Western Australia

Biodiversity Conservation Act 2016

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Defined terms

Western Australia

Biodiversity Conservation Act 2016

An Act to provide for —

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

and for related purposes.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Biodiversity Conservation Act 2016*.

2. Commencement

This Act comes into operation as follows —

(a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;

(b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. Objects of Act

(1) The objects of this Act are —

(a) to conserve and protect biodiversity and biodiversity components in the State; and

(b) to promote the ecologically sustainable use of biodiversity components in the State.

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

4. Principles of ecologically sustainable development

The principles of ecologically sustainable development are as follows —

(a) decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations;

(b) if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;

(c) the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;

(d) the conservation of biodiversity and ecological integrity should be a fundamental consideration in decision-making;

(e) improved valuation, pricing and incentive mechanisms should be promoted.

5. Terms used

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

abandoned fauna means fauna that —

(a) belongs to a species the juveniles of which are normally cared for by a parent; and

(b) is of an age at which it would normally be cared for by a parent; and

(c) has been abandoned by its parents;

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

(a) any viable or non-viable progeny, larva, embryo, egg, ovum or sperm of an animal;

(b) any part, product or genetic material of an animal from which another animal could be produced;

(c) any other part of an animal;

(d) the carcass of an animal;

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

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

biodiversity means the variability among living organisms and the ecosystems of which those organisms are a part and includes the following —

(a) diversity within native species and between native species;

(b) diversity of ecosystems;

(c) diversity of other biodiversity components;

biodiversity components includes native species, habitats, ecological communities, genes, ecosystems and ecological processes;

biodiversity conservation means the conservation and protection of biodiversity and biodiversity components;

biodiversity conservation agreement has the meaning given in section 114(1);

biodiversity conservation covenant has the meaning given in section 122(1);

biodiversity conservation measures includes the following —

(a) penalties for offences under this Act;

(b) biodiversity management programmes;

(c) recovery plans and interim recovery plans;

(d) biodiversity conservation agreements;

(e) biodiversity conservation covenants;

(f) measures in place under Part 9 for the control of environmental pests;

(g) measures in place under any other written law that have the effect, whether directly or indirectly, of conserving or protecting biodiversity or biodiversity components, including the following —

(i) biosecurity measures;

(ii) regulations under the CALM Act or the *Environmental Protection Act 1986*;

(iii) environmental protection policies;

(iv) conditions agreed or decided under the *Environmental Protection Act 1986* Part IV Division 3;

(v) management plans under the *Fish Resources Management Act 1994* and measures under that Act relating to the control or management of exotic fish, noxious fish or biological threats;

(vi) State planning policies under the *Planning and Development Act 2005*;

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

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

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

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

(a) requirements or restrictions imposed by Part 2 of that Act;

(b) pest control notices, pest exclusion notices and pest keeping notices under Part 2 of that Act;

(c) management plans under Part 2 of that Act;

(d) regulations under that Act relating to the keeping, breeding, cultivation or supply of declared pests;

(e) the terms and conditions of authorisations under that Act relating to the keeping, breeding, cultivation or supply of declared pests;

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

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

CALM Act land means each of the following categories of land —

(a) land, or land and waters, to which the CALM Act applies under the CALM Act section 5;

(b) section 8A land as defined in the CALM Act section 3;

(c) section 8C land as defined in the CALM Act section 3;

(d) land owned by, vested in, or under the care, control and management of, the Executive Body as defined in the CALM Act section 3, whether solely or jointly with another body;

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

CALM Act officer means —

(a) a wildlife officer; or

(b) a forest officer as defined in the CALM Act section 3; or

(c) a ranger as defined in the CALM Act section 3; or

(d) a conservation and land management officer as defined in the CALM Act section 3;

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

carcass includes part of a carcass;

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

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

CI Act means the *Criminal Investigation Act 2006*;

class —

(a) in relation to animals, means any grouping of animals; and

(b) in relation to plants, means any grouping of plants;

collapsed ecological community means an ecological community that is listed as a collapsed ecological community under section 31(1);

commercial purpose means the purpose of sale or any other purpose that is directed to financial gain or reward;

Commission has the meaning given in the CALM Act section 3;

condition includes a limitation or restriction;

conserve includes to maintain and to restore;

container includes the following —

(a) a case, box, bag, wrapper or material of any kind used or intended to be used to cover, contain or package something;

(b) a bulk container, or any means of bulk transport, used or intended to be used to cover, contain or package something;

contravene includes to fail to comply with;

control, in relation to an environmental pest or other organism, includes the following —

(a) to eradicate;

(b) to destroy;

(c) to prevent the presence or spread of;

(d) to manage;

(e) to examine or test for;

(f) to survey for or monitor the presence or spread of;

(g) to treat;

critical habitat means habitat that is listed as critical habitat under section 54(1);

critically endangered ecological community means a threatened ecological community that is listed in the category of

critically endangered ecological community under section 27(1)(a);

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

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

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

(a) it has been sown, planted or propagated as required under this Act or another written law; or

(b) it is of a class declared by the regulations to be excluded from this definition;

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

Department has the meaning given in the CALM Act section 3;

disturb —

(a) in relation to fauna, includes the following —

(i) to chase, drive, follow, harass, herd or hunt fauna by any means;

(ii) to apply an identifier to fauna by any means;

(iii) to engage in an activity that has the effect, whether directly or indirectly, of altering the natural behaviour of fauna to its detriment;

(iv) to cause or permit anything referred to in subparagraph (i), (ii) or (iii) to be done;

(b) in relation to flora, includes the following —

(i) to engage in an activity that has the effect, whether directly or indirectly, of altering the long term persistence of the flora in its habitat;

(ii) to cause or permit an activity referred to in subparagraph (i) to be engaged in;

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

ecologically sustainable use, in relation to biodiversity components, means use of the biodiversity components in a way and at a rate that does not lead to the long-term decline of biodiversity, thereby maintaining the potential of the biodiversity components to meet the needs of present and future generations;

ecosystem means a dynamic complex of ecological communities and the non-living chemical and physical parts of their environment interacting as a functional unit;

endangered ecological community means a threatened ecological community that is listed in the category of endangered ecological community under section 27(1)(b);

endangered species means a threatened species that is listed in the category of endangered species under section 19(1)(b);

environmental pest means a species in respect of which an order under section 132(1) is in force;

environmental pest notice has the meaning given in section 135(2);

environmental protection policy means an approved policy as defined in the *Environmental Protection Act 1986* section 3(1);

EPBC Act means the *Environment Protection and Biodiversity Conservation Act 1999* (Commonwealth);

exclusive economic zone has the meaning given in the *Seas and Submerged Lands Act 1973* (Commonwealth) section 3;

export means to take out of the State and includes the following —

(a) to offer to export;

(b) to send or deliver for export;

(c) to receive, or have in possession, for export;

external Territory has the meaning given in the *Acts Interpretation Act 1901* (Commonwealth) section 17;

extinct species means a native species that is listed as an extinct species under section 23(1);

fauna means —

(a) an animal that —

(i) belongs to a native species unless the animal is determined by order under section 9(2) not to be fauna for the purposes of this Act; or

(ii) is determined by order under section 9(1) to be fauna for the purposes of this Act;

or

(b) a native species or taxonomic grouping of native species that is determined by order under section 10(1) or (2) to be fauna for the purposes of this Act;

fauna processing establishment means a place used to process fauna, other than fish or pearl oyster, for a commercial purpose;

fish has the meaning given in the *Fish Resources Management Act 1994* section 4(1);

flora means —

(a) a plant that —

(i) belongs to a native species and is indigenous to the State unless the plant is determined by order under section 9(4) not to be flora for the purposes of this Act; or

(ii) is determined by order under section 9(3) to be flora for the purposes of this Act;

or

(b) a native species or taxonomic grouping of native species that is determined by order under section 10(1) or (2) to be flora for the purposes of this Act;

flora processing establishment means a place used to process flora for a commercial purpose but does not include a place used solely to process forest products taken under a contract to which

the *Forest Products Act 2000* Part 8 applies unless those forest products are sandalwood;

genetic resources means any material of plant, animal, microbial or other origin that contains functional units of heredity and that has actual or potential value to humanity;

habitat means the biophysical medium or media —

(a) occupied (continuously, periodically or occasionally) by an organism or group of organisms; or

(b) once occupied (continuously, periodically or occasionally) by an organism, or group of organisms, and into which organisms of that kind have the potential to be reintroduced;

habitat conservation notice has the meaning given in section 59(1);

identifier means a tag, mark, brand, electronic device, or other thing of a prescribed kind, designed or used to identify, track or trace an organism;

import means to bring into the State;

injured fauna means fauna that is injured, sick or diseased;

interim recovery plan means an interim recovery plan made under section 105;

key threatening process means a threatening process that is listed as a key threatening process under section 34(1);

label means to mark a package, container or other thing to identify it or its contents by attaching to it or inserting in it a tag, mark, stamp or written statement;

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

lawful activity has the meaning given in section 6;

lawful authority has the meaning given in section 7(2);

licence means a licence granted under the regulations;

managed fauna means fauna prescribed or of a class prescribed by regulations referred to in section 163(1) as managed fauna for the purposes of the section in which the term is used;

ministerial guidelines means guidelines issued under section 260;

mobile home means a vehicle that —

(a) is ordinarily used for human habitation; and

(b) is permanently or semi-permanently stationary in a single location;

native species has the meaning given in section 8(2);

obstruct includes to delay, to hinder and to resist;

occupier, in relation to land, means a person who is in occupation or control of the land, or is entitled to be in occupation or control of the land, whether or not the person owns the land;

organism means a life form, other than a human being, whether alive or not and includes part of such a life form and the genetic material of such a life form;

owner —

(a) in relation to private land, means —

(i) a person who is for the time being registered under the *Transfer of Land Act 1893* as proprietor of an estate in fee simple in the land; or

(ii) a person who is for the time being the holder of the freehold in the land as evidenced by a memorial that is registered under the *Registration of Deeds Act 1856*; or

(iii) an executor or administrator of, or a person appointed under a written law to act on behalf of, a person referred to in subparagraph (i) or (ii); or

(iv) an agent or attorney of a person referred to in subparagraph (i) or (ii); or

(v) a mortgagee in possession of the land;

(b) in relation to Crown land, means the public authority that has the care, control or management of the land or, if there is no such public authority, the State;

part, in relation to an animal or carcass, includes the bodily fluid, bone, chitin, exoskeleton, feathers, flesh, fur, hide, organs, pelage, scale, shell, skin, teeth, tissue and viscera of the animal or carcass;

pearl oyster has the meaning given in the *Pearling Act 1990* section 3(1);

place means any land, building, structure, tent or mobile home or a part of any land, building, structure, tent or mobile home;

plant means any member, alive or dead, of the plant kingdom or the fungus kingdom and includes the following —

(a) any viable or non-viable ovule, seed, pollen or spore of a plant;

(b) any part, product or genetic material of a plant from which another plant could be produced;

(c) any other part of a plant;

potential carrier means —

(a) any thing that is capable of carrying an environmental pest; or

(b) any thing that is capable of carrying anything else that is capable of carrying an environmental pest;

prescribed means prescribed by regulations made under this Act;

private land means alienated land as defined in the *Land Administration Act 1997* section 3(1);

process —

(a) in relation to fauna, means to cut, skin, treat, freeze, chill, can, cure, pack or preserve;

(b) in relation to flora, means to obtain or produce a thing or substance of a prescribed kind from flora using a prescribed method;

prohibited device means —

(a) a thing or substance of a kind prescribed as a prohibited device; or

(b) a thing or substance that is used in a manner other than that prescribed for its use;

prohibited method means —

(a) a method of a kind prescribed as a prohibited method; or

(b) a method that is used in a manner other than that prescribed for its use;

public authority means —

(a) a Minister of the State; or

(b) an agency or an organisation as those terms are defined in the *Public Sector Management Act 1994* section 3(1); or

(c) a local government or a regional local government; or

(d) a body, whether incorporated or not, or the holder of an office, that is established or continued for a public purpose under a written law and that, under the authority of a written law, performs a statutory function on behalf of the State;

record means any record of information, irrespective of how the information is recorded or stored or able to be recovered and includes the following —

(a) any thing from which images, sounds or writings can be reproduced, with or without the aid of anything else;

(b) any thing on which information is recorded or stored, whether electronically, magnetically, mechanically or by some other means;

recovery plan means —

(a) a recovery plan approved under section 89(1); or

(b) a plan adopted as a recovery plan under section 92(1);

Registrar —

(a) in relation to land that is under the operation of the *Transfer of Land Act 1893*, means the Registrar of Titles under that Act;

(b) in relation to land that is alienated from the Crown but is not under the operation of the *Transfer of Land Act 1893*, means the Registrar of Deeds and Transfers under the *Registration of Deeds Act 1856*;

remedial action has the meaning given in section 217(1);

sandalwood means a plant that belongs to the species *Santalum spicatum* or to another species of flora prescribed for the purposes of this definition;

self-governing Territory has the meaning given in the EPBC Act section 528;

specially protected fauna means fauna that belongs to a specially protected species;

specially protected flora means flora that belongs to a specially protected species;

specially protected species means a native species that is listed as a specially protected species under section 13(1);

species —

(a) means a group of organisms that —

(i) interbreed to produce fertile offspring; or

(ii) possess common characteristics derived from a common gene pool,

and

(b) includes —

(i) a taxonomically separate population of a species, being a population that is characterised by morphological or other biological differences from other populations of that species; and

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

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

supply includes the following —

(a) to sell;

(b) to send or deliver for the purpose of sale or on sale;

(c) to receive, or have in possession, for the purpose of sale;

(d) to dispose of under a hire-purchase agreement;

(e) to give;

(f) to send or deliver for the purpose of giving;

(g) to receive, or have in possession, for the purpose of giving;

(h) to cause or permit anything referred to in paragraph (a), (b), (c), (d), (e), (f) or (g) to be done;

(i) to offer to do anything referred to in paragraph (a), (b), (c), (d), (e), (f) or (g);

take —

(a) in relation to fauna, includes the following —

(i) to kill, injure, harvest or capture fauna by any means;

(ii) to cause or permit anything referred to in subparagraph (i) to be done;

(b) in relation to flora, includes the following —

(i) to gather, pluck, cut, pull up, destroy, dig up, remove, harvest or damage flora by any means;

(ii) to cause or permit anything referred to in subparagraph (i) to be done;

threatened ecological community means an ecological community that —

(a) is listed as a threatened ecological community under section 27(1); or

(b) is to be regarded as a threatened ecological community under section 33;

threatened fauna means fauna that belongs to a threatened species;

threatened flora means flora that belongs to a threatened species;

threatened species means a native species that —

(a) is listed as a threatened species under section 19(1); or

(b) is to be regarded as a threatened species under section 26(2);

threatening process means a process that threatens, or may threaten, the survival, abundance or evolutionary development of a native species or ecological community;

treat includes to disinfect, to disinfest, to clean, to vaccinate or apply other prophylactic measures, and to isolate;

vehicle means any thing capable of transporting people or things by air, road, rail or water, and it does not matter how the thing is moved or propelled;

vulnerable ecological community means a threatened ecological community that is listed in the category of vulnerable ecological community under section 27(1)(c);

vulnerable species means a threatened species that is listed in the category of vulnerable species under section 19(1)(c);

wildlife officer has the meaning given in the CALM Act section 3.

(2) Despite the definitions of ***occupier*** and ***owner*** in subsection (1), neither the CEO nor the Executive Body (as defined in the CALM Act section 3) is to be regarded as an occupier or owner of land for the purposes of this Act.

6. Lawful activity

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

(a) clearing that does not involve an offence under the *Environmental Protection Act 1986* section 51C; and

(b) an activity prescribed or of a class prescribed for the purposes of this section.

7. Lawful authority

(1) In this section —

biodiversity conservation conditions means conditions or requirements relating to the conservation or protection of biodiversity or biodiversity components;

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

(a) this Act; or

(b) the CALM Act; or

(c) the *Environmental Protection Act 1986*; or

(d) the *Fish Resources Management Act 1994*; or

(e) the *Pearling Act 1990*; or

(f) an enactment prescribed for the purposes of this definition.

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

(a) it is —

(i) an act that is authorised by a relevant authorisation or is otherwise authorised or required under a State agreement; or

(ii) an act that is a likely consequence of an act referred to in subparagraph (i);

and

(b) all biodiversity conservation conditions that apply to or in relation to it are complied with, whether those conditions are imposed under the relevant authorisation or State agreement referred to in paragraph (a)(i) or imposed in some other way.

8. Native species

(1) In this section —

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

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

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

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

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

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

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

(e) members of which periodically or occasionally visit —

(i) Australia or an external Territory; or

(ii) the exclusive economic zone;

or

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

9. Determination as to fauna, flora or species

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

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

(3) The Minister may, by order, determine that a plant, other than a plant that belongs to a native species and is indigenous to the State, is flora for the purposes of this Act.

(4) The Minister may, by order, determine that a plant that belongs to a native species and is indigenous to the State is not flora for the purposes of this Act.

(5) The Minister may, by order, determine that a distinct population of organisms is a species for the purposes of this Act.

(6) An order made under this section may provide that it applies to the whole of the State, a specified part of the State or specified parts of the State.

(7) Section 258 applies to an order made under this section.

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

(1) The Minister may, by order, determine that a particular native species, or taxonomic grouping of native species, that is

classified as belonging to a kingdom other than the animal kingdom, the plant kingdom or the fungus kingdom is either fauna or flora for the purposes of this Act.

(2) If it appears to the Minister that according to scientific opinion a particular native species or taxonomic grouping of native species is not classified as belonging to the animal kingdom, the plant kingdom, the fungus kingdom or another kingdom, the Minister may, by order, determine that the species or taxonomic grouping is either fauna or flora for the purposes of this Act.

(3) Section 258 applies to an order made under this section.

11. Crown bound

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

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

12. Application of Act in relation to aquatic matters

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

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

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

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

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

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

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

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

Division 1 — Native species

Subdivision 1 — Specially protected species

13. Listing of specially protected species

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

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

(i) species of special conservation interest;

(ii) migratory species;

(iii) cetaceans;

(iv) species subject to international agreement;

or

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

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

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

14. Criteria for categorisation as species of special conservation interest

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

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

(i) has a naturally low population; or

(ii) has a restricted natural range; or

(iii) is subject to or recovering from a significant population decline or reduction in natural range; or

(iv) is of special interest to science;

and

(b) in the opinion of the Minister —

(i) the penalty for an offence under this Act involving the taking of the species is not likely to effectively deter its taking; and

(ii) taking of the species may result in undue depletion of the species;

and

(c) listing in that category is otherwise in accordance with the ministerial guidelines.

