, disobey a signal under subsection (3).

Maximum penalty—165 penalty units or 1 year's imprisonment.
- (5) It is a reasonable excuse for the person to fail to stop or to move the vehicle, boat or aircraft if—
 - (a) to immediately obey the signal would have endangered the person or another person; and
 - (b) the person obeys the signal as soon as it is practicable to obey the signal.
- (6) The conservation officer may require the driver or the person in command or control, or who appears to be in command or control, of the vehicle, boat or aircraft—
 - (a) to provide such reasonable assistance as the officer requires to enable the vehicle, boat or aircraft to be entered or boarded under subsection (2); or
 - (b) to bring the vehicle, boat or aircraft to a specified place and remain in control of the vehicle, boat or aircraft at the place for a reasonable time to enable the officer to exercise the officer's powers in relation to the vehicle, boat or aircraft.
- (7) A person must not, without reasonable excuse, contravene a requirement under subsection (6).

Maximum penalty—165 penalty units or 1 year's imprisonment.

- (8) If, while searching the vehicle, boat or aircraft, the conservation officer finds a thing that the officer believes, on reasonable grounds, will afford evidence of the commission of an offence against this Act, section 146(2)(a) to (c) apply to the thing.
- (9) If, after searching the vehicle, boat or aircraft, the conservation officer believes on reasonable grounds that the vehicle, boat or aircraft will afford evidence of the commission of an offence against this Act, section 146(2)(a) and (b) apply to the vehicle, boat or aircraft.

145 Entry and search—monitoring compliance

- (1) Subject to subsection (2), a conservation officer may, for the purpose of finding out whether this Act is being complied with—
 - (a) enter any place at any reasonable time of the day or night; and
 - (b) exercise the powers set out in section 147.
- (2) The conservation officer must not enter a place, or exercise a power under subsection (1), unless—
 - (a) the occupier of the place consents to the entry or exercise of the power; or
 - (b) a warrant under section 148 authorises the entry or exercise of the power; or
 - (c) the place is a place to which the public are admitted (whether or not for consideration) and the entry is made when members of the public attend or the premises are open for admission by the public; or
 - (d) the place is premises, or the part of premises, that—
 - (i) are licensed under a regulation and the entry is made when the premises are open for conduct of business or otherwise open for entry; and
 - (ii) are not used exclusively for residential purposes.
- (3) In this section—

place does not include a vehicle, boat or aircraft.

146 Entry and search—evidence of offences

- (1) Subject to subsection (3), if a conservation officer has reasonable grounds for suspecting that there is in a place a particular thing (*the evidence*) that may afford evidence of the commission of an offence against this Act, the officer may—
 - (a) enter the place; and
 - (b) exercise the powers set out in section 147.
- (2) If the conservation officer enters the place and finds the evidence, the following provisions have effect—
 - (a) the officer may seize the evidence;
 - (b) the officer may keep the evidence for 6 months or, if a prosecution for an offence against this Act in the commission of which the evidence may have been used or otherwise involved is instituted within that period, until the completion of the proceeding for the offence and any appeal in relation to the proceeding;
 - (c) if the evidence is a document—while the officer has possession of the document, the officer may take extracts from and make copies of the document, but must allow the document to be inspected at any reasonable time by a person who would be entitled to inspect it if it were not in the officer's possession.
- (3) A conservation officer must not enter the place or exercise a power under subsection (1) unless—
 - (a) the occupier of the place consents to the entry or exercise of the power; or
 - (b) a warrant under section 149 that was issued in relation to the evidence authorises the entry or exercise of the power.
- (4) If, while searching the place under subsection (1) under a warrant under section 149—
 - (a) a conservation officer finds a thing that the officer believes, on reasonable grounds, to be—
 - (i) a thing (other than the evidence) that will afford evidence of the commission of the offence mentioned in subsection (1); or

- (ii) a thing that will afford evidence of the commission of another offence against this Act; and
 - (b) the officer believes, on reasonable grounds, that it is necessary to seize the thing to prevent—
 - (i) its concealment, loss or destruction; or
 - (ii) its use in committing, continuing or repeating the offence mentioned in subsection (1) or the other offence, as the case may be;
- subsection (2) applies to the thing as if it were the evidence.
- (5) In this section—
place does not include a vehicle, boat or aircraft.

147 General powers of conservation officer in relation to places

- (1) A conservation officer who enters or boards a place under this part may exercise any of the following powers—
- (a) search any part of the place;
 - (b) inspect, examine, photograph or film anything in or on the place;
 - (c) take extracts from, and make copies of, any documents in or on the place;
 - (d) take into or onto the place such persons, equipment and materials as the conservation officer reasonably requires for the purpose of exercising any powers in relation to the place;
 - (e) require the occupier or any person in or on the place to give to the conservation officer reasonable assistance in relation to the exercise of the powers mentioned in paragraphs (a) to (d);
 - (f) the powers mentioned in the following provisions—
 - (i) section 151;
 - (ii) section 152;
 - (iii) section 154(1)(b) to (e).