15. Criteria for categorisation as migratory species

(1) A native species is eligible for listing in the category of migratory species at a particular time if, at that time —

(a) either —

(i) members of the species periodically or occasionally visit Australia or an external Territory or the exclusive economic zone; or

(ii) the species is the subject of an international agreement that relates to the protection of migratory species and that binds the Commonwealth;

and

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

(2) If a native species is listed in the category of migratory species on the basis of subsection (1)(a)(ii), the listing must specify the relevant international agreement.

16. Criteria for categorisation as cetaceans

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

(a) it is a cetacean; and

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

17. Criteria for categorisation as species subject to international agreement

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

(a) the species is the subject of an international agreement that relates to the provision, coordination or encouragement of special protective measures for the species and that binds the Commonwealth; and

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

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

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

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

(a) it is a species for which a need for special protection exists; and

(b) it is not eligible for listing in any of the categories referred to in section 13(1)(a); and

(c) listing in that category is otherwise in accordance with the ministerial guidelines.

Subdivision 2 — Threatened species

19. Listing of threatened species

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

(a) critically endangered species;

(b) endangered species;

(c) vulnerable species.

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

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

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

20. Criteria for categorisation as critically endangered species

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

(a) it is facing an extremely high risk of extinction in the wild in the immediate future, as determined in accordance with criteria set out in the ministerial guidelines; and

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

21. Criteria for categorisation as endangered species

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

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

(b) it is facing a very high risk of extinction in the wild in the near future, as determined in accordance with criteria set out in the ministerial guidelines; and

(c) listing in that category is otherwise in accordance with the ministerial guidelines.

22. Criteria for categorisation as vulnerable species

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

(a) it is not a critically endangered species or an endangered species; and

(b) it is facing a high risk of extinction in the wild in the medium-term future, as determined in accordance with criteria set out in the ministerial guidelines; and

(c) listing in that category is otherwise in accordance with the ministerial guidelines.

Subdivision 3 — Extinct species

23. Listing of extinct species

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

(a) extinct species;

(b) extinct in the wild species.

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

24. Criteria for categorisation as extinct species

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

(a) there is no reasonable doubt that the last member of the species has died; and

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

25. Criteria for categorisation as extinct in the wild species

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

(a) it is known only to survive in cultivation, in captivity or as a naturalised population well outside its past range; and

(b) it has not been recorded in its known habitat or expected habitat, at appropriate seasons, anywhere in its past range, despite surveys over a time frame appropriate to its life cycle and form; and

(c) listing in that category is otherwise in accordance with the ministerial guidelines.

26. Rediscovered species

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

(a) it is listed in the category of extinct species and is discovered to be extant; or

(b) it is listed in the category of extinct in the wild species and is discovered to be extant in the wild.

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

(a) it is listed as a threatened species or a specially protected species; or

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

Division 2 — Ecological communities

Subdivision 1 — Threatened ecological communities

27. Listing of threatened ecological communities

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

(a) critically endangered ecological community;

(b) endangered ecological community;

(c) vulnerable ecological community.

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

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

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

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

28. Criteria for categorisation as critically endangered ecological community

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

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

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

29. Criteria for categorisation as endangered ecological community

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

(a) it is not a critically endangered ecological community; and

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

(c) listing in that category is otherwise in accordance with the ministerial guidelines.

30. Criteria for categorisation as vulnerable ecological community

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

(a) it is not a critically endangered ecological community or an endangered ecological community; and

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

(c) listing in that category is otherwise in accordance with the ministerial guidelines.

Subdivision 2 — Collapsed ecological communities

31. Listing of collapsed ecological communities

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

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

32. Criteria for listing as collapsed ecological community

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

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

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

(i) its species composition or structure; or

(ii) its species composition and structure.

33. Rediscovered ecological communities

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

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

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

Division 3 — Threatening processes

34. Listing of key threatening processes

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

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

35. Criteria for listing as key threatening process

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

(a) the threatening process —

(i) could cause a native species to become eligible for listing as a threatened species; or

(ii) could cause an ecological community to become eligible for listing as a threatened ecological community; or

(iii) could cause a threatened species or a threatened ecological community to become eligible for listing in another category representing a higher degree of endangerment; or

(iv) significantly contributes to the continuing decline of 2 or more threatened species or 2 or more threatened communities; or

(v) significantly contributes to a native species becoming eligible for listing as a threatened species in the category of critically endangered species; or

(vi) significantly contributes to an ecological community becoming eligible for listing as a threatened ecological community in the category of critically endangered ecological community; or

(vii) significantly contributes to the continuing decline of a critically endangered species or a critically endangered ecological community; or

(viii) significantly contributes to the degradation of a critical habitat;

and

(b) listing is otherwise in accordance with the ministerial guidelines.

Division 4 — Listing process

36. Terms used

In this Division —

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

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

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

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

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

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

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

(g) amend or repeal criteria referred to in section 20(a), 21(b), 22(b), 28(a), 29(b) or 30(b);

nomination means a nomination under section 38(1).

37. Minister to obtain scientific advice on listing decision

Before making a listing decision the Minister must obtain and have regard to advice from one or more persons considered by the Minister to have scientific expertise relevant to the matter to which the decision relates.

38. Nominations in respect of certain listings

(1) A person may nominate to the Minister —

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

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

(c) an ecological community for listing as a threatened ecological community in a particular category; or

(d) an amendment to or repeal of the listing of a threatened ecological community; or

(e) a threatening process for listing as a key threatening process; or

(f) an amendment to or repeal of the listing of a key threatening process.

(2) A nomination may be made at any time and whether or not nominations have been sought under subsection (4).

(3) The Minister may, by written notice given to the person who makes a nomination, reject the nomination if the Minister is satisfied that —

(a) it is vexatious, frivolous or not made in good faith; or

(b) it has not been made in accordance with any prescribed requirement.

(4) The Minister may, by notice published in accordance with the regulations, seek nominations.

(5) The regulations may regulate the way in which nominations are made and the form in which they are made.

39. Notification of Minister's decision

(1) In this section —

nomination does not include a nomination rejected under section 38(3).

(2) The Minister must give a person who makes a nomination written notice of the Minister's decision on the listing, amendment or repeal the subject of the nomination.

(3) If the Minister's decision is that the listing, amendment or repeal is not to be made, the notice must include the reasons for the decision.

Part 3 — Threatened species and threatened ecological communities

Division 1 — Threatened species

40. Minister may authorise taking or disturbance of threatened species

(1) The Minister may, by instrument, authorise a person (including a public authority) to take or disturb a threatened species.

(2) An application for an authorisation must be in a form approved by the CEO.

(3) The Minister may, by instrument, amend or revoke an authorisation given under this section.

41. Conditions of authorisation

(1) In this section —

authorisation means an authorisation given under section 40;

land of conservation value means land on which there are either or both of the following —

(a) a population of the relevant species;

(b) relevant habitat;

relevant habitat, in relation to an authorisation, means habitat listed as critical habitat under section 54(1) because it is critical to the survival of the threatened species to which the authorisation relates;

relevant species, in relation to an authorisation, means the threatened species to which the authorisation relates.

(2) The Minister may impose conditions on an authorisation.

(3) Without limiting subsection (2) but subject to subsection (4), the Minister may impose a condition that requires the holder of the authorisation to do one or more of the following —

(a) make a monetary contribution towards the purchase of land of conservation value;

(b) transfer, lease or otherwise dispose of land of conservation value to a specified person (including the CEO);

(c) exchange land of conservation value for other land;

(d) enter into an agreement in respect of land of conservation value for the purpose of conserving and protecting the relevant species or relevant habitat;

(e) take specified measures on land of conservation value for the purpose of conserving and protecting the relevant species or relevant habitat;

(f) provide equipment, facilities, resources or services to assist in the conservation and protection of the relevant species or relevant habitat;

(g) conduct or fund surveys, studies or research in relation to the relevant species or relevant habitat;

(h) prepare and implement, or fund the preparation and implementation of, plans or schemes for the conservation and protection of the relevant species or relevant habitat;

(i) do anything else that is prescribed for the purposes of this subsection.

(4) The Minister must not impose a condition described in subsection (3) unless the Minister considers that the condition is necessary for the purpose of mitigating or offsetting the impact that activity carried out under the authorisation is likely to have on the total known population of the relevant species in the State and on relevant habitat.

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

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

42. Parliament's approval required for certain proposals

(1) In this section —

proposal means —

(a) a proposal to give an authorisation under section 40; or

(b) a proposal to amend an authorisation given under that section.

(2) This section applies to a proposal if, in the opinion of the Minister, the authorisation or amendment the subject of the proposal could be expected to result in the threatened species to which the proposal relates becoming eligible for listing as an extinct species in the near future.

(3) Despite subsection (2), this section does not apply to a proposal if the purpose of the taking or disturbance to which the proposal relates is to establish a breeding colony or a population in cultivation so that the threatened species can be reintroduced into the wild at a later time.

(4) The Minister must not give the authorisation or make the amendment the subject of a proposal to which this section applies unless the proposal —

(a) has been laid before each House of Parliament; and

(b) has been approved by a resolution passed by both Houses of Parliament.

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

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

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

(b) complying with a requirement under the *Environmental Protection Act 1986* section 51E(1)(d) or (1A) in relation to an application for a clearing permit.

(2) If the person, in the course of carrying out the field work, finds an occurrence of a species that is a threatened species on land to which the work relates, the person must report its presence to the CEO.

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

(3) A report under subsection (2) may be made orally or in writing.

(4) It is a defence to a charge of an offence under subsection (2) to prove that the person charged did not know, and could not reasonably have known, that the occurrence found was an occurrence of a threatened species.

[Section 43 amended: No. 40 of 2020 s. 113(2).]

Division 2 — Threatened ecological communities

44. Term used: modify

In this Division —

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

(a) the modification of the occurrence of the threatened ecological community to such an extent that the occurrence is unlikely to recover —

(i) its species composition or structure; or

(ii) its species composition and structure;

or

(b) the destruction of the occurrence of the threatened ecological community.

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

(1) The Minister may, by instrument, authorise a person (including a public authority) to modify an occurrence of a threatened ecological community.

(2) An application for authorisation must be in a form approved by the CEO.

(3) The Minister may, by instrument, amend or revoke an authorisation given under this section.

46. Conditions of authorisation

(1) In this section —

authorisation means an authorisation given under section 45;

land of conservation value means land on which there are either or both of the following —

(a) an occurrence of the relevant community;

(b) relevant habitat;

relevant community, in relation to an authorisation, means the threatened ecological community to which the authorisation relates;

relevant habitat, in relation to an authorisation, means habitat listed as critical habitat under section 54(1) because it is critical to the survival of the threatened ecological community to which the authorisation relates.

(2) The Minister may impose conditions on an authorisation.

(3) Without limiting subsection (2) but subject to subsection (4), the Minister may impose a condition that requires the holder of the authorisation to do one or more of the following —

(a) make a monetary contribution towards the purchase of land of conservation value;

(b) transfer, lease or otherwise dispose of land of conservation value to a specified person (including the CEO);

(c) exchange land of conservation value for other land;

(d) enter into an agreement in respect of land of conservation value for the purpose of conserving and protecting the relevant community or relevant habitat;

(e) take specified measures on land of conservation value for the purpose of conserving and protecting the relevant community or relevant habitat;

(f) provide equipment, facilities, resources or services to assist in the conservation and protection of the relevant community or relevant habitat;

(g) conduct or fund surveys, studies or research in relation to the relevant community or relevant habitat;

(h) prepare and implement, or fund the preparation and implementation of, plans or schemes for the conservation or protection of the relevant community or relevant habitat;

(i) do anything else that is prescribed for the purposes of this subsection.

(4) The Minister must not impose a condition described in subsection (3) unless the Minister considers that the condition is necessary for the purpose of mitigating or offsetting the impact that activity carried out under the authorisation is likely to have on the total known occurrences of the relevant community in the State and on relevant habitat.

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

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

47. Parliament's approval required for certain proposals

(1) In this section —

proposal means —

(a) a proposal to give an authorisation under section 45; or

(b) a proposal to amend an authorisation given under that section.

(2) This section applies to a proposal if, in the opinion of the Minister, the authorisation or amendment the subject of the proposal could be expected to result in the threatened ecological community to which the proposal relates becoming eligible for listing as a collapsed ecological community in the near future.

(3) The Minister must not give the authorisation or make the amendment the subject of a proposal to which this section applies unless the proposal —

(a) has been laid before each House of Parliament; and

(b) has been approved by a resolution passed by both Houses of Parliament.

48. Modifying occurrence of threatened ecological community

(1) A person must not modify an occurrence of a threatened ecological community unless the person is authorised under

section 45 to modify it and complies with the conditions, if any, to which the authorisation is subject.

Penalty for this subsection:

(a) if the offence involves a critically endangered ecological community — a fine of $500 000;

(b) if the offence involves an endangered ecological community — a fine of $400 000;

(c) if the offence involves a vulnerable ecological community — a fine of $300 000.

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

(a) the modification of the occurrence of the threatened ecological community —

(i) occurred in the course of a lawful activity the sole or dominant purpose of which was not to modify an ecological community; and

(ii) could not reasonably have been avoided;

and

(b) the person charged did not know, and could not reasonably have known, that the occurrence of the threatened ecological community was present.

(3) The defence in subsection (2) is not available if the modification of the occurrence of the threatened ecological community has resulted in the threatened ecological community becoming eligible for listing as a collapsed ecological community.

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

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

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

(b) complying with a requirement under the *Environmental Protection Act 1986* section 51E(1)(d) in relation to an application for a clearing permit.

(2) If the person, in the course of carrying out the field work, finds an occurrence of an ecological community that is a threatened ecological community on land to which the work relates, the person must report its presence to the CEO.

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

(3) A report under subsection (2) may be made orally or in writing.

(4) It is a defence to a charge of an offence under subsection (2) to prove that the person charged did not know, and could not reasonably have known, that the occurrence found was an occurrence of a threatened ecological community.

Division 3 — General provisions

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

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

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

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

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

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

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

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

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

51. Lodgment of notification with Registrar and withdrawal of notification

(1) In this section —

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

(2) The CEO may lodge a notification in relation to a section 50 notice with the Registrar.

(3) If a notification is lodged under subsection (2) and the section 50 notice to which it relates is cancelled, the CEO must apply to the Registrar for the notification to be withdrawn.

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

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

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

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

(5) On the lodgment of a notification under subsection (2) or the receipt of an application under subsection (3), the Registrar must make any endorsement or notation the Registrar considers necessary on the certificate of title or other appropriate record in respect of the land to which the notification or application, as the case requires, relates.

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

(1) If a notice is given to an owner of land under section 50(1), the owner must give written notice to the CEO in accordance with subsection (2) if —

(a) that person ceases to be an owner of the land; or

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

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

(2) The notice must —

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

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

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

(1) In this section —

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

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

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

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

(b) the owner or occupier permits, either generally or in a particular case, another person to have access to the land

or knows that another person will have access to the land; and

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

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

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

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

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

Part 4 — Critical habitat

Division 1 — Determination of critical habitat

54. Listing of critical habitat

(1) The Minister may, by order, list habitat as critical habitat.

(2) The Minister must not list habitat as critical habitat or amend or repeal such a listing unless —

(a) the Minister has had regard to any submission made in response to a notice under section 56(1); and

(b) in the case of habitat in Western Australian waters, the listing, amendment or repeal is made with the concurrence of Minister responsible for the administration of the *Fish Resources Management Act 1994*.

(3) In subsection (2)(b) —

Western Australian waters means waters that —

(a) are within the limits of the State; or

(b) are coastal waters of the State as defined in the *Off-shore (Application of Laws) Act 1982* section 2.

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

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

55. Criteria for listing as critical habitat

Habitat is eligible for listing as critical habitat if —

(a) it is critical to the survival of a threatened species or a threatened ecological community; and

(b) its listing is otherwise in accordance with the ministerial guidelines.

56. Consultation

(1) Before the listing of habitat as critical habitat or the amendment or repeal of such a listing, 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 on which the habitat is located.

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

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

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

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

57. Register

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

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

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

Division 2 — Habitat conservation notices

58. Terms used

In this Division —

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

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

59. Habitat conservation notice

(1) The CEO may give a written notice (a ***habitat conservation notice***) to a person requiring the person to ensure that habitat damage, or further habitat damage, does not occur on land, if the CEO reasonably believes that —

(a) habitat damage is likely to occur on the land; or

(b) habitat damage is occurring or has occurred on the land.

(2) A habitat conservation notice may be given to one or more of the following people —

(a) an owner of the land;

(b) an occupier of the land;

(c) a person other than an owner or occupier of the land, if the CEO considers that it is practicable for that person to comply with and give effect to the habitat conservation notice.

(3) A habitat conservation notice must —

(a) specify the name and address of the person to whom it is given; and

(b) specify the reason for which it is given; and

(c) inform the person to whom it is given that contravention of it could result in a fine, the CEO taking remedial action, or both.

(4) A habitat conservation notice may require any person bound by it to take specified measures, within or for the duration of a specified period, for one or more of the following purposes —

(a) to repair any habitat damage that has occurred;

(b) to re-establish and maintain critical habitat in any area affected by habitat damage to a condition as near as possible to the condition of the critical habitat before the habitat damage occurred;

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

(d) to ensure that specified land, or a specified watercourse or wetland (as those terms are defined in the *Rights in Water and Irrigation Act 1914*), where critical habitat is or was located will not be —

(i) damaged or detrimentally affected; or

(ii) further damaged or detrimentally affected.

(5) Before a habitat conservation notice containing a requirement under subsection (4) is given to a person, the CEO must, by written notice given to the person, invite the person to make submissions to the CEO within a period specified in that notice on any matter relevant to the determination of whether or not the person should have to take the measures that the CEO intends to specify in the habitat conservation notice.

(6) The CEO must consider any submissions that are received within the period specified under subsection (5).

60. Persons bound by habitat conservation notice

The following persons are bound by a habitat conservation notice —

(a) each person to whom the notice is given;

(b) each person who is bound by the notice under section 64.

61. Amendment of habitat conservation notice

(1) The CEO may, by written notice given to each person bound by a habitat conservation notice, amend the notice by —

(a) extending the period within which a requirement contained in it is to be complied with if the CEO is satisfied that the circumstances of the case justify the extension; or

(b) removing or amending any requirement contained in it.

(2) The CEO must, before exercising the power conferred by subsection (1), give each person bound by the habitat conservation notice a reasonable opportunity to show cause in writing why the power should not be exercised.

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

62. Cancellation of habitat conservation notice

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

63. Lodgment of notification with Registrar and withdrawal of notification

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

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

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

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

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

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

(4) On the lodgment of a notification under subsection (1) or the receipt of an application under subsection (2), the Registrar

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

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

64. Habitat conservation notice binding on successive owners and occupiers

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

65. Contravention of habitat conservation notice

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

Penalty for this subsection:

(a) if the habitat conservation notice relates to habitat critical to the survival of a critically endangered species or critically endangered community — a fine of $500 000;

(b) if the habitat conservation notice relates to habitat critical to the survival of an endangered species or endangered ecological community — a fine of $400 000;

(c) if the habitat conservation notice relates to habitat critical to the survival of a vulnerable species or

vulnerable ecological community — a fine of $300 000.

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

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

(1) If a certificate of title or other record in respect of land contains an endorsement or notation relating to a notification lodged under section 63(1), an owner of the land to which the notification relates must give written notice to the CEO in accordance with subsection (2) if —

(a) that person ceases to be an owner of the land; or

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

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

(2) The notice must —

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

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

67. Apportionment of costs of complying with habitat conservation notice

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

(2) Subsection (1) —

(a) applies whether the measures are taken by an owner or occupier or the CEO; and

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

Part 5 — Biodiversity management programmes

68. Terms used

In this Part —

draft programme means a draft biodiversity management programme prepared under section 70;

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

(a) a clerical mistake or unintentional error or omission in the programme; or

(b) a misdescription of any person, land or thing in the programme.

69. Content of biodiversity management programme

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

(a) one or more native species (other than threatened species); or

(b) one or more ecological communities (other than threatened ecological communities); or

(c) one or more critical habitats; or

(d) a combination of such species, communities and habitats.

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

(a) threats to —

(i) native species or populations of native species; or

(ii) an ecological community; or

(iii) a critical habitat;

(b) the containment or eradication of species that are not indigenous to the State or the mitigation of the effect of such species;

(c) the distribution or population size of native species in the State or a part of the State;

(d) research and strategies relevant to biodiversity conservation;

(e) the ecologically sustainable use of native species;

(f) educational activities that promote an appreciation of biodiversity conservation values including the keeping, breeding and display of native species;

(g) the mitigation, containment or eradication of nuisance or damage caused by native species;

(h) the mitigation of danger posed by native species;

(i) matters that are complementary to a recovery plan, interim recovery plan or biodiversity conservation agreement;

(j) nature-based tourism and recreation as defined in section 190.

70. Preparation of draft programme

The CEO may prepare a draft biodiversity management programme.

71. Consultation on draft programme

When preparing a draft programme the CEO —

(a) must consult with the Commission if the programme relates to land vested in that body or is otherwise relevant to the functions of that body; and

(b) may consult with any other person or body who or which appears to the CEO to be likely to be affected in a material way by the programme.

72. Submission to Minister

(1) The CEO may submit a draft programme to the Minister for approval.

(2) The draft programme must be accompanied by any submissions received as a result of consultation under section 71.

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

73. Approval of biodiversity management programme

(1) The Minister may approve a draft programme submitted under section 72 as a biodiversity management programme or refuse to approve it.

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

(a) is satisfied that the draft programme is consistent with any recovery plan or interim recovery plan that relates to matters dealt with in the draft programme; and

(b) has had regard to submissions referred to in section 72(2).

74. Notice of biodiversity management programme

(1) If the Minister approves a biodiversity management programme under section 73(1), the CEO must cause notice of the programme to be published in the *Gazette*.

(2) The notice must specify where copies of the biodiversity management programme may be inspected and obtained.

75. Operation of biodiversity management programme

A biodiversity management programme takes effect on —

(a) the day on which the relevant notice under section 74 is published in the *Gazette*; or

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

76. Publication of biodiversity management programme

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

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

77. Review of biodiversity management programme

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

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

78. Amendment of biodiversity management programme

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

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

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

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

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

79. Revocation of biodiversity management programme

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

(2) The Minister must consult with the Commission before revoking a biodiversity management programme if the programme relates to land vested in that body or is otherwise relevant to the functions of that body.

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

(4) A revocation under subsection (1) takes effect on —

(a) the day on which the relevant notice under subsection (3) is published in the *Gazette*; or

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

(5) If a biodiversity management programme (the ***new programme***) replaces another biodiversity management programme (the ***old programme***), the old programme is to be taken to have been revoked under subsection (1) on the day on which the new programme takes effect.

80. Public authority to have regard to biodiversity management programme

To the extent that the functions of a public authority relate to matters dealt with in a biodiversity management programme, the public authority must have regard to the programme when performing those functions.

Part 6 — Recovery plans and interim recovery plans

Division 1 — Preliminary

81. Terms used

In this Part —

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

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

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

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

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

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

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

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

(a) to take into account new scientific findings;

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

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

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

82. Content of recovery plan

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

(a) one or more threatened species; or

(b) one or more threatened ecological communities; or

(c) a combination of such species and communities.

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

(3) In particular, a recovery plan must —

(a) state the objectives to be achieved; and

(b) state criteria against which achievement of those objectives is to be measured; and

(c) specify actions to achieve those objectives; and

(d) identify any habitat that is critical habitat, or that may be eligible for listing as critical habitat, for a threatened species or threatened ecological community to which the plan relates and actions to protect that habitat; and

(e) identify any population of a threatened species to which the plan relates that is critical to the survival of that species and actions to protect that population; and

(f) identify any occurrence of a threatened ecological community to which the plan relates that is critical to the survival of that community and actions to protect that occurrence; and

(g) identify any key threatening process that is affecting or is likely to affect a threatened species or threatened ecological community to which the plan relates and specify the proposed means for preventing, eradicating, reducing or containing that process; and

(h) state the estimated duration of the plan; and

(i) identify —

(i) land that will be materially affected by the plan's implementation; and

(ii) persons or bodies who or which appear to the CEO to be likely to be involved in implementing the plan or evaluating its effectiveness.

Division 2 — Approved plans

83. Preparation of draft plan

(1) The CEO may prepare a draft recovery plan.

(2) Before preparing a draft plan the CEO must have regard to —

(a) the resources available for the preparation of the plan; and

(b) the estimated cost of implementing the plan.

84. Consultation on draft plan

When preparing a draft plan the CEO must consult with —

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

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

(c) each person or body to be identified in the plan under section 82(3)(i)(ii).

85. CEO to publicise draft plan

(1) The CEO must publish in the *Gazette* and on the Department's website a notice —

(a) specifying where copies of the draft plan may be inspected and obtained; and

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

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

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

86. Public submissions

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

87. Referral of draft plan to certain persons or bodies

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

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

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

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

88. Submission to Minister

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

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

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

89. Approval of plan

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

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

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

(b) has had regard to —

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

(ii) the matters referred to in section 97.

90. Amendment of approved plan

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

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

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

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

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

91. Joint recovery plan

(1) If a threatened species or threatened ecological community occurs in both this State and another State, a self-governing Territory or an external Territory, the Minister may seek the cooperation of —

(a) each State and self-governing Territory in which the species or community occurs; and

(b) in the case of each external Territory in which the species or community occurs — the Commonwealth,

with a view to making a recovery plan jointly with the other State, the self-governing Territory or the Commonwealth, or with their agencies (a ***joint recovery plan***).

(2) Sections 84 to 89 apply, with all necessary changes, to the preparation and approval of a joint recovery plan.

(3) Sections 90, 101 and 102 do not apply to a joint recovery plan.

(4) A joint recovery plan must contain provisions that set out procedures for the amendment, review and revocation of the plan.

(5) Nothing in this Division affects the power of the State, under the EPBC Act, to make —

(a) a recovery plan jointly with the Commonwealth; or

(b) a joint wildlife conservation plan with the Commonwealth.

Division 3 — Adopted plans

92. Adoption of plan

(1) The Minister may, by instrument, adopt as a recovery plan a plan made by any of the following, whether or not the plan is in force —

(a) another State, a self-governing Territory or the Commonwealth;

(b) an agency of another State, a self-governing Territory or the Commonwealth.

(2) The Minister may adopt a plan as a recovery plan with such modifications as are specified in the instrument.

(3) The Minister must not adopt a plan under subsection (1) unless the Minister —

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

(b) has had regard to —

(i) any submissions made under section 94 or requests made under section 95(2) in respect of the proposed plan; and

(ii) the matters referred to in section 97.

93. CEO to publicise proposed plan

(1) Before the adoption of a plan under section 92(1), the CEO must publish in the *Gazette* and on the Department's website a notice —

(a) specifying where copies of the proposed plan may be inspected and obtained; and

(b) specifying the period for submissions under section 94 and an address for those submissions.

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

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

94. Public submissions

Submissions in respect of a proposed plan may be made by any person within a period determined by the CEO that is not less than 60 days after the day on which the notice referred to in section 93(1) is published in the *Gazette*.

95. Referral of proposed plan to certain persons or bodies

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

(a) must refer the proposed plan to —

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

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

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

and

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

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

96. Amendment of adopted plan

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

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

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

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

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

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

Division 4 — General provisions for recovery plans

97. Matters relevant to approval or adoption of recovery plan

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

(a) the objects of this Act;

(b) the most efficient and effective use of the resources that are allocated for biodiversity conservation;

(c) the need to minimise any significant adverse social and economic impacts, consistently with the principles of ecologically sustainable development set out in section 4;

(d) Australia's obligations under international agreements relevant to the threatened species or threatened ecological community to which the plan relates;

(e) the extent to which any environmental protection policy affects the conservation, protection and management of the threatened species or threatened ecological community to which the plan relates;

(f) the extent to which the conservation, protection and management of the threatened species or threatened ecological community to which the plan relates are addressed by —

(i) any implementation conditions as defined in the *Environmental Protection Act 1986* section 44A; or

(ii) any conditions agreed or decided under the *Environmental Protection Act 1986* Part IV Division 3; or

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

[Section 97 amended: No. 40 of 2020 s. 113(3).]

98. Notice of recovery plan

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

(2) The notice must specify —

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

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

99. Operation of recovery plan

A recovery plan takes effect on —

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

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

100. Publication of recovery plan

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

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

101. Review of recovery plan

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

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

102. Revocation of recovery plan

(1) The Minister may, by instrument, revoke a recovery plan.

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

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

(4) A revocation under subsection (1) takes effect on —

(a) the day on which the relevant notice under subsection (3) is published in the *Gazette*; or

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

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

103. Public authority to have regard to recovery plan

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

Division 5 — Interim recovery plans

104. Interim recovery plan

(1) An interim recovery plan is a document that sets out measures for the conservation, protection and management of —

(a) one or more threatened species; or

(b) one or more threatened ecological communities; or

(c) a combination of such species and communities.

(2) An interim recovery plan may include provisions dealing with one or more of the matters referred to in section 82(3).

105. Making an interim recovery plan

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

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

(b) there is insufficient scientific information available to allow the preparation of a recovery plan for that threatened species or threatened ecological community.

106. Consultation on proposed plan

Before making an interim recovery plan the CEO —

(a) must consult with the Commission if the proposed plan relates to a threatened species or threatened ecological

community on land vested in that body or is otherwise relevant to the functions of that body; and

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

107. Notice of interim recovery plan

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

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

108. Operation of interim recovery plan

An interim recovery plan takes effect on —

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

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

109. Publication of interim recovery plan

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

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

110. Review of interim recovery plan

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

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

111. Amendment of interim recovery plan

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

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

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

112. Revocation of interim recovery plan

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

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

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

(4) A revocation under subsection (1) takes effect on —

(a) the day on which the relevant notice under subsection (3) is published in the *Gazette*; or

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

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

113. Public authority to have regard to interim recovery plan

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

Part 7 — Biodiversity conservation agreements

114. Minister may enter into biodiversity conservation agreement

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

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

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

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

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

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

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

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

(b) each mortgagee of the land.

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

(a) each owner of the land;

(b) each mortgagee of the land.

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

115. Content of biodiversity conservation agreement

(1) In this section —

agreement land means the land to which the biodiversity conservation agreement relates;

specified means specified in the biodiversity conservation agreement.

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

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

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

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

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

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

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

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

(a) restrict the use of the agreement land;

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

(c) refrain from carrying out a specified activity or doing a specified thing on the agreement land;

(d) not permit any other person to carry out a specified activity or do a specified thing on the agreement land;

(e) permit access to the agreement land by a specified person;

(f) contribute towards costs incurred in connection with biodiversity conservation on the agreement land;

(g) apply money provided by way of financial assistance under the agreement in a specified manner;

(h) repay money provided by way of financial assistance under the agreement if the party commits a specified breach of the agreement or in other specified circumstances;

(i) return goods provided under the agreement if the party commits a specified breach of the agreement or in other specified circumstances;

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

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

116. Amendment or cancellation of biodiversity conservation agreement

(1) In this section —

other party to the agreement includes any person who is bound by the agreement under section 118.

(2) The Minister may amend a biodiversity conservation agreement with the consent in writing of the other party to the agreement.

(3) Before amending a biodiversity conservation agreement that relates to Crown land, the Minister must obtain the concurrence

of the Minister responsible for the administration of the *Land Administration Act 1997*.

(4) The Minister may, by written notice given to the other party to the agreement, cancel a biodiversity conservation agreement if, in the opinion of the Minister, the agreement —

(a) is no longer needed to achieve a purpose for which it was entered into; or

(b) is no longer capable of being used to achieve a purpose for which it was entered into.

(5) If a biodiversity conservation agreement is cancelled under subsection (4), the other party to the agreement is not entitled to any compensation for loss resulting from the cancellation.

(6) A biodiversity conservation agreement must not exclude, modify or restrict the operation of this section and to the extent that it purports to do so it is of no effect.

117. Lodgment of notification with Registrar and withdrawal of notification

(1) If a biodiversity conservation agreement is entered into under section 114(1), the CEO must lodge a notification in relation to the biodiversity conservation agreement with the Registrar.

(2) If the biodiversity conservation agreement is cancelled, the CEO must apply to the Registrar for the notification lodged under subsection (1) to be withdrawn.

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

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

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

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

(4) On the lodgment of a notification under subsection (1) or the receipt of an application under subsection (2), the Registrar must make any endorsement or notation the Registrar considers necessary on the certificate of title or other appropriate record in respect of the land to which the notification or application, as the case requires, relates.

118. Biodiversity conservation agreement binding on owners and occupiers

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

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

(1) If a certificate of title or other record in respect of land contains an endorsement or notation relating to a notification lodged under section 117(1), an owner of the land to which the notification relates must give written notice to the CEO in accordance with subsection (2) if —

(a) that person ceases to be an owner of the land; or

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

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

(2) The notice must —

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

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

120. Action in respect of money, goods or services provided under agreement

(1) If the CEO is satisfied that goods provided to an owner or occupier of land under a biodiversity conservation agreement are being used for purposes other than the purposes of the agreement or have not been used, a wildlife officer may —

(a) enter land on which the goods are located; and

(b) on behalf of the CEO take possession of and remove the goods.

(2) A wildlife officer must not enter land under subsection (1) unless —

(a) an owner or occupier of the land has consented to the entry; or

(b) an owner or occupier of the land has been given reasonable notice of the proposed entry and has not objected to the entry; or

(c) the entry is in accordance with an entry warrant.

(3) Part 12 Division 3 applies, with all necessary changes, in relation to applications for, and the issue and execution of, entry warrants for the purposes of subsection (2)(c).

(4) Without limiting subsection (3), references in Part 12 Division 3 to inspection purposes are to be taken to include the purposes of taking action under subsection (1).

(5) If the CEO is satisfied that an amount of money provided to an owner or occupier of land by way of financial assistance under a biodiversity conservation agreement has been used for purposes other than the purposes of the agreement, the CEO may require the owner or occupier to pay that amount to the CEO.

(6) If the CEO is satisfied that goods or services provided to an owner or occupier of land under a biodiversity conservation agreement have been used for purposes other than the purposes of the agreement, the CEO may require the owner or occupier to

pay to the CEO an amount determined by the CEO to be equivalent to the value of those goods or services.

(7) The CEO may recover an amount payable under subsection (5) or (6) in a court of competent jurisdiction as a debt due to the State.

Part 8 — Biodiversity conservation covenants

121. Terms used

In this Part —

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

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

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

(a) if the covenant relates to land that is under the operation of the *Transfer of Land Act 1893* — to endorse the particulars of the covenant on the certificate of title for that land; or

(b) if the covenant relates to other land — to enter the particulars of the covenant in the appropriate record under the *Registration of Deeds Act 1856*.

122. Biodiversity conservation covenant

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

(a) the conservation, protection or management of biodiversity or biodiversity components on the land;

(b) the conservation, protection or management of —

(i) a specially protected species that occurs on the land; or

(ii) a threatened species that occurs on the land; or

(iii) a threatened ecological community that occurs on the land;

(c) scientific purposes consistent with a purpose referred to in paragraph (a) or (b);

(d) public education purposes consistent with a purpose referred to in paragraph (a) or (b).

(2) A biodiversity conservation covenant may be expressed to have effect for a period of time or in perpetuity.

(3) A biodiversity conservation covenant may do one or more of the following —

(a) restrict the use of the covenant land;

(b) restrict the nature of works that may be carried out on the covenant land;

(c) require that action specified in the covenant be taken on the covenant land;

(d) require that action be taken in a manner specified in the covenant on the covenant land.

(4) Different provisions of a biodiversity conservation covenant may be expressed to apply to different parts of the covenant land.

(5) A biodiversity conservation covenant must be in a form approved by the Registrar.

123. Consents required

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

124. Persons bound by biodiversity conservation covenant

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

(a) the covenantor while the covenantor remains the owner of the covenant land;

(b) a person who is bound by the covenant under section 129.