- (2) A person must not, without reasonable excuse, fail to comply with a requirement made under subsection (1)(e).
Maximum penalty—50 penalty units.
- (3) It is a reasonable excuse for a person to fail to answer a question or produce a document (other than a document required to be kept by the person under a regulation) if answering the question, or producing the document, might tend to incriminate the person.
- (4) A conservation officer who seizes or damages anything under this part must, as soon as it is reasonably practicable after seizing or damaging the thing, give written notice of particulars of the thing or damage.
- (5) The notice must be given to—
 - (a) if anything is seized—the person from whom the thing was seized; or
 - (b) if damage was caused to anything—the person who appears to the conservation officer to be the owner of the thing.
- (6) This section does not limit any power that a conservation officer has apart from this section.

148 Monitoring warrants

- (1) A conservation officer may apply to a magistrate for a warrant under this section in relation to a particular place (other than premises, or the part of premises, used exclusively for residential purposes).
- (2) Subject to subsection (3), the magistrate may issue the warrant if the magistrate is satisfied, by information on oath, that it is reasonably necessary that the conservation officer should have access to the place for the purpose of finding out whether this Act is being complied with.
- (3) If the magistrate requires further information concerning the grounds on which the issue of the warrant is being sought, the magistrate must not issue the warrant unless the conservation officer or some other person has given the information to the magistrate in the form (either orally or by affidavit) that the magistrate requires.

- (4) The warrant must—
 - (a) authorise the conservation officer, with such assistance and by such force as is necessary and reasonable—
 - (i) to enter the place; and
 - (ii) to exercise the powers set out in section 147(1)(a) to (e); and
 - (b) state whether the entry is authorised to be made at any reasonable time of the day or night or only during specified reasonable hours of the day or night; and
 - (c) specify the day (not more than 14 days after the issue of the warrant) on which the warrant ceases to have effect; and
 - (d) state the purpose for which the warrant is issued.

149 Offence related warrants

- (1) A conservation officer may apply to a magistrate for a warrant under this section in relation to a particular place.
- (2) Subject to subsection (3), the magistrate may issue the warrant if the magistrate is satisfied, by information on oath, that there are reasonable grounds for suspecting that there is, or there may be within the next 7 days, in or on the place a particular thing (*the evidence*) that may afford evidence of the commission of an offence against this Act.
- (3) If the magistrate requires further information concerning the grounds on which the issue of the warrant is being sought, the magistrate must not issue the warrant unless the conservation officer or another person has given the information to the magistrate in the form (either orally or by affidavit) that the magistrate requires.
- (4) The warrant must—
 - (a) authorise the conservation officer, with such assistance and by such force as is necessary and reasonable—
 - (i) to enter the place; and
 - (ii) to exercise the powers set out in section 147(1)(a) to (e); and

- (iii) to seize the evidence; and
- (b) state whether the entry is authorised to be made at any time of the day or night or only during specified hours of the day or night; and
- (c) specify the day (not more than 14 days after the issue of the warrant) on which the warrant ceases to have effect; and
- (d) state the purpose for which the warrant is issued.

150 Warrants may be granted by telephone, facsimile, radio etc.

- (1) If a conservation officer considers it necessary to do so because of—
 - (a) urgent circumstances; or
 - (b) other special circumstances, including, for example, the officer's remote location;the officer may, under this section, apply by telephone, facsimile, radio or another form of communication for a warrant under section 148 or 149.
- (2) Before applying for the warrant, the conservation officer must prepare an information of the kind mentioned in section 148(2) or 149(2) that sets out the grounds on which the issue of the warrant is sought.
- (3) If it is necessary to do so, a conservation officer may apply for the warrant before the information has been sworn.
- (4) If the magistrate is satisfied—
 - (a) after having considered the terms of the information; and
 - (b) after having received such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought;

that there are reasonable grounds for issuing the warrant, the magistrate may, under section 148 or 149, complete and sign the warrant that the magistrate would issue under the section if the application had been made under the section.