125. Modification of biodiversity conservation covenant

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

126. Cancellation of biodiversity conservation covenant

(1) In this section —

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

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

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

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

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

127. Lodgment of biodiversity conservation covenant with Registrar

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

129. Biodiversity conservation covenant binding on successive owners

While a biodiversity conservation covenant remains registered —

(a) the covenant binds each successive owner of the land to which the covenant relates; and

(b) if a certificate of title or other record in respect of the land to which the covenant relates contains an endorsement or notation relating to a notice given under section 128(1), the modification to the covenant referred to in the notice binds each successive owner of the land.

130. Contravention of biodiversity conservation covenant

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

Penalty: a fine of $50 000.

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

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

(a) that person ceases to be an owner of the land; or

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

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

(2) The notice must —

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

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

[Part 9 has not come into operation.]

Part 10 — Fauna and flora

Division 1 — Protection of fauna

Subdivision 1 — Property in fauna

145. Term used: fauna

In this Subdivision —

fauna does not include fish or pearl oyster.

146. Property in fauna

(1) The property in fauna is vested in the State.

(2) The property in fauna ceases to be vested in the State when it is taken by a person who has lawful authority to take it.

(3) Subsection (4) applies to fauna that —

(a) has been taken without lawful authority; or

(b) is the property of the State under subsection (1).

(4) The property in the progeny of fauna to which this subsection applies is vested in the State.

147. Property remains vested in the State in certain cases

(1) This section applies to the following classes of fauna —

(a) fauna taken in accordance with a licence or authorisation under this Act that authorises the capture of live fauna;

(b) injured fauna or abandoned fauna captured, rescued, received or temporarily cared for under section 161 or regulations referred to in that section.

(2) Despite section 146(2), the property in fauna of a class to which this section applies continues to be vested in the State unless the Minister makes an order under subsection (3).

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

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

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

148. No compensation

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

Subdivision 2 — Protection provisions

149. Taking fauna other than threatened fauna or managed fauna

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

Penalty for this subsection:

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

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

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

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

(a) threatened fauna; or

(b) managed fauna.

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

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

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

150. Taking threatened fauna

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

Penalty for this subsection:

(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.

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

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

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

151. Defences to charges under s. 149 and 150

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

(a) occurred in the course of a lawful activity the sole or dominant purpose of which was not to take fauna (other than fish or pearl oyster); and

(b) could not reasonably have been avoided.

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

(a) the taking —

(i) occurred in the course of a lawful activity the sole or dominant purpose of which was not to take fauna (other than fish or pearl oyster); and

(ii) could not reasonably have been avoided;

and

(b) the person charged did not know, and could not reasonably have known, that the specially protected fauna or threatened fauna concerned was present.

(3) The defence in subsection (2) is not available in relation to a charge of an offence under section 150(1) if the taking has resulted in the threatened fauna becoming eligible for listing as an extinct species.

152. Possessing fauna

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

Penalty for this subsection:

(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 — a fine of $50 000.

(2) Subsection (1) does not apply if the fauna is managed fauna.

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

(a) the fauna had been taken in circumstances giving rise to a defence under section 151(1) or (2) or in circumstances beyond the control of the person charged; and

(b) the person charged 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.

(4) It is a defence to a charge of an offence under subsection (1) involving possession of a carcass to prove that —

(a) the fauna had been killed in circumstances giving rise to a defence under section 151(1) or (2) or in circumstances beyond the control of the person charged; and

(b) the carcass, because of its condition or location, was likely to endanger the health or safety of the public; and

(c) the person charged had possession of the carcass for no longer than the period reasonably required to move or dispose of it.

(5) For the purposes of subsection (1), an inspector under the *Animal Welfare Act 2002*, or a person assisting an inspector under that Act, has lawful authority to possess fauna seized under that Act for the period reasonably required to comply with section 45 of that Act.

153. Disturbing fauna

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

Penalty for this subsection:

(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 — a fine of $50 000.

(2) Subsection (1) does not apply if the fauna is managed fauna.

(3) It is a defence to a charge of an offence under subsection (1) involving fauna that is not a specially protected species or a threatened species to prove that the disturbance —

(a) occurred in the course of a lawful activity the sole or dominant purpose of which was not to disturb fauna (other than fish or pearl oyster); and

(b) could not reasonably have been avoided.

(4) It is a defence to a charge of an offence under subsection (1) involving a specially protected species or a threatened species to prove that —

(a) the disturbance —

(i) occurred in the course of a lawful activity the sole or dominant purpose of which was not to disturb fauna (other than fish or pearl oyster); and

(ii) could not reasonably have been avoided;

and

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

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

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

155. Feeding fauna

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

Penalty: a fine of $20 000.

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

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

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

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

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

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

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

157. Dealing in fauna

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

Penalty for this subsection:

(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 — a fine of $50 000.

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

158. Processing fauna

(1) In this section —

fauna does not include fish or pearl oyster.

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

Penalty for this subsection:

(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 — a fine of $50 000.

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

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

159. Importing fauna

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

Penalty:

(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 — a fine of $50 000.

160. Exporting fauna

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

Penalty:

(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 — a fine of $50 000.

161. Injured or abandoned fauna

(1) In this section —

temporarily care for means —

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

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

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

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

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

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

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

(3) The regulations may —

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

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

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

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

(ii) injured fauna or abandoned fauna in circumstances where the person knows or reasonably suspects that the fauna was taken without lawful authority;

and

(d) confer power on a wildlife officer to require a person who possesses injured fauna or abandoned fauna to give the fauna to the officer or to another person specified by the officer within a period specified by the officer; and

(e) prohibit, control or regulate the release of injured fauna or abandoned fauna and for that purpose may confer power on the CEO to determine places in the State where such fauna can or cannot be released; and

(f) prohibit, control or regulate any other matter relating to the keeping or possession of injured fauna or abandoned fauna.

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

162. Releasing fauna

(1) A person must not release fauna in any part of the State unless the person has lawful authority to release it.

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

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

(a) the fauna had been taken in circumstances giving rise to a defence under section 151(1) or (2) or in circumstances beyond the control of the person charged; and

(b) the release occurred in circumstances in which it was reasonable to expect the fauna to be able to fend for itself.

163. Managed fauna

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

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

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

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

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

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

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

(5) In subsection (4) —

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

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

164. Regulations: stranded or distressed fauna

(1) In this section —

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

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

(2) The regulations may —

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

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

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

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

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

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

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

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

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

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

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

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

165. Humane destruction of fauna

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

Division 2 — Protection of flora

Subdivision 1 — Property in flora

166. Term used: flora

In this Subdivision —

flora does not include fish.

167. Property in flora

(1) The property in flora on Crown land is vested in the State.

(2) Subsection (1) does not apply to cultivated flora.

(3) The property in flora on Crown land ceases to be vested in the State when it is taken by a person who has lawful authority to take it.

168. Property remains vested in the State in certain cases

(1) Despite section 167(3), the property in flora taken under a licence to take flora, or an authorisation under section 40, on condition that flora propagated from the flora taken is to be re-established on Crown land continues to be vested in the State unless the Minister makes an order under subsection (3).

(2) Despite section 167(3), the property in flora taken under a contract to which the *Forest Products Act 2000* Part 8 applies continues to be vested in the State until the flora is sold, and payment for it is received by the Forest Products Commission, under that Act.

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

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

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

169. Flora propagated from taken flora

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

(a) was taken without lawful authority; or

(b) is the property of the State under section 168.

170. No compensation

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

Subdivision 2 — Protection provisions

171. Taking flora

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

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

(b) otherwise has lawful authority to take it.

Penalty for this subsection:

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

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

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

Penalty for this subsection:

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

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

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

(a) threatened flora; or

(b) cultivated flora; or

(c) sandalwood.

172. Taking sandalwood

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

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

(b) otherwise has lawful authority to take it.

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

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

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

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

173. Taking threatened flora

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

Penalty for this subsection:

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

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

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

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

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

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

Penalty for this subsection:

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

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

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

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

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

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

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

(b) could not reasonably have been avoided.

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

(a) the taking —

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

(ii) could not reasonably have been avoided;

and

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

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

175. Use of prohibited device or prohibited method when taking flora

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

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

(2) An occupier of land must not allow any prohibited device or prohibited method to be used in the taking of flora on the land.

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

176. Supplying flora

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

Penalty for this subsection:

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

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

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

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

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

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

177. Dealing in flora

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

Penalty for this subsection:

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

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

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

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

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

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

178. Processing flora

(1) In this section —

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

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

Penalty for this subsection:

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

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

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

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

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

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

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

179. Exporting flora

A person must not export flora unless the flora —

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

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

Penalty:

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

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

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

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

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

180. Additional penalty for offence involving sandalwood

(1) If a court convicts a person of an offence under this Division or the regulations that involves sandalwood, the court may order the offender to pay an additional penalty of an amount calculated at the rate of the prescribed amount per tonne, or part of a tonne, of sandalwood involved in the offence.

(2) The court must not make an order under subsection (1) unless the prosecutor applies for the order.

(3) The amount prescribed by the regulations for the purposes of subsection (1) cannot exceed $20 000.

Division 3 — Taking or disturbance by Aboriginal people

181. Terms used

In this Division —

Aboriginal customary purpose means —

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

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

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

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

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

CALM Act land means —

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

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

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

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

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

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

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

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

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

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

182. Taking or disturbance for Aboriginal customary purposes

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

(2) It is a defence to a charge of an offence under this Act of taking fauna or flora to prove —

(a) the accused is an Aboriginal person; and

(b) the accused took the fauna or flora for an Aboriginal customary purpose; and

(c) in taking the fauna or flora the accused complied with —

(i) section 156(1) or 175(1), as the case requires; and

(ii) any regulations that restrict or exclude the operation of this subsection;

and

(d) if the offence is alleged to have been committed on land other than CALM Act land, the person who has control or management of the land consented to the taking of the fauna or flora; and

(e) if the offence is alleged to have been committed in an area in relation to which exclusive native title exists, the accused either —

(i) held the exclusive native title alone or with other persons; or

(ii) took the fauna or flora with the permission of the exclusive native title holder for the area.

(3) It is a defence to a charge of an offence under this Act of disturbing fauna to prove —

(a) the accused is an Aboriginal person; and

(b) the accused disturbed the fauna for an Aboriginal customary purpose; and

(c) in disturbing the fauna the accused complied with —

(i) section 156(1); and

(ii) any regulations that restrict or exclude the operation of this subsection; and

(d) if the offence is alleged to have been committed on land other than CALM Act land, the person who has control or management of the land consented to the disturbance of the fauna; and

(e) if the offence is alleged to have been committed in an area in relation to which exclusive native title exists, the accused either —

(i) held the exclusive native title alone or with other persons; or

(ii) disturbed the fauna with the permission of the exclusive native title holder for the area.

(4) If, but for this subsection, the defence provided by subsection (2) or (3) would entitle an Aboriginal person to do an act that is inconsistent with the continued existence, enjoyment or exercise of any native title rights and interests (as defined in the NT Act section 223) held by another Aboriginal person, the

defence does not apply to that act unless it is proved the accused did the act in order to obtain fauna or flora sufficient only for food for the accused and the accused's family, but not for sale.

(5) The defences provided by subsections (2) and (3) are in addition to the defences provided by sections 151(1) and (2), 153(3) and (4) and 174(1) and (2).

183. Possessing fauna taken for Aboriginal customary purposes

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

184. Selling fauna or flora taken for Aboriginal customary purposes

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

Penalty: a fine of $10 000.

185. Permission given by exclusive native title holder to take or disturb fauna

(1) In this section —

disturbance means the doing of anything referred to in paragraph (a)(i), (ii) or (iii) of the definition of ***disturb*** in section 5(1);

taking means the doing of anything referred to in paragraph (a)(i) of the definition of ***take*** in section 5(1).

(2) If the exclusive native title holder for an area in relation to which exclusive native title exists permits the taking or disturbance of fauna in the area, the exclusive native title holder does not commit an offence under this Act by reason of giving the permission.

(3) Subsection (2) applies despite any other provision of this Act.

186. Regulations: restriction or exclusion of s. 182(2) or (3)

(1) The regulations may restrict or exclude the operation of section 182(2) by reference to any of, or a combination of, the following —

(a) the fauna or flora taken;

(b) the class of person taking the fauna or flora;

(c) the time of taking;

(d) the place of taking;

(e) the manner of taking;

(f) the quantity of fauna or flora taken;

(g) the circumstances of the taking.

(2) The regulations may restrict or exclude the operation of section 182(3) by reference to any of, or a combination of, the following —

(a) the fauna disturbed;

(b) the class of person disturbing the fauna;

(c) the time of disturbance;

(d) the place of disturbance;

(e) the manner of disturbance;

(f) the quantity of fauna disturbed;

(g) the circumstances of the disturbance.

Division 4 — Other matters

187. Orders limiting quantity of sandalwood taken

(1) In this section —

sandalwood does not include sandalwood that is cultivated flora;

specified, in relation to an order made under subsection (2), means specified in the order;

taken means taken in the State, whether on Crown land or private land.

(2) The Minister may, by order —

(a) fix the maximum quantity of sandalwood that can be taken in a specified period; and

(b) fix the maximum quantity of sandalwood that can be taken in a specified part of the specified period.

(3) An order made under subsection (2) may provide that it applies, or does not apply, to —

(a) sandalwood of a specified kind; or

(b) sandalwood taken in specified circumstances.

(4) Before making an order under subsection (2), or amending or repealing such an order, the Minister must consult with the Minister responsible for the administration of the *Forest Products Act 2000*.

(5) If an order under subsection (2) is in force, the CEO must ensure that —

(a) the total quantity of sandalwood that is authorised by licence under this Act to be taken in the specified period does not exceed the maximum quantity fixed in the order for that period; and

(b) the total quantity of sandalwood that is authorised by licence under this Act to be taken in a specified part of the specified period does not exceed the maximum quantity fixed in the order for that part of that period.

(6) In subsection (5) —

sandalwood means sandalwood to which the order applies.

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

188. Regulations: charges for fauna and flora

(1) The regulations may impose charges in respect of —

(a) prescribed fauna taken for a commercial purpose on any land; and

(b) prescribed flora taken for a commercial purpose on Crown land.

(2) Regulations made for the purposes of subsection (1) are to —

(a) prescribe the amount of the charges or the method to be used to calculate them; and

(b) prescribe the persons liable to pay the charges; and

(c) make provision for the collection of the charges.

(3) Regulations made for the purposes of subsection (1) may provide that charges are payable irrespective of whether or not there was lawful authority for the taking of the fauna or flora to which the charges relate.

(4) Without limiting the *Interpretation Act 1984* section 43(8)(d) or 45, regulations made for the purposes of subsection (1) may —

(a) impose different charges for different fauna or flora or different categories or classes of fauna or flora; and

(b) specify circumstances in which charges are not payable; and

(c) provide for the issue by the CEO of identifiers for application to fauna or flora to indicate that charges have been paid or are not payable; and

(d) provide for the circumstances in which, and by whom, identifiers mentioned in paragraph (c) are to be applied to fauna or flora; and

(e) provide for the recovery of unpaid charges and prohibit conduct by which the payment of charges might be evaded; and

(f) confer powers on wildlife officers to seize and sell, dispose of or otherwise deal with fauna or flora in circumstances where a charge payable in respect of the fauna or flora has not been paid.

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

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

Part 11 — Nature-based tourism and recreation

190. Terms used

In this Part —

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

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

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

191. Issue of codes of practice

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

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

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

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

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

192. Approval of codes of practice

(1) The Minister may approve a code of practice issued under another written law, or issued by a tourism industry body or

other person, if the Minister considers that the code is appropriate for the purpose mentioned in section 191(1).

(2) A code of practice may be approved as existing or in force from time to time or as existing or in force at a particular time.

(3) A code of practice approved under this section may consist of any code, standard, rule, specification or provision relating to the purpose mentioned in section 191(1).

(4) The Minister may approve a revision of the whole or any part of a code of practice approved under this section.

(5) The Minister may revoke the approval of a code of practice.

(6) The CEO must publish a notice in the *Gazette* giving details of the approval, revision, or revocation of approval, of a code of practice under this section.

(7) A code of practice approved under this section is not subsidiary legislation for the purposes of the *Interpretation Act 1984*.

193. Regulations: nature-based tourism and recreation

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

(2) Subsection (1) does not extend to the control and management of aquatic eco-tourism.

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

(a) limit, or provide for the limitation of, the number of persons who may visit or use a particular place for the purposes of nature-based tourism and recreation if the visit or use is, or is likely to be, detrimental to native species or their habitats; and

(b) regulate commercial operators involved in nature-based tourism and recreation; and

(c) regulate the activities or services that commercial operators referred to in paragraph (b) conduct or provide; and

(d) place restrictions on the number of licences that may be issued under this Act in respect of nature-based tourism and recreation —

(i) of a particular kind; or

(ii) at a particular place.

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

194. Consultation

(1) In this section —

code of practice means a code of practice referred to in section 191 or 192.

(2) Before a code of practice is issued or approved, or regulations referred to in section 193 are made, the Minister must consult with the following —

(a) the Minister responsible for the administration of the *Western Australian Tourism Commission Act 1983*;

(b) tourism industry bodies;

(c) 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, as the case requires.

(3) Without limiting subsection (2), if a code of practice is to contain provisions relating to aquatic eco-tourism, the Minister must consult with the Minister responsible for the administration of the *Fish Resources Management Act 1994* before the code of practice is issued or approved.

Part 12 — Inspection and compliance

Division 1 — Preliminary

195. Terms used

In this Part, unless the contrary intention appears —

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

entry warrant means an entry warrant issued under Division 3;

inspection purposes means the purposes referred to in section 198;

instrument includes any of the following —

(a) a biodiversity conservation covenant;

(b) an environmental pest notice;

(c) a habitat conservation notice;

(d) a licence;

(e) an exemption under this Act;

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

occupier —

(a) in relation to a place — includes any person who has or appears to have the control or management of the place; and

(b) in relation to a vehicle — includes any person who is or appears to be in charge of the vehicle;

offence means an offence under this Act;

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

reasonably suspects has the meaning given in section 196;

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

196. Reasonably suspects: meaning

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

197. Thing relevant to an offence: meaning

(1) For the purposes of this Part, a thing is a thing relevant to an offence if it is reasonably suspected that —

(a) the thing has been, is being, or is intended to be used for the purpose of committing an offence; or

(b) the thing has been obtained by the commission of an offence; or

(c) an offence has been, is being, or may be committed in respect of the thing; or

(d) the thing is or may afford —

(i) evidence relevant to proving the commission of an offence or who committed an offence; or

(ii) evidence that tends to rebut an alibi.

(2) For the purposes of this Part, a thing relevant to an offence may be material or non-material, animate (other than human) or inanimate.

Division 2 — Inspection and related functions

198. Purposes for which inspection may be carried out

A wildlife officer may carry out an inspection for one or more of the following purposes —

(a) to search for or inspect any organism, ecological community, habitat or potential carrier or anything else prohibited, controlled, regulated or managed under this Act;

(b) to ascertain whether this Act or any instrument entered into, given or issued under it is being contravened;

(c) to inspect any records that are kept under or for the purposes of this Act or that are relevant to determining whether this Act or any instrument entered into, given or issued under it is being contravened;

(d) any other purpose that is prescribed.

199. Power to enter places

(1) For inspection purposes a wildlife officer may do one or more of the following —

(a) at any time enter licensed premises (including a dwelling);

(b) at any time enter a place that is not a dwelling;

(c) at any time enter a dwelling with the informed consent of an occupier of the dwelling;

(d) enter a place in accordance with an entry warrant.

(2) For the purposes of subsection (1)(c), an occupier gives informed consent if the occupier consents after being informed by the wildlife officer —

(a) of the powers that the wildlife officer wants to exercise in respect of the dwelling; and

(b) of the reason why the wildlife officer wants to exercise those powers; and

(c) that the person can refuse to consent to the wildlife officer entering the dwelling.

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

(1) This section applies if under section 199 a wildlife officer may enter a place.

(2) If the place is one of 2 or more premises in one building, then, in order to enter the place, the wildlife officer may enter, but not inspect, any part of the building that the occupiers of the premises use exclusively but in common with each other.

(3) If subsection (2) does not apply and the wildlife officer reasonably suspects that in order to enter the place it is necessary to enter another place, the wildlife officer may enter, but not inspect, the other place.

201. Power to stop and enter vehicles and ancillary powers

(1) For inspection purposes a wildlife officer may at any time stop and enter a vehicle other than a mobile home.

(2) If under subsection (1) a wildlife officer may stop a vehicle, the officer may use any means that are reasonably necessary in the circumstances to do so, including means that obstruct the passage of other vehicles.

(3) Subsection (2) does not authorise the use of means that are likely to cause death or grievous bodily harm to any person, whether or not in a vehicle.

(4) A wildlife officer who under subsection (1) stops a vehicle may —

(a) detain the vehicle for a reasonable period; and

(b) move the vehicle to a place suitable for carrying out an inspection.

202. Application of CI Act s. 31

The CI Act section 31 (the ***applied provision***) applies, with all necessary changes, to and in relation to the entry of a place under section 199(1)(a), (b) or (d) or 200 or a vehicle under section 201 as if references in the applied provision to —

(a) a place included references to a vehicle; and

(b) an occupier included references to a person in charge of a vehicle; and

(c) an officer were references to a wildlife officer; and

(d) a search warrant were references to an entry warrant; and

(e) a search were references to an inspection.

203. Other powers related to inspection

For inspection purposes a wildlife officer may do one or more of the following —

(a) take onto or into, and use on or in, a place or vehicle any equipment or facilities that are reasonably necessary in order to carry out an inspection;

(b) make reasonable use of any equipment, facilities or services on or in a place or vehicle in order to carry out an inspection and for that purpose operate the equipment or facilities;

(c) remain on or in a place or vehicle for so long as is reasonably necessary to carry out an inspection;

(d) inspect and open any package, compartment, cupboard or container of any kind, and inspect its contents;

(e) inspect any cage, enclosure or similar structure on or in a place or vehicle;

(f) photograph or otherwise make a record of a place or vehicle and any thing in or on the place or vehicle;

(g) restrain, muster, round up, yard, draft or otherwise move or handle any animal;

(h) patrol and inspect any fence on or bounding a place;

(i) take samples or specimens of or from organisms, ecological communities, habitats, potential carriers, water or soil;

(j) apply an identifier to any organism;

(k) survey and mark out land for any purpose relevant to carrying out an inspection;

(l) label any thing.

204. Obtaining records

(1) In this section —

relevant record means a record that —

(a) contains information about the storage, handling, transport, possession, supply, use or distribution of an organism or potential carrier or anything else prohibited, controlled, regulated or managed under this Act; or

(b) is required to be kept under this Act; or

(c) contains information that is relevant to compliance with this Act or with an instrument entered into, issued or given under it.

(2) For inspection purposes a wildlife officer may do one or more of the following —

(a) direct a person who has the custody or control of a record to give the wildlife officer the record or a copy of it;

(b) direct a person who has the custody or control of a record, computer or thing to make or print out a copy of the record or to operate the computer or thing;

(c) operate a computer or other thing on which a record is or may be stored;

(d) direct a person who is or appears to be in control of a record that the wildlife officer reasonably suspects is a relevant record to give the wildlife officer a translation, code, password or other information necessary to gain access to or interpret and understand the record;

(e) take extracts from or make copies of, or download or print out, or photograph a record that the wildlife officer reasonably suspects is a relevant record;

(f) take reasonable measures to secure or protect a record, or computer or other thing on which a record is or may be stored, against damage or unauthorised removal or interference.

(3) If a wildlife officer is given a record, the wildlife officer must, if practicable, allow a person who is otherwise entitled to possession of it to have reasonable access to it.

205. Directions

(1) In this section —

specified means specified by the wildlife officer.

(2) A wildlife officer may do one or more of the following —

(a) for inspection purposes direct an occupier of a place or vehicle, or a person who is or appears to be in possession or control of a thing, to give to the wildlife officer, orally or in writing —

(i) any information in the person's possession or control as to the name and address of the owner of the place, vehicle or thing; and

(ii) any other information in the person's possession or control that is relevant to an inspection;

(b) for inspection purposes direct a person who is or appears to be in possession or control of an organism or potential carrier to give the wildlife officer any information in the person's possession or control as to the name and

address of any person from whom the organism or potential carrier or to whom a similar organism or potential carrier has been supplied;

(c) for inspection purposes direct an occupier of a place or vehicle to answer questions;

(d) for inspection purposes direct an occupier of a place or vehicle to produce a specified thing or a thing of a specified kind;

(e) for inspection purposes direct an occupier of a place or vehicle to open or unlock any thing in or on the place or vehicle to which the wildlife officer requires access;

(f) direct an occupier of a place or vehicle to give the wildlife officer a plan, or access to a plan, of the place or vehicle;

(g) direct an occupier of a place or vehicle, or a person who is or appears to be in possession or control of a thing, to give the wildlife officer any assistance that the wildlife officer reasonably needs to carry out the wildlife officer's functions in relation to the place, vehicle or thing;

(h) direct an occupier of a vehicle to move the vehicle to a specified place for inspection or treatment;

(i) direct a person who is or could be carrying an organism or potential carrier to go to a specified place for inspection or treatment;

(j) direct a person who is or appears to be in control of a consignment of goods or a potential carrier to move the consignment or potential carrier to a specified place for inspection or treatment;

(k) direct a person who is or appears to be in control of an organism to do anything necessary to identify the organism;

(l) direct a person who is or appears to be in control of an animal to restrain, muster, round up, yard, draft or

otherwise move or handle the animal or to remove the animal to a specified place for inspection or treatment;

(m) direct a person who is or appears to be in control of any goods, vehicle, package or container to label it;

(n) direct a person who is or appears to be in control of an organism, potential carrier or other thing prohibited, controlled, regulated or managed under this Act to keep that organism, potential carrier or other thing in the possession of that person until further directed by the wildlife officer;

(o) direct a person who is or appears to be in control of an organism, potential carrier or other thing prohibited, controlled, regulated or managed under this Act to leave that organism, potential carrier or other thing at a specified place until further directed by the wildlife officer.

(3) If a person does not comply with a direction under subsection (2)(h), (i), (j) or (l) the wildlife officer may do anything the wildlife officer considers necessary to achieve, so far as is practicable, the purpose of the direction.

(4) Without limiting subsection (3) or section 201(4)(b), a wildlife officer may move a vehicle to achieve the purpose of the direction.

206. Seizure of thing relevant to an offence

(1) If a wildlife officer when exercising a power under this Division finds a thing relevant to an offence, the wildlife officer may, subject to subsection (2), seize the thing.

(2) The wildlife officer may seize the thing only if the wildlife officer reasonably suspects one or more of the following —

(a) that the thing has been unlawfully obtained;

(b) that possession of the thing at that time and place by the person in possession of it is unlawful;

(c) that it is necessary to seize the thing for one or more of the following purposes —

(i) to prevent it from being concealed, damaged, destroyed, interfered with or lost;

(ii) to preserve its evidentiary value;

(iii) to do a forensic examination on it under section 209;

(iv) to prevent it from being used in the commission of another offence.

(3) The CI Act sections 147 to 151 apply, with all necessary changes, to and in relation to —

(a) the seizure of a thing under this section; and

(b) a thing that may be seized under this section; and

(c) a thing seized under this section.

(4) The form prescribed for the CI Act section 147(1), as applied by subsection (3), may be adapted as necessary for the purposes of this section.

207. Dealing with seized thing

(1) In this section —

deal with includes to preserve, to treat, to sell, to give away, to use and to destroy.

(2) If under section 206 or in the exercise of powers under the CI Act, a wildlife officer seizes a thing and, in the opinion of the wildlife officer, the thing is likely to suffer, deteriorate or perish if no action is taken to deal with it, the wildlife officer may deal with the thing in accordance with the directions of the CEO.

(3) Unless subsection (5) applies, the proceeds of the sale of a thing under subsection (2), after deduction of the expenses of and incidental to the sale, are to be credited to the Consolidated Account.

(4) Subsection (5) applies if —

(a) under section 206 or in the exercise of powers under the CI Act a thing is seized in connection with an offence; and

(b) the thing is sold under subsection (2); and

(c) a decision is subsequently made not to commence a prosecution in respect of the offence or, after the prosecution has been completed, no person is convicted of the offence.

(5) The proceeds of the sale of the thing, after deduction of the expenses of and incidental to the sale, are to be paid to the person entitled to possession of the thing before it was seized.

208. Dealing with seized live fauna

(1) If under section 206 or in the exercise of powers under the CI Act, a wildlife officer seizes live fauna and, in the opinion of the wildlife officer, it is not practicable to keep the fauna, the wildlife officer may release the fauna into the wild.

(2) The power in subsection (1) is not to be exercised in circumstances where the wildlife officer reasonably suspects that another person is entitled to possession of the fauna.

209. Forensic examination

(1) In this section —

do a forensic examination, on a sample, specimen or other thing, means to do any or all of the following —

(a) to examine or operate it;

(b) to photograph, measure or otherwise make a record of it;

(c) to take an impression of it;

(d) to take samples of or from it;

(e) to do tests on it, or on any sample taken under paragraph (d), for forensic purposes.

(2) If a wildlife officer takes a sample or specimen under section 203(i) the wildlife officer may do a forensic examination on it or arrange for a forensic examination to be done on it.

(3) If a wildlife officer, when exercising a power under this Division, finds a thing that may be seized under section 206, then whether or not the wildlife officer seizes the thing, the wildlife officer may do a forensic examination on it or arrange for a forensic examination to be done on it.

(4) If it is reasonably necessary to do so in order to do a forensic examination, the sample, specimen or thing may be dismantled, damaged or destroyed.

(5) The power in subsection (3) must not be exercised in relation to a thing that may contain information that is privileged, as that term is defined in the CI Act section 151(1), until under that section (as applied by section 206(3) of this Act) —

(a) a decision is made that the information is not privileged; or

(b) orders have been made to enable the power to be exercised.

Division 3 — Entry warrants

210. Applying for entry warrant

(1) A wildlife officer may apply to a JP for an entry warrant authorising the entry of a place or vehicle for inspection purposes.

(2) A wildlife officer may apply for an entry warrant for a place or vehicle even if, under Division 2, a wildlife officer may enter the place or vehicle without an entry warrant.

(3) The application must be made in accordance with section 211 and must include the prescribed information, if any.

211. Making an application

(1) In this section —

application means an application under section 210;

remote communication means any way of communicating at a distance including by telephone, fax, email and radio.

(2) A reference in this section to making an application includes a reference to giving information in support of the application.

(3) An application must be made in person before a JP unless —

(a) the warrant is needed urgently; and

(b) the applicant reasonably suspects that a JP is not available within a reasonable distance of the applicant.

(4) If subsection (3)(a) and (b) apply —

(a) the application may be made to the JP by remote communication; and

(b) the JP may grant the application only if satisfied about the matters in subsection (3)(a) and (b).

(5) An application must be made in writing unless —

(a) the application is made by remote communication; and

(b) it is not practicable to send the JP written material.

(6) If subsection (5)(a) and (b) apply —

(a) the application may be made orally; and

(b) the JP must make a written record of the application and any information given in support of it.

(7) An application must be made on oath unless —

(a) the application is made by remote communication; and

(b) it is not practicable for the JP to administer an oath to the applicant.

(8) If subsection (7)(a) and (b) apply —

(a) the application may be made in an unsworn form; and

(b) if the JP issues an entry warrant, the applicant must as soon as is practicable send the JP an affidavit verifying the application and any information given in support of it.

212. Further provisions relating to application for entry warrant

(1) If, on an application made by remote communication under section 211 a JP issues an entry warrant, the JP must, if practicable, send a copy of the original warrant to the applicant by remote communication, but otherwise —

(a) the JP must send the applicant by remote communication any information that must be set out in the warrant; and

(b) the applicant must complete a form of warrant with the information received and give the JP a copy of the form as soon as is practicable after doing so; and

(c) the JP must attach the copy of the form to the original warrant and any affidavit received from the applicant and make them available for collection by the applicant.

(2) The copy of the original warrant sent, or the form of the warrant completed, as the case may be, under subsection (1) has the same force and effect as the original warrant.

(3) If an applicant contravenes section 211(8)(b) or subsection (1)(b), any evidence obtained under the entry warrant is not admissible in proceedings in a court.

213. Issuing entry warrant

(1) A JP may issue an entry warrant if satisfied that it is necessary for a wildlife officer to enter a place or vehicle for inspection purposes.

(2) An entry warrant must contain the following information —

(a) a reasonably particular description of the place or vehicle to which it relates;

(b) a reasonably particular description of the inspection purpose for which entry to the place or vehicle is required;

(c) the period, not exceeding 30 days, during which it may be executed;

(d) the name of the JP who issued it;

(e) the date and time when it was issued.

(3) If a JP refuses to issue an entry warrant, the JP must record on the application the fact of, the date and time of, and the reasons for, the refusal.

214. Effect of entry warrant

(1) An entry warrant has effect according to its contents and this section.

(2) An entry warrant comes into force when it is issued by a JP.

(3) An entry warrant authorises the wildlife officer executing the warrant, during the period of the warrant —

(a) to enter the place or vehicle described in the warrant; and

(b) to exercise the powers conferred by Division 2.

215. Execution of entry warrant

(1) An entry warrant may be executed by the wildlife officer to whom it is issued or by any other wildlife officer.

(2) A wildlife officer executing an entry warrant must, at the reasonable request of a person apparently in charge of the place or vehicle, produce the warrant.

Division 4 — Remedial action

216. Term used: relevant instrument

In this Division —

relevant instrument means —

(a) a biodiversity conservation covenant; or

(b) an environmental pest notice; or

(c) a habitat conservation notice.

217. CEO may take remedial action

(1) If, in the opinion of the CEO, a relevant instrument has been contravened, the CEO may take any action (***remedial action***) the CEO considers necessary to ensure compliance with it.

(2) Without limiting subsection (1), remedial action may include —

(a) stopping anything that is being done in contravention of the instrument; and

(b) doing anything required by the instrument to be done that has not been done; and

(c) carrying out work that is necessary to remedy anything done in contravention of the instrument; and

(d) doing anything incidental to action referred to in paragraph (a), (b) or (c).

(3) For the purposes of taking remedial action a wildlife officer may —

(a) enter on land with or without vehicles, plant and equipment; and

(b) remain on that land for as long as is necessary to complete the remedial action.

(4) The power in subsection (3)(a) must not be exercised unless —

(a) the consent of an owner or occupier of the land has been obtained; or

(b) an owner or occupier of the land has been given reasonable notice of the proposed entry and has not objected to the entry; or

(c) the entry is in accordance with an entry warrant.

(5) Division 3 applies, with all necessary changes, in relation to applications for, and the issue and execution of, entry warrants for the purposes of subsection (4)(c).

(6) Without limiting subsection (5), references in Division 3 to inspection purposes are to be taken to include the purposes of remedial action.

218. Notice required before remedial action

The CEO must not take remedial action unless —

(a) the CEO has given a person bound by the relevant instrument a written notice —

(i) stating that in the opinion of the CEO the instrument has been contravened; and

(ii) giving details of the action necessary to comply with the instrument; and

(iii) informing the person that if the instrument is not complied with within the period specified in the notice the CEO may take remedial action;

and

(b) the relevant instrument has not been complied with within the period referred to in paragraph (a)(iii).

219. Recovery of costs of remedial action

(1) The CEO may recover the reasonable costs incurred in taking remedial action from a person bound by the relevant instrument in a court of competent jurisdiction as a debt due to the State.

(2) If more than one person is bound by the relevant instrument, each of those persons is jointly and severally liable for the costs referred to in subsection (1).

Division 5 — Other provisions

220. Time and place for compliance with direction

A wildlife officer may specify the date and time when, and place where, a direction given under this Act must be complied with.

221. Direction may be given orally or in writing

(1) A direction under this Act may be given by a wildlife officer orally or in writing.

(2) A direction that is given orally must be confirmed in writing within 5 business days after it is given, unless within that period it is complied with or cancelled.

(3) Failure to comply with subsection (2) does not invalidate the direction.

222. Exercise of power may be recorded

A wildlife officer may record the exercise of a power under this Act, including by making an audiovisual recording.

223. Assistance to exercise powers

(1) A wildlife officer exercising a power under this Act may authorise as many other persons to assist in exercising the power as are reasonably necessary in the circumstances.