- (5) If the magistrate completes and signs the warrant, the magistrate must immediately send a copy of the warrant to the conservation officer by facsimile or, if it is not reasonably practicable to do so—
- (a) the magistrate must—
 - (i) tell the officer what the terms of the warrant are; and
 - (ii) tell the officer the day and time when the warrant was signed; and
 - (iii) record on the warrant the reasons for granting the warrant; and
 - (b) the officer must—
 - (i) complete a form of warrant in the same terms as the warrant completed and signed by the magistrate; and
 - (ii) write on the form of warrant the name of the magistrate and the day and time when the magistrate signed the warrant.
- (6) The conservation officer must also—
- (a) not later than the day after the day of expiry or execution of the warrant (whichever is the earlier); or
 - (b) if it is not practicable to comply with paragraph (a)—as soon as practicable after the day mentioned in the paragraph;
- send to the magistrate—
- (c) the information mentioned in subsection (2), which must have been properly sworn; and
 - (d) if a form of warrant was completed by the conservation officer under subsection (5)(b)—the completed form of warrant.
- (7) When the magistrate receives the documents mentioned in subsection (6), the magistrate must—
- (a) attach them to the warrant that the magistrate completed and signed; and

- (b) deal with them in the way in which the magistrate would have dealt with the information if the application for the warrant had been made under section 148 or 149.
- (8) A facsimile copy of a warrant, or a form of warrant properly completed by the conservation officer under subsection (5)(b), is authority for any entry, search, seizure or other exercise of a power that the warrant signed by the magistrate authorises.
- (9) If—
 - (a) it is material for a court to be satisfied that an entry, search, seizure or other exercise of power was authorised by this section; and
 - (b) the warrant completed and signed by the magistrate authorising the exercise of power is not produced in evidence;

the court must assume, unless the contrary is proved, that the exercise of power was not authorised by such a warrant.

151 Conservation officer may require name and address

- (1) This section applies if a conservation officer—
 - (a) finds a person committing an offence against this Act; or
 - (b) finds a person in circumstances that lead the officer to suspect, on reasonable grounds, that the person has just committed an offence against this Act; or
 - (c) has information that leads the officer to suspect, on reasonable grounds, that a person has just committed an offence against this Act; or
 - (d) believes, on reasonable grounds, that the name and address of a person is required for the administration or enforcement of this Act.
- (2) The conservation officer may require the person to state the person's name and address.
- (3) When making the requirement, the conservation officer must warn the person it is an offence to fail to state the person's name and address, unless the person has a reasonable excuse.

(4) The conservation officer may require the person to give evidence of the correctness of the person's name or address if the officer suspects, on reasonable grounds, that the name or address given is false.

(5) A person must comply with a conservation officer's requirement under subsection (2) or (4), unless the person has a reasonable excuse for not complying with the requirement.

Maximum penalty—100 penalty units.

(6) The person does not commit an offence against this section if—

(a) the conservation officer required the person to state the person's name and address on suspicion of the person having committed an offence against this Act; and

(b) the person is not proved to have committed the offence.

152 Power to require information from certain persons

(1) This section applies if a conservation officer suspects, on reasonable grounds, that—

(a) an offence against this Act has happened; and

(b) a person may be able to give information about the offence.

(2) The conservation officer may require the person to give information about the offence.

(3) When making the requirement, the conservation officer must warn the person it is an offence to fail to give the information, unless the person has a reasonable excuse.

(4) The person must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—100 penalty units.

(5) It is a reasonable excuse for the person to fail to give information if giving the information might tend to incriminate the person.

(6) The person does not commit an offence against this section if the information sought by the conservation officer is not in fact relevant to the offence.

152A General powers for seized things

- (1) Having, under this part, seized a thing, a conservation officer may do 1 or more of the following—
- (a) move it from the place where it was seized (the *place of seizure*);
 - (b) leave it at the place of seizure, but take reasonable action to restrict access to it;

Examples of restricting access to a thing—

- 1 brand, mark, seal, tag or otherwise identify it to show access to it is restricted
- 2 sealing the entrance to a room where the thing is situated and marking it to show access to it is restricted

- (c) for equipment—make it inoperable;

Example of making equipment inoperable—

dismantling equipment or removing a component of equipment without which the equipment is not capable of being used

- (d) for wildlife, 1 or more of the following as is appropriate to ensure its survival—
 - (i) take it to a place the conservation officer considers appropriate;
 - (ii) give it accommodation, food, rest, water or other appropriate living conditions;
 - (iii) if the conservation officer reasonably believes it requires veterinary or other treatment—arrange for the treatment;
 - (iv) leave it at the place of seizure and take any action mentioned in subparagraphs (i) to (iii);
 - (v) if it is left at the place of seizure—give the person from whom it was seized a direction to look after, or continue to look after, the wildlife;
 - (vi) if the wildlife is left at the place of seizure and the person from whom it was seized does not comply with a direction under subparagraph (v)—take any action mentioned in subparagraphs (i) to (iii);

- (2) If—