(2) A person who under subsection (1) is authorised by a wildlife officer to assist in exercising a power must obey any lawful and reasonable direction given to the person by the wildlife officer when assisting in exercising the power.

(3) For the purposes of section 273, a person who assists in exercising a power under this Act having been authorised by a wildlife officer to do so is to be taken to be performing a function under this Act.

(4) The protection from liability given to a person because of the operation of subsection (3) does not extend to anything done or omitted to be done by the person in contravention of a lawful and reasonable direction referred to in subsection (2).

224. Use of force

(1) When exercising a power under this Act a wildlife officer, and any person assisting a wildlife officer, may use any force against any person or thing that is reasonably necessary in the circumstances —

(a) to exercise the power; and

(b) to overcome any resistance to exercising the power that is offered, or that the wildlife officer reasonably suspects will be offered, by any person.

(2) However, if the use of force is likely to cause significant damage to property, a wildlife officer or person assisting a wildlife officer is not entitled to use force unless the CEO has, in the particular case, given the wildlife officer prior written authorisation to do so.

(3) Any use of force under this section against a person is subject to *The Criminal Code* Chapter XXVI.

225. Evidence obtained improperly

(1) This section applies if in the purported exercise of a power conferred by this Act or by an entry warrant issued or purportedly issued under this Act —

(a) a thing relevant to an offence is seized or obtained; and

(b) a requirement of this Act in relation to exercising the power or issuing the entry warrant, including a

requirement that arises before or after the exercise of the power or the issue of the entry warrant, is contravened.

(2) Any evidence derived from the thing seized or obtained or from the exercise of the power is not admissible in any criminal proceedings against a person in a court unless —

(a) the person does not object to the admission of the evidence; or

(b) the court decides otherwise under subsection (3).

(3) The court may nevertheless decide to admit the evidence if it is satisfied that the desirability of admitting the evidence outweighs the undesirability of admitting the evidence.

(4) In making a decision under subsection (3) the court must take into account each of the following —

(a) any objection to the evidence being admitted by the person against whom the evidence may be given;

(b) the seriousness of the offence in respect of which the evidence is relevant;

(c) the seriousness of any contravention of this Act in obtaining the evidence;

(d) whether any contravention of this Act in obtaining the evidence —

(i) was intentional or reckless; or

(ii) arose from an honest and reasonable mistake of fact;

(e) the probative value of the evidence;

(f) any other matter the court thinks fit.

(5) The probative value of the evidence does not by itself justify its admission.

226. Compliance with directions

(1) A person must not contravene a direction given to the person by a wildlife officer under this Act.

Penalty for this subsection: a fine of $10 000.

(2) It is a defence to a charge of an offence under subsection (1) to prove that the person charged had a reasonable excuse.

227. False or misleading information

(1) A person must not give false or misleading information to a wildlife officer who is carrying out a function under this Act.

Penalty for this subsection: a fine of $10 000.

(2) For the purposes of subsection (1), a person gives false or misleading information to a wildlife officer if the person does one or more of the following —

(a) states anything to the wildlife officer that the person knows is false or misleading in a material particular;

(b) omits from a statement made to a wildlife officer anything without which the statement is, to the person's knowledge, misleading in a material particular;

(c) gives or produces any record or other document to the wildlife officer that —

(i) the person knows is false or misleading in a material particular; or

(ii) omits anything without which the record or other document is, to the person's knowledge, misleading in a material particular.

228. Obstruction of wildlife officer

A person must not obstruct a wildlife officer or a person assisting a wildlife officer in the exercise or attempted exercise of a power under this Act.

Penalty: a fine of $20 000.

229. Self-incrimination not an excuse

(1) An individual is not excused from complying with a direction under this Act to provide information or answer questions, or to produce any record or thing, on the ground that the information, answer, record or thing might incriminate the individual or make the individual liable to a penalty.

(2) However, any information or answer provided, or document or thing produced, by an individual in compliance with a direction under this Act is not admissible in evidence in any proceedings against the individual other than proceedings for perjury or an offence against section 227.

230. Orders for forfeiture or disposal of seized things

(1) In this section —

seized thing means a thing seized —

(a) under section 206; or

(b) under the CI Act in the exercise of powers in respect of an offence under this Act.

(2) A court that convicts a person of an offence under this Act may make an order for the forfeiture to the State, or the destruction or disposal, of a seized thing if the court is satisfied that the thing was the subject of, used in, or otherwise involved in, the commission of the offence.

231. Application of *Criminal and Found Property Disposal Act 2006*

The *Criminal and Found Property Disposal Act 2006* applies to and in respect of —

(a) any thing seized under section 206 unless the thing is dealt with under section 207(2) or 208(1); and

(b) any thing forfeited under section 230.

Part 13 — Legal proceedings

Division 1 — General provisions relating to offences

232. Who can commence prosecution

A prosecution for an offence under this Act may be commenced only by the CEO or a person authorised to do so by the CEO.

233. Time for commencing prosecution

(1) A prosecution for an offence under this Act must be commenced within 3 years after the day on which the offence is alleged to have been committed.

(2) Despite subsection (1), if a prosecution notice alleging an offence under this Act specifies the day on which evidence of the alleged offence first came to the attention of a person who has authority to commence the prosecution —

(a) the prosecution may be commenced within 3 years after that day; and

(b) the prosecution notice need not contain particulars of the day on which the offence is alleged to have been committed.

(3) The day on which evidence first came to the attention of a person who has authority to commence the prosecution is, in the absence of proof to the contrary, the day specified in the prosecution notice.

234. Attempt, incitement or accessory after the fact

(1) In this section —

accessory after the fact to an offence has the meaning given in *The Criminal Code* section 10.

(2) *The Criminal Code* section 555A applies to an offence under this Act as if it were a simple offence under that Code.

(3) A person who becomes an accessory after the fact to an offence under this Act (the ***principal offence***) commits an offence and is liable on conviction to the penalty to which a person convicted of the principal offence is liable.

235. Penalties for continuing offences

For the purposes of the *Interpretation Act 1984* section 71, in relation to an offence committed under this Act, the penalty for each separate and further offence committed by a person is a fine of $5 000.

236. Court may cancel or suspend licence

(1) If a court convicts a person of an offence under this Act, the court may, in addition to any other penalty it imposes in relation to the offence, cancel, or suspend for any period, any licence held by the person.

(2) A court must not cancel or suspend a licence under subsection (1) unless the prosecutor applies for its cancellation or suspension.

Division 2 — Responsibility of certain persons

237. Liability of officers for offence by body corporate

(1) *The Criminal Code* section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of this Act listed in Table A.

Table A

s. 48(1)	s. 65(1)
s. 150(1)	s. 158(3)
s. 172(1)	s. 173(1) and (2)

(2) *The Criminal Code* section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of this Act listed in Table B if the offence involves a cetacean or threatened fauna.

Table B

s. 152(1)	s. 153(1)
s. 157(1)	s. 158(2)
s. 159	s. 160

(3) *The Criminal Code* section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of this Act listed in Table C if the offence involves threatened flora.

Table C

s. 176(1)	s. 177(1)
s. 178(2)	s. 179

[Section 237 inserted: No. 9 of 2023 s. 30.]

*[**238.** Deleted: No. 9 of 2023 s. 30.]*

239. Liability of partners

(1) In this section —

offence means an offence under this Act committed or alleged to have been committed in the course of the activities of the relevant partnership.

(2) If a licence is granted in respect of a partnership each partner has the same rights and duties as a licensee, whether or not the partner is named in the licence.

(3) If a person (***partner A***) who is a partner in a partnership is charged with an offence, every other person who was a partner at the time of the alleged offence may also be charged with the offence.

(4) If a person (***partner B***) is charged as permitted by subsection (3) and partner A is convicted of the offence, partner B is to be taken to have also committed the offence, subject to subsection (7).

(5) If a person (***partner C***) who is a partner in a partnership commits an offence then, although partner C is not charged with the offence, every other person who was a partner at the time the offence was committed may be charged with the offence.

(6) If a person (***partner D***) is charged as permitted by subsection (5) and it is proved that partner C committed the offence, partner D is to be taken to have also committed the offence, subject to subsection (7).

(7) If under this section a person is charged with an offence it is a defence to prove that —

(a) the offence was committed without the person's consent or connivance; and

(b) the person took all the measures to prevent the commission of the offence that the person could reasonably be expected to have taken having regard to the person's functions and to all the circumstances.

240. Liability of principals for offence by agent

(1) If a person (the ***agent***) acting, otherwise than as an employee, for or on behalf of another person (the ***principal***) is charged with an offence under this Act, the principal may also be charged with the offence.

(2) If a principal is charged as permitted by subsection (1) and the agent is convicted of the offence, the principal is to be taken to have also committed the offence, subject to subsection (5).

(3) If a person (the ***agent***) acting, otherwise than as an employee, for or on behalf of another person (the ***principal***) commits an offence under this Act, then, although the agent is not charged with the offence, the principal may be charged with the offence.

(4) If a principal is charged as permitted by subsection (3) and it is proved that the agent committed the offence, the principal is to be taken to have also committed the offence, subject to subsection (5).

(5) If under this section a principal is charged with an offence it is a defence to prove that —

(a) the offence was committed without the principal's consent or connivance; and

(b) the principal took all the measures to prevent the commission of the offence that the principal could reasonably be expected to have taken having regard to all the circumstances.

241. Liability of employers for offence by employee

(1) If an employee of another person (the ***employer***) is charged as an employee with an offence under this Act, 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 orders or instructions.

(2) If an employer is charged as permitted by subsection (1) and the employee is convicted of the offence, the employer is to be taken to have also committed the offence, subject to subsection (5).

(3) If an employee of another person (the ***employer***) commits an offence under this Act as an employee, then, although the employee is not charged with the offence, the employer may be charged with the offence whether or not the employee acted without the employer's authority or contrary to the employer's orders or instructions.

(4) If an employer is charged as permitted by subsection (3) and it is proved that the employee committed the offence, the employer is to be taken to have also committed the offence, subject to subsection (5).

(5) If under this section an employer is charged with an offence it is a defence to prove that —

(a) the offence was committed without the employer's consent or connivance; and

(b) the employer took all the measures to prevent the commission of the offence that the employer could reasonably be expected to have taken having regard to all the circumstances.

Division 3 — Remediation orders

242. Terms used

In this Division —

environmental damage means damage to a habitat or a threatened ecological community;

relevant offence means an offence under section 48(1), 149(1), 150(1), 156, 171(1) or (2), 172(1), 173(1) or (2) or 175;

remediation measures means measures to repair, control or mitigate environmental damage caused by the commission of a relevant offence including measures involving the re-establishment and maintenance of vegetation;

remediation order means an order under section 243(1);

specified, in relation to a remediation order, means specified in the order.

243. Making a remediation order

(1) If a court convicts a person of a relevant offence, the court may order the offender —

(a) to take specified remediation measures within a specified time; or

(b) to pay to the CEO or any other specified person within a specified time an amount of money set by the court as compensation for costs reasonably incurred by the CEO or other person in taking remediation measures.

(2) An application for a remediation order must be made in accordance with the regulations.

(3) A remediation order may be made by a court on its own initiative or on the application of the prosecutor.

(4) A court that makes a remediation order may make any other order that is necessary to give effect to the remediation order.

244. Limitation on making remediation order: damage to habitat on private land

A court must not make a remediation order in respect of environmental damage consisting of damage to habitat on private land if —

(a) the offender, at the time of the relevant offence, was an owner or occupier of the private land; and

(b) the relevant offence did not involve a threatened species, threatened ecological community or critical habitat.

245. Enforcement of remediation order under s. 243(1)(a)

(1) If the CEO considers that a remediation order made under section 243(1)(a) has been contravened, the CEO may apply to the court that made the remediation order for an order under subsection (3).

(2) The application must be made in accordance with the regulations.

(3) After considering the application, the court may —

(a) amend the remediation order; or

(b) cancel the remediation order and make an order under section 243(1)(b); or

(c) dismiss the application.

246. Enforcement of remediation order under s. 243(1)(b)

(1) If the amount payable to a person under a remediation order made under section 243(1)(b) is not paid within the specified time, the person may enforce the order by lodging a certified copy of it in a court of competent jurisdiction.

(2) When lodged, the remediation order is to be taken to be a judgment of the court and may be enforced accordingly.

(3) No fee is to be charged for a certified copy of the remediation order or for lodging it.

Division 4 — Evidentiary provisions

247. Terms used

In this Division —

authorisation means a licence, approval, consent or other authorisation under this Act;

exemption means an exemption under this Act;

offence means an offence under this Act;

specified, in relation to a certificate or prosecution notice, means specified in the certificate or prosecution notice, as the case requires.

248. Presumption as to identity of alleged offender

In proceedings for an offence, if the name of the accused in the prosecution notice for the offence is the name given by the alleged offender at the time of, or immediately following, the occurrence giving rise to the offence, the accused is, in the absence of proof to the contrary, to be taken to be the alleged offender.

249. Presumption as to place of offence

In proceedings for an offence, an allegation in the prosecution notice that an act occurred on land of a particular description (for example, Crown land or private land), is, on the act being proved and in the absence of proof to the contrary, to be taken to be proved.

250. Evidence as to authority or status

In proceedings for an offence, an allegation in the prosecution notice of any of the following matters is, in the absence of proof to the contrary, to be taken to be proved —

(a) that the prosecutor is authorised to commence the prosecution;

(b) that on a specified day or during a specified period a specified person was or was not the holder of an authorisation;

(c) that on a specified day or during a specified period a specified person was or was not authorised to do a specified thing under an authorisation;

(d) that on a specified day or during a specified period a specified place, vehicle or other thing was or was not the subject of an authorisation or exemption;

(e) that on a specified day or during a specified period a specified person was or was not the subject of an authorisation or exemption;

(f) that on a specified day or during a specified period an authorisation or exemption was cancelled, suspended or for any other reason of no effect;

(g) that on a specified day or during a specified period an authorisation or exemption was subject to a specified condition;

(h) that on a specified day or during a specified period a person was the owner or occupier of specified land;

(i) that on a specified day or during a specified period a person was a wildlife officer or a person assisting a wildlife officer;

(j) that on a specified day or during a specified period a person held a specified office.

251. Evidence as to type of organism, species, ecological community or habitat

In proceedings for an offence, an allegation in the prosecution notice of any of the following matters is, in the absence of proof to the contrary, to be taken to be proved —

(a) that on a specified day or during a specified period a specified animal or other organism was fauna;

(b) that on a specified day or during a specified period a specified plant or other organism was flora;

(c) that on a specified day or during a specified period a specified native species was a specially protected species or a specially protected species listed in a specified category;

(d) that on a specified day or during a specified period a specified native species was a threatened species or a threatened species listed in a specified category;

(e) that on a specified day or during a specified period a specified ecological community was a threatened ecological community or a threatened ecological community listed in a specified category;

(f) that on a specified day or during a specified period a specified habitat was a critical habitat;

(g) that on a specified day or during a specified period a specified species was an environmental pest for a specified area.

252. Evidence of scientific matters

(1) In this section —

authorised person means a person declared under subsection (2) to be an authorised person.

(2) The Minister may, by notice published in the *Gazette*, declare a person who, in the opinion of the Minister, has relevant scientific knowledge to be an authorised person for the purposes of this section.

(3) In proceedings for an offence, production of a certificate purporting to be signed by an authorised person and stating that on a specified day or during a specified period —

(a) a specified thing was an animal of a specified class or description; or

(b) a specified thing was a plant of a specified class or description; or

(c) a specified animal, plant or other organism belonged to a specified species or taxonomic grouping of species; or

(d) a specified species was a native species; or

(e) a specified thing or place was an ecological community, a habitat or other biodiversity component; or

(f) a specified thing was a potential carrier,

is, without proof of the authorised person's signature, evidence of the facts stated in the certificate.

(4) Subsection (3) only applies if —

(a) at least 14 days before the hearing, written notice has been given to the accused of the prosecutor's intention to produce the certificate and of the content of the certificate; and

(b) the accused has not, within 7 days of receipt of the notice, delivered to the prosecutor a notice requiring that the authorised person's evidence be given in person.

(5) The court before which proceedings are held may, in addition to making any other order as to costs, make such order as it thinks fit as to the expenses and remuneration to be paid for the services of the authorised person.

253. Evidence as to authorisations, notices and other documents

(1) Subsection (2) applies to the following documents —

(a) an authorisation;

(b) an exemption;

(c) a notice given under this Act;

(d) a code or other document that has been adopted under the regulations.

(2) In proceedings for an offence, production of a copy of a document to which this subsection applies certified by the CEO as a true copy as at any date or during any period is proof of the contents of the document as at that date or during that period.

(3) In the absence of proof to the contrary, it is to be presumed that a document purporting to have been signed by the Minister, the CEO or a wildlife officer was signed by a person who at the time was the Minister, the CEO or a wildlife officer, as the case requires.

254. Provisions in addition to *Evidence Act 1906*

This Division is in addition to and does not affect the operation of the *Evidence Act 1906*.

Part 14 — Regulations, orders and guidelines

Division 1 — Regulations

255. Regulations: general power

(1) The Governor may make regulations prescribing matters —

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for giving effect to the purposes of this Act.

(2) Without limiting subsection (1), the regulations may provide for, prohibit, control, impose requirements in relation to, or otherwise regulate all or any of the matters referred to in Schedule 1.

(3) Terms used in Schedule 1 item 13 that are defined in the EPBC Act have the same meaning in that item as they have in that Act.

(4) The regulations may provide for offences against the regulations and prescribe penalties for those offences not exceeding a fine of $50 000.

256. Regulations: licensing

(1) The regulations are to establish a licensing scheme under which the CEO may grant licences for the purposes of this Act.

(2) Regulations made for the purposes of subsection (1) may provide for or regulate the following —

(a) the kinds or classes of licences that may be granted including licences that confer exclusive or preferential rights;

(b) applications for or in relation to licences, the persons who are eligible to make applications and the manner in which applications are to be dealt with;

(c) requirements to be met by persons who make applications for or in relation to licences including —

(i) requirements to produce information relevant to an application;

(ii) requirements to undergo assessment or testing;

(iii) requirements as to training, qualifications and experience;

(d) the grant, amendment, renewal or transfer of licences;

(e) fees payable in respect of the following —

(i) applications for or in relation to licences;

(ii) the grant, amendment, renewal or transfer of licences;

(f) the imposition of conditions on licences, the kinds of conditions that can be imposed and the consequences of failing to comply with conditions;

(g) the duration of licences;

(h) the surrender, suspension or cancellation of licences;

(i) the content of licence documents;

(j) circumstances in which licence documents have to be returned to the CEO;

(k) the issue by the CEO of guidelines in respect of licensing matters;

(l) the review by the State Administrative Tribunal of decisions to amend, suspend or cancel licences or to refuse to grant, renew or transfer licences.

(3) Without limiting subsection (2)(f), the regulations may provide for the imposition of the following conditions —

(a) a condition authorising bioprospecting activity that requires the licence holder to enter into an arrangement with the CEO or another person for the sharing of profits;

(b) a condition authorising the taking of fauna or flora that restricts the quantity of fauna or flora that may be taken.

(4) Without limiting subsection (2)(i), the regulations may provide for any licence or permit granted to a person under the CALM Act to be included in a licence document issued to the person under this Act.

(5) No person is entitled to the grant, renewal or transfer of a licence as of right unless the regulations expressly provide otherwise.

(6) If the regulations provide 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.

257. Regulations may adopt codes or legislation

(1) In this section —

code means a code, code of practice, standard, rule, specification, administrative procedure, quality assurance scheme or other document, published in or outside Australia by any public authority or other person, including the Minister or the CEO, that does not by itself have legislative effect in this State;

subsidiary legislation includes rules, regulations, instructions, local laws and by-laws.

(2) The regulations may adopt, either wholly or in part or with modifications and either specifically or by reference —

(a) any code; or

(b) any subsidiary legislation made, determined or issued under any other Act or under any Act of the Commonwealth, another State or a Territory.

(3) If the regulations adopt a code or subsidiary legislation, it is adopted as existing or in force from time to time unless the regulations prescribe that a particular text is adopted.

(4) Particulars of any code or subsidiary legislation adopted by the regulations must be published on, or accessible through, the Department's website.

Division 2 — Orders

258. Orders made by Minister

(1) This section applies to an order made by the Minister under another provision of this Act if the other provision states that it so applies.

(2) An order to which this section applies is subsidiary legislation for the purposes of the *Interpretation Act 1984*.

(3) The Minister must cause a copy of each of the following orders to be laid before each House of Parliament as soon as is practicable after the order is published in the *Gazette* —

(a) an order to which this section applies;

(b) an order amending or repealing an order referred to in paragraph (a).

(4) Subsection (3) does not apply if the order is referred to in section 259.

259. Certain orders subject to disallowance

The *Interpretation Act 1984* section 42 applies to each of the following orders as if the order were a regulation —

(a) an order made by the Minister under a provision of this Act listed in the Table;

(b) an order amending or repealing an order referred to in paragraph (a).

Table

s. 9(1), (2), (3), (4) and (5)	s. 10(1) and (2)
s. 132(1)	s. 147(3)
s. 168(3)	s. 187(2)
s. 271(2)	

Division 3 — Guidelines

260. Guidelines about listing

(1) The Minister may issue guidelines establishing criteria for, and setting out other matters relevant to, the following —

(a) the listing of specially protected species under Part 2 Division 1 Subdivision 1;

(b) the listing of threatened species under Part 2 Division 1 Subdivision 2;

(c) the listing of extinct species under Part 2 Division 1 Subdivision 3;

(d) the listing of threatened ecological communities under Part 2 Division 2;

(e) the listing of key threatening processes under Part 2 Division 3;

(f) the listing of critical habitats under Part 4 Division 1.

(2) Without limiting subsection (1), guidelines issued under this section may provide for and in relation to —

(a) the making of nominations under section 38(1) relating to threatened species or threatened ecological communities; and

(b) the process for dealing with those nominations.

261. Other guidelines

(1) The Minister may issue guidelines setting out matters that the Minister considers to be of importance in respect of the performance by the CEO or any other person of a function under this Act.

(2) Guidelines issued under this section are intended —

(a) to assist the CEO and other persons in the performance of functions under this Act; and

(b) to provide information to —

(i) any person or body that may be affected by decisions under this Act; and

(ii) any person or body that has a special interest in species or ecological communities that may be affected by decisions under this Act or in biodiversity conservation generally; and

(iii) the general community.

262. Publication, amendment and revocation of guidelines

(1) Guidelines issued under section 260 or 261 must be published in the prescribed way.

(2) The Minister may at any time amend or revoke guidelines issued under section 260 or 261.

(3) An amendment or revocation under subsection (2) must be published in the prescribed way.

263. Guidelines to be taken into account

(1) In performing a function under this Act a person must take into account guidelines issued under section 260 or 261 that relate to the performance of the function.

(2) Nothing in subsection (1) —

(a) derogates from the person's duty to exercise the person's discretion in a particular case; or

(b) precludes the person from taking into account matters not set out in guidelines; or

(c) requires the person to take into account guidelines that are inconsistent with the provision of this Act that confers the function.

264. Status of guidelines

(1) Guidelines issued under section 260 or 261 are not subsidiary legislation for the purposes of the *Interpretation Act 1984*.

(2) If there is a conflict or inconsistency between a provision of this Act and a provision of guidelines issued under section 260 or 261, the provision of this Act prevails.

Part 15 — Miscellaneous

Division 1 — Documents

265. Giving documents to CEO

A document required or authorised to be given under this Act to the CEO may be given to the CEO —

(a) by lodging the document at a prescribed address; or

(b) by prepaid post addressed to the CEO; or

(c) if the regulations authorise service of the document under this paragraph — by faxing a copy of the document to a fax number stated in the regulations; or

(d) if the regulations authorise service of the document under this paragraph — by sending electronic data from which the document can be reproduced, in a prescribed format, to a prescribed email address.

266. Giving documents generally

(1) A document required or authorised to be given under this Act to a person other than the CEO may be given to the person by —

(a) giving it to the person personally; or

(b) leaving it at the person's place of residence or business; or

(c) sending it by prepaid post (including document exchange) addressed to the person —

(i) in accordance with the *Interpretation Act 1984* section 75(1); or

(ii) at an address appearing on recent correspondence addressed by or on behalf of the person to the CEO or otherwise notified to the CEO or published by the person; or

(iii) at an address shown in the rate book kept by a local government under the *Local Government*

Act 1995 as the address for the service of rate notices under that Act on that person;

or

(d) faxing it to a fax number, or emailing it to an email address, provided by the person or appearing on recent correspondence addressed by or on behalf of the person to the CEO or otherwise notified to the CEO or published by the person; or

(e) communicating it in some other way agreed with the person.

(2) Where an address for service cannot be identified for the purposes of subsection (1), the document may be given by advertising the document at least twice in the prescribed way, with an interval of at least one week between the advertisements.

(3) The use of a particular method for giving a document to a person does not prevent the giving of other documents to the same person in a different way.

(4) Failure to properly give a document to one person does not affect whether or not it was properly given to another person.

267. Giving documents to owner or occupier of land

(1) A document given to a person because the person is an owner or occupier of land may be addressed to the person by the description of "the owner" or "the occupier" of the relevant land, describing it, without further name or description.

(2) If there are 2 or more owners or occupiers, a document is sufficiently given to all of them if it is given to one of them, and is addressed to that one with the addition of the words "and others" or "and another", as the case requires.

(3) If a document is to be given to a person because the person is an owner of land, the document may be given to the person by

addressing it to the owner and giving it under section 266 to the occupier, if any, of the land.

(4) If a document is to be given to a person because the person is an owner or occupier of land, the document may be given to the person by addressing it to the person and affixing it to a conspicuous part of the land.

(5) Subsections (3) and (4) only apply if it is not reasonably practicable to give the document in any of the ways provided for in section 266 and this Act does not otherwise state how the document is to be given.

268. Giving certain notices

(1) In this section —

notice means an environmental pest notice or a notice under section 50(1).

(2) If for any reason it is not reasonably practicable to give a notice to a person in accordance with section 266, the notice may be given by publishing a copy of the notice in the prescribed way.

(3) A notice given under subsection (2) —

(a) may be directed to any number of owners or occupiers of land; and

(b) is to be taken to be given to the owner and occupier of any land specified in the notice.

269. Time when document given

(1) Except where a document is sent by post to an address outside the State, given personally, or the contrary is proved, a document is taken to be given on the business day following the day on which the document was sent by post, faxed or emailed to, or left for, the person to whom it was addressed.

(2) A document sent by post to an address within Australia but outside the State is taken to be given on the 5th business day

after the day on which the document was sent to the person to whom it is addressed.

(3) A document sent by post to an address outside Australia is taken to be given on the 10th business day after the day on which the document was sent to the person to whom it is addressed.

270. Defects in document

A document is not ineffective, nor is it to be regarded as having been not properly given, only because of an error, misdescription, or irregularity in the document or the way it is addressed that is not likely to mislead or does not in fact mislead.

Division 2 — Other matters

271. Exemptions from Act

(1) In this section —

specified, in relation to an exemption, means specified in the order made under subsection (2) that provides for the exemption.

(2) The Minister may, by order, exempt from a specified provision of this Act —

(a) a specified person or a specified class of persons; or

(b) a specified activity or a specified class of activities; or

(c) a specified place, vehicle or thing or a specified class of places, vehicles or things.

(3) An exemption may be granted on an application to, or on the initiative of, the Minister.

(4) An exemption may be granted indefinitely or for a specified period.

(5) An exemption may be expressed to apply —

(a) generally; or

(b) in specified circumstances; or

(c) in respect of a specified area of the State.

(6) An exemption may be granted subject to specified conditions.

(7) If an exemption is granted subject to a specified condition, the exemption has no effect at any time when the condition is being contravened.

(8) A person to whom an exemption applies must not contravene any condition to which the exemption is subject.

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

(9) This section does not affect the operation of the *Interpretation Act 1984* section 43(8)(d).

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

272. Resolution of matters relating to powers and duties of public authorities

(1) In this section —

matter includes a question, difference or dispute;

responsible Minister, in relation to a public authority, means —

(a) if the public authority is a Minister of the State — that Minister; or

(b) if the public authority is an agency or an organisation as defined in the *Public Sector Management Act 1994* section 3(1) — the Minister responsible for the administration of that agency or organisation; or

(c) if the public authority is a local government or a regional local government — the Minister responsible for the administration of the *Local Government Act 1995*; or

(d) in any other case — the Minister responsible for the administration of the written law under which the public

authority, or the office held by the public authority, is established or continued.

(2) If, in the operation of this Act, a matter arises, or may arise, with respect to the exercise of any right, power or authority of, or the discharge of any duty by, a public authority under this Act or another written law, then the responsible Minister and the Minister may consult on the matter.

(3) If the Ministers reach agreement on the matter after consultation under subsection (2), the Ministers must give such directions as result from the agreement, and effect must be given to those directions.

(4) If no consultation under subsection (2) is concluded or the Ministers cannot reach agreement on the matter, the matter may be finally and conclusively determined by the Governor, and effect must be given to the determination.

273. Protection from liability for wrongdoing

(1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.

(2) The State is also relieved of any liability that it might otherwise have had for another person having done anything as described in subsection (1).

(3) The protection given by this section applies even though the thing done as described in subsection (1) may have been capable of being done whether or not this Act had been enacted.

(4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

274. Information sharing

(1) In this section —

authorised officer means the CEO or a person designated under subsection (2);

guidelines means guidelines issued under subsection (7);

information sharing agency means any of the following —

(a) the department of the Public Service principally assisting in the administration of the *Animal Welfare Act 2002*;

(b) the department of the Public Service principally assisting in the administration of the *Biosecurity and Agriculture Management Act 2007*;

(c) the department of the Public Service principally assisting in the administration of the *Bush Fires Act 1954*;

(d) the department of the Public Service principally assisting in the administration of the *Environmental Protection Act 1986*;

(e) the department of the Public Service principally assisting in the administration of the *Fish Resources Management Act 1994*;

(f) the department of the Public Service principally assisting in the administration of the *Health Act 1911*;

(g) the department of the Public Service principally assisting in the administration of the *Land Administration Act 1997*;

(h) the department of the Public Service principally assisting in the administration of the *Pearling Act 1990*;

(i) the Forest Products Commission established by the *Forest Products Act 2000*;

(j) the Police Force of Western Australia;

(k) the Western Australian Land Information Authority established by the *Land Information Authority Act 2006*;

(l) the Western Australian Museum constituted under the *Museum Act 1969*;

(m) the agency of the Commonwealth principally assisting in the administration of the EPBC Act;

(n) a public authority prescribed for the purposes of this definition;

(o) an agency of the Commonwealth, another State, or a Territory, prescribed for the purposes of this definition;

officer, in relation to an information sharing agency, means —

(a) an officer or employee in or of the agency; or

(b) if the agency is the Police Force of Western Australia — a member of the Police Force of Western Australia;

relevant information means information relevant to the administration or enforcement of this Act.

(2) The CEO may, in writing, designate a person employed in the Department as an authorised officer for the purposes of this section.

(3) An authorised officer may, in accordance with the guidelines, disclose relevant information to an officer of an information sharing agency.

(4) An authorised officer may, in accordance with the guidelines, request a public authority that holds relevant information to disclose the information to the authorised officer.

(5) Information may be disclosed under subsection (3), or in compliance with a request under subsection (4), despite any written law relating to confidentiality or secrecy.

(6) If information is disclosed, in good faith, under subsection (3), or in compliance with a request under subsection (4) —

(a) no civil or criminal liability is incurred in respect of the disclosure; and

(b) the disclosure is not to be regarded as a breach of any duty of confidentiality or secrecy imposed by law; and

(c) the disclosure is not to be regarded as a breach of professional ethics or standards or as unprofessional conduct.

(7) The CEO must issue guidelines as to the disclosure of information under subsection (3) and the requesting of information under subsection (4).

(8) The regulations may include provisions about —

(a) receiving and storing information disclosed for the purposes of this Act; and

(b) restricting access to such information.

275. Confidentiality

(1) A person who is or has been engaged in the performance of functions under this Act must not, directly or indirectly, record, disclose or make use of any information obtained in the course of duty except —

(a) for the purpose of, or in connection with, performing a function under this Act; or

(b) as required or allowed under this Act or another written law; or

(c) for the purposes of any legal proceedings arising under this Act; or

(d) with the written consent of the person to whom the information relates; or

(e) in prescribed circumstances.

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

(2) Subsection (1) does not extend to the 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.

276. Certain information may be kept confidential

(1) In this section —

strategic document means any of the following —

(a) a biodiversity management programme;

(b) a recovery plan;

(c) an interim recovery plan.

(2) This section applies if the Minister considers that the survival of a native species or ecological community could be threatened by the disclosure of some or all of the following information, or by the presence or actions of persons if some or all of the following information were disclosed —

(a) the precise location of the species in the wild or of the community;

(b) any other information about the species or community.

(3) It is sufficient compliance with this Act if only a general description of the location of the native species or ecological community is included in a strategic document or other instrument made or issued under this Act.

277. Review of Act

(1) The Minister must carry out a review of the operation and effectiveness of this Act as soon as is practicable after every 5th anniversary of the commencement of this section.

(2) In the course of each review the Minister must consider and have regard to —

(a) the objects of this Act; and

(b) the adequacy of the penalties imposed under this Act; and

(c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Act.

(3) The Minister must 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

Division 1 — Repeal of *Wildlife Conservation Act 1950*

Subdivision 1 — Repeals

278. *Wildlife Conservation Act 1950* repealed

The *Wildlife Conservation Act 1950* is repealed.

279. Subsidiary legislation repealed

The following subsidiary legislation is repealed:

(a) the *Wildlife Conservation Regulations 1970*;

(b) the *Wildlife Conservation (Reptiles and Amphibians) Regulations 2002*;

(c) any notice made under the *Wildlife Conservation Act 1950* section 6(2), (4) or (6), 14(2) or (4), 18(1) or 23F(2) that is in force immediately before the day on which section 278 comes into operation.

Subdivision 2 — Transitional provisions

280. Consents under *Wildlife Conservation Act 1950* s. 23F

(1) In this section —

commencement day means the day on which section 278 comes into operation.

(2) A consent to take rare flora given under the *Wildlife Conservation Act 1950* section 23F and in force immediately before commencement day is to be taken to be an authorisation given under section 40 to take that flora.

Division 2 — Repeal of *Sandalwood Act 1929*

Subdivision 1 — Repeals

281. *Sandalwood Act 1929* repealed

The *Sandalwood Act 1929* is repealed.

282. *Sandalwood Regulations 1993* repealed

The *Sandalwood Regulations 1993* are repealed.

Subdivision 2 — Transitional provisions

283. Licences under *Sandalwood Act 1929*

(1) In this section —

commencement day means the day on which section 281 comes into operation;

sandalwood licence means a licence referred to in the *Sandalwood Act 1929* section 3(1)(a) or (b).

(2) A sandalwood licence that was in force immediately before commencement day is to be taken to be a licence granted under this Act on the conditions (if any) applying to the licence immediately before commencement day and, subject to the regulations, has effect accordingly.

(3) An application for a sandalwood licence that was not determined before commencement day may be dealt with under the regulations as an application for a licence under this Act.

Division 3 — Transitional regulations

284. Transitional regulations

(1) In this section —

publication day, for transitional regulations, means the day on which those regulations are published in the *Gazette*;

relevant commencement day, in relation to transitional regulations, means —

(a) to the extent that the regulations deal with a transitional matter relating to the provisions of written laws repealed by Division 1 — the day on which that Division comes into operation; and

(b) to the extent that the regulations deal with a transitional matter relating to the provisions of the written laws repealed by Division 2 — the day on which that Division comes into operation;

specified means specified or described in transitional regulations;

transitional matter —

(a) means a matter that needs to be dealt with for the purpose of effecting the transition from the provisions of the written laws repealed by Divisions 1 and 2 to the provisions of this Act; and

(b) includes a saving or application matter;

transitional regulations means regulations under subsection (2).

(2) If there is no sufficient provision in this Part for dealing with a transitional matter, the regulations may prescribe matters —

(a) required to be prescribed for the purpose of dealing with the transitional matter; or

(b) necessary or convenient to be prescribed for the purpose of dealing with the transitional matter.

(3) Transitional regulations may provide that specified provisions of this Act —

(a) do not apply to or in relation to a specified matter; or

(b) apply with specified modifications to or in relation to a specified matter.

(4) If transitional regulations provide that a specified state of affairs is to be taken to have existed, or not to have existed, on and

from a day that is earlier than publication day for those regulations but not earlier than the relevant commencement day, the regulations have effect according to their terms.

(5) If transitional regulations contain a provision referred to in subsection (4), the provision does not operate so as —

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before publication day for those regulations; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before publication day for those regulations.

(6) Transitional regulations can only be made within 24 months after the day on which this Act receives the Royal Assent.

Division 4 — General

285. *Interpretation Act 1984* not affected

This Part does not limit or otherwise affect the operation of the *Interpretation Act 1984* in relation to the repeals effected by Divisions 1 and 2.

Part 17 — Consequential amendments to other Acts

Division 1 — *Conservation and Land Management Act 1984* amended

286. Act amended

This Division amends the *Conservation and Land Management Act 1984*.

287. Long title amended

In the long title before "**and for incidental or connected purposes.**" insert:

to confer functions relating to the conservation, protection and management of biodiversity and biodiversity components,

288. Section 3 amended

(1) In section 3 delete the definitions of:

biodiversity

biodiversity components

fauna

flora

(2) In section 3 insert in alphabetical order:

biodiversity has the meaning given in the *Biodiversity Conservation Act 2016* section 5(1);

biodiversity components has the meaning given in the *Biodiversity Conservation Act 2016* section 5(1);

conserve includes to maintain and to restore;

fauna has the meaning given in the *Biodiversity Conservation Act 2016* section 5(1);

flora has the meaning given in the *Biodiversity Conservation Act 2016* section 5(1);

289. Section 13A amended

In section 13A(1):

(a) in paragraph (a) delete "and restoration";

(b) in paragraph (b) delete "indigenous".

290. Section 13B amended

In section 13B(1):

(a) delete "and restoration";

(b) delete "indigenous".

291. Section 19 amended

In section 19(1):

(a) in paragraph (d) delete "conservation" and insert:

conservation, protection

(b) after paragraph (g) insert:

(haa) to participate in the preparation of the following documents under the *Biodiversity Conservation Act 2016* Parts 5 and 6 when consulted in accordance with those Parts —

(i) draft biodiversity management programmes;

(ii) draft recovery plans;

(iii) interim recovery plans;

292. Section 33 amended

(1) In section 33(1):

(a) delete paragraph (ca) and insert:

(ca) to promote and encourage the use of fauna and flora for therapeutic, scientific, breeding, propagation or cultivation purposes for the good of the people in the State and elsewhere, and to undertake any project or operation relating to the use of fauna or flora for such a purpose; and

(b) in paragraph (cc) delete "conservation of biodiversity throughout" and insert:

conservation, protection and management of biodiversity and biodiversity components in

(c) delete paragraph (d) and insert:

(d) to promote, encourage and facilitate the conservation, protection and management of biodiversity and biodiversity components in the State; and

(daa) to promote, encourage and facilitate the planning for and establishment of a comprehensive, adequate and representative system of reserves for the purposes of conserving, protecting and managing biodiversity and biodiversity components in the State; and

(dab) to promote, facilitate and manage nature-based tourism and recreation, as defined in the *Biodiversity Conservation Act 2016*

section 190, in the State in accordance with this Act and the *Biodiversity Conservation Act 2016*; and

(d) delete paragraph (e)(ii) and insert:

(ii) the conservation, protection and management of biodiversity and biodiversity components in the State; and

(e) after paragraph (e) insert:

(fa) to carry out or cause to be carried out surveys of biodiversity and biodiversity components in the State including surveys of the distribution and abundance of native species and ecological communities as those terms are defined in the *Biodiversity Conservation Act 2016* section 5(1); and

(fb) to facilitate the implementation of agreements referred to in the *Environment Protection and Biodiversity Conservation Act 1999* (Commonwealth) section 45(2) to which the State is a party; and

(f) after paragraph (g) insert:

(ha) to enter into collaborative arrangements with any department, public or private body or other person, whether in the State or elsewhere, for the purposes of performing a function referred to in any of paragraphs (a), (ca), (cc) to (ea) and (gb); and

(hb) to perform functions conferred on the CEO under the *Biodiversity Conservation Act 2016*; and

(2) After section 33(1) insert:

(2A) In subsection (1)(ca) —

use includes use or development on a commercial basis.

(3) Delete section 33(6) and insert:

(6) To promote and encourage the use of fauna and flora for the purposes referred to in subsection (1)(ca), the Minister and the CEO may enter into an agreement with another person under which the Minister and the CEO agree to exercise the powers under the *Biodiversity Conservation Act 2016* and this Act to grant, issue or refuse licences or permits —

(a) to take flora in a manner that has the effect of conferring on the other person an exclusive or preferential right to take specified flora from specified land (other than private land); or

(b) to take fauna in a manner that has the effect of conferring on the other person an exclusive or preferential right to take specified fauna from specified land (including private land in circumstances where consent to enter the land is obtained from the occupier of the land).

(7A) In subsection (6) each of the following terms has the meaning given in the *Biodiversity Conservation Act 2016* section 5(1) —

occupier

private land

take

(7B) An agreement under subsection (6) may provide for the exercise of powers referred to in that subsection to be conditional on the other person entering into an arrangement with the CEO for the sharing of profits.

(4) Delete section 33(8).

(5) In section 33(1) after each of paragraphs (a) to (bb), (cb), (cc), (da) to (dd), (e), (f) and (g) insert:

and

293. Section 34A amended

(1) In section 34A(1) delete "a project or operation undertaken for a purpose mentioned in section 33(1)(ca) or (cc) —" and insert:

the performance of a function referred to in section 33(1)(a), (ca), (cc) to (fb), (ha) or (hb) —

(2) In section 34A(3) delete "engage in any scheme, project or operation referred to in subsection (1)." and insert:

engage in —

(a) a scheme for the establishment, management or utilisation of tree plantations; or

(b) an activity related to a function referred to in section 33(1)(a), (ca), (cc) to (fb), (ha) or (hb).

294. Section 37 amended

In section 37 delete "*Wildlife Conservation Act 1950*" and insert:

Biodiversity Conservation Act 2016

295. Section 45 amended

Delete section 45(3), (3a) and (4) and insert:

(3) An instrument under subsection (1) may limit the functions of the person designated to functions specified in the instrument.

(4) Subject to any limitation under subsection (3), wildlife officers —

(a) have the functions conferred on them under this Act and the *Biodiversity Conservation Act 2016*; and

(b) if authorised by the CEO for the purposes of this paragraph, have the functions conferred on them under the *Bush Fires Act 1954*; and

(c) have the functions conferred on them under any other written law.

(5A) Subject to any limitation under subsection (3), forest officers, rangers and conservation and land management officers —

(a) have the functions conferred on them under this Act; and

(b) if authorised by the CEO for the purposes of this paragraph, have the functions conferred on them under the *Bush Fires Act 1954*; and

(c) have the functions conferred on them under any other written law.

296. Section 46 amended

In section 46(3) delete "by or under this Act or the *Wildlife Conservation Act 1950*" and insert:

under this Act, the *Biodiversity Conservation Act 2016* or another written law

297. Section 48 amended

In section 48(1) delete "*1954* or the *Wildlife Conservation Act 1950*," and insert:

1954, the *Biodiversity Conservation Act 2016* or another written law,

298. Section 56 amended

In section 56(1):

(a) in paragraph (c) delete "maintenance and restoration" and insert:

conservation

(b) in paragraph (c) delete "indigenous";

(c) in paragraph (d) delete "maintain and restore" and insert:

conserve

(d) in paragraph (d) delete "indigenous".

299. Section 68 replaced

Delete section 68 and insert:

68. Biodiversity Conservation Account

(1) An agency special purpose account called the Biodiversity Conservation Account is established under the *Financial Management Act 2006* section 16.

(2) The Biodiversity Conservation Account is a continuation of the Nature Conservation and National Parks Account referred to in section 68 of this Act as in force immediately before the commencement of the *Biodiversity Conservation Act 2016* section 299.

(3) The Biodiversity Conservation Account is to be credited with gifts, devises, bequests and donations made to that account.

(4) The CEO is to apply money standing to the credit of the Biodiversity Conservation Account for the purpose of scientific research relating to biodiversity and biodiversity components in the State.

300. Section 87 amended

In section 87(1) in the definition of ***forest produce*** paragraph (a) delete "resin or sap; or" and insert:

resin, sap or seed; or

301. Section 101B amended

(1) In section 101B(2a) delete the passage that begins with "in accordance with" and continues to the end of the subsection and insert:

in accordance with —

(a) a licence granted under regulations made under section 130; or

(b) a licence granted under regulations made under the *Biodiversity Conservation Act 2016*; or

(c) an authorisation given under the *Biodiversity Conservation Act 2016* section 40.

(2) In section 101B(3)(d) delete "notices issued or regulations made under the *Wildlife Conservation Act 1950*" and insert:

regulations made under the *Biodiversity Conservation Act 2016*, or an authorisation given under section 40 of that Act,

302. Section 103A amended

In section 103A(2) delete "*Wildlife Conservation Act 1950*" and insert:

Biodiversity Conservation Act 2016

303. Section 106 amended

In section 106(b) delete "indigenous".

304. Section 121 amended

Delete section 121(6)(a) and insert:

(a) limits the powers conferred on an enforcement officer under another provision of this Act or under the *Biodiversity Conservation Act 2016*, the *Bush Fires Act 1954* or another written law; or

305. Section 124 amended

Delete section 124(2).

306. Section 125 replaced

Delete section 125 and insert:

125. Application of *Criminal Investigation Act 2006* and *Criminal Investigation (Identifying People) Act 2002* to enforcement officers

(1) For the purposes of the *Criminal Investigation Act 2006* section 9(1) and the *Criminal Investigation (Identifying People) Act 2002* section 5(1), designation

as any of the following officers is to be taken to be an appointment to an office —

(a) a wildlife officer under section 45(1)(a); or

(b) a forest officer under section 45(1)(b); or

(c) a ranger under section 45(1)(c); or

(d) a conservation and land management officer under section 45(1)(d).

(2) For the purposes of the *Criminal Investigation Act 2006* —

(a) the office of wildlife officer is prescribed under section 9(1)(a) of that Act; and

(b) the following powers are prescribed under section 9(1)(b) of that Act in respect of that office —

(i) the powers in Part 2 of that Act;

(ii) the powers in Part 5 of that Act other than the power in section 44(2)(g)(iv) to do a strip search of a person;

(iii) the powers in Part 6 of that Act;

(iv) the powers in Part 8 of that Act to the extent that they authorise, or apply in relation to, the doing of a basic search of a person;

(v) the powers in Part 9 of that Act to the extent that they authorise, or apply in relation to, the doing of a non-intimate forensic procedure on a person;

(vi) the powers in Part 12 Divisions 2, 3 and 5 of that Act;

(vii) the powers in Part 13 of that Act.

(3) Despite the *Criminal Investigation Act 2006* section 43(8)(b)(ii), a search warrant does not authorise a wildlife officer to do a strip search of a person.

(4) For the purposes of the *Criminal Investigation (Identifying People) Act 2002* —

(a) each of the following offices is prescribed under section 5(1)(a) of that Act —

(i) wildlife officer;

(ii) forest officer;

(iii) ranger;

(iv) conservation and land management officer;

(v) honorary wildlife officer;

(vi) honorary forest officer;

(vii) honorary ranger;

(viii) honorary conservation and land management officer;

and

(b) the powers in Part 3 of that Act are specified under section 5(1)(b) of that Act in respect of each of those offices.

126A. Department a prescribed agency for the *Criminal and Found Property Disposal Act 2006*

The Department is a prescribed agency for the purposes of the *Criminal and Found Property Disposal Act 2006*.

307. Section 127 amended

(1) In section 127 delete "The regulations" and insert:

(1) The regulations

(2) At the end of section 127 insert:

(2) Without limiting subsection (1)(d), the regulations may provide for a licence granted to a person under the *Biodiversity Conservation Act 2016* to be included in a permit document or licence document issued to the person under this Act.

308. Section 132 amended

(1) In section 132(1) delete "this Act or the *Wildlife Conservation Act 1950*." and insert:

this Act.

(2) In section 132(2) and (4) delete "or the *Wildlife Conservation Act 1950*".

309. Section 133 amended

(1) In section 133(1) delete the passage that begins with "*Wildlife Conservation Act 1950*," and continues to the end of the subsection and insert:

Biodiversity Conservation Act 2016, other than —

(a) this power of delegation; or

(b) the power to make any instrument of legislative effect; or

(c) a function that the Minister has under the *Biodiversity Conservation Act 2016* section 260 or 261.

(2) In section 133(2) delete the passage that begins with "*Wildlife Conservation Act 1950*," and continues to the end of the subsection and insert:

Biodiversity Conservation Act 2016, other than —

(a) this power of delegation; or

(b) a function delegated to the CEO under subsection (1); or

(c) a function that the CEO has under the *Biodiversity Conservation Act 2016* section 122, 125 or 126.

Division 2 — Other Acts amended

310. *Animal Welfare Act 2002* amended

(1) This section amends the *Animal Welfare Act 2002*.

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

CALM

fauna

(3) In section 5(1) insert in alphabetical order:

Biodiversity Conservation Department means the department of the Public Service principally assisting with the administration of the *Biodiversity Conservation Act 2016*;

fauna has the meaning given in the *Biodiversity Conservation Act 2016* section 5(1);

lawfully taken, in relation to fauna, means taken in circumstances that do not involve a contravention of the *Biodiversity Conservation Act 2016* or any other written law;

(4) In section 7(2) delete "*Wildlife Conservation Act 1950*" and insert:

Biodiversity Conservation Act 2016

(5) Delete section 33(2)(a)(iii) and insert:

(iii) the Biodiversity Conservation Department; or

(6) In section 41(2)(a) delete "CALM; or" and insert:

the Biodiversity Conservation Department; or

(7) In section 44(1) delete "taken under the *Wildlife Conservation Act 1950*." and insert:

taken.

(8) In section 45:

(a) delete "taken under the *Wildlife Conservation Act 1950*," and insert:

taken,

(b) delete "CALM." and insert:

the Biodiversity Conservation Department.

(9) In section 55(2)(b)(i):

(a) delete "taken under the *Wildlife Conservation Act 1950*," and insert:

taken,

(b) delete "CALM; or" and insert:

the Biodiversity Conservation Department; or

(10) Delete section 64(1)(c) and insert:

(c) the Biodiversity Conservation Department; and

311. *Biosecurity and Agriculture Management Act 2007* amended

(1) This section amends the *Biosecurity and Agriculture Management Act 2007*.

(2) Before section 4(2)(c) insert:

(cb) the *Biodiversity Conservation Act 2016*;

(3) In section 6 delete the definitions of:

CALM Act Minister

Minister for the Environment

(4) In section 45(5)(b) delete "CALM Act Minister." and insert:

Minister administering the *Biodiversity Conservation Act 2016*.

(5) In section 184(1) in the definition of ***information sharing agency*** paragraph (f) delete "*Wildlife Conservation Act 1950*;" and insert:

Biodiversity Conservation Act 2016;

312. *Bush Fires Act 1954* amended

(1) This section amends the *Bush Fires Act 1954*.

(2) In section 7(1) delete the definition of ***authorised CALM Act officer*** and insert:

authorised CALM Act officer means —

(a) a wildlife officer who is authorised for the purposes of the *Conservation and Land Management Act 1984* section 45(4)(b); or

(b) a forest officer, ranger or conservation and land management officer who is authorised for the purposes of the *Conservation and Land Management Act 1984* section 45(5A)(b);

313. *Constitution Acts Amendment Act 1899* amended

(1) This section amends the *Constitution Acts Amendment Act 1899*.

(2) In Schedule V Part 3 delete the item relating to the Western Australian Wildlife Authority.

314. *Environmental Protection Act 1986* amended

(1) This section amends the *Environmental Protection Act 1986*.

(2) In Schedule 5 clause 1:

(a) in paragraph (a) delete "biological diversity; or" and insert:

biodiversity; or

(b) in paragraph (b) delete "fauna indigenous to Western Australia; or" and insert:

fauna; or

(c) in paragraph (c) delete "rare flora; or" and insert:

threatened flora; or

(3) In Schedule 5 clause 2 delete the definitions of:

rare flora

threatened ecological community

(4) In Schedule 5 clause 2 insert in alphabetical order:

biodiversity has the meaning given in the *Biodiversity Conservation Act 2016* section 5(1);

fauna has the meaning given in the *Biodiversity Conservation Act 2016* section 5(1);

threatened ecological community has the meaning given in the *Biodiversity Conservation Act 2016* section 5(1);

threatened flora has the meaning given in the *Biodiversity Conservation Act 2016* section 5(1);

(5) Delete Schedule 6 items 4, 5 and 6 and insert:

4. Clearing consisting of the taking of flora —

(a) as authorised by a licence under the *Biodiversity Conservation Act 2016*; or

(b) as authorised by an authorisation under the *Biodiversity Conservation Act 2016* section 40; or

(c) by a person referred to in the *Biodiversity Conservation Act 2016* section 171(2) for the purposes of supply in accordance with a licence under that Act.

315. *Financial Management Act 2006* amended

(1) This section amends the *Financial Management Act 2006*.

(2) In section 23(1) in the definition of ***prescribed receipts*** paragraph (b) delete "fauna or".

316. *Firearms Act 1973* amended

(1) This section amends the *Firearms Act 1973*.

(2) Delete section 23(10b) and insert:

(11A) For the purposes of subsections (10) and (10a), the fact that a person uses or carries a firearm for the purposes of an activity authorised under the *Biodiversity Conservation Act 2016* is not a reasonable excuse.

317. *Forest Products Act 2000* amended

(1) This section amends the *Forest Products Act 2000*.

(2) In section 10(5) delete "*Wildlife Conservation Act 1950*" and insert:

Biodiversity Conservation Act 2016

318. *Land Administration Act 1997* amended

(1) This section amends the *Land Administration Act 1997*.

(2) In section 117:

(a) delete paragraph (d) and insert:

(d) the *Biodiversity Conservation Act 2016*; or

[(b) has not come into operation.]

319. *Land Tax Assessment Act 2002* amended

(1) This section amends the *Land Tax Assessment Act 2002*.

(2) After section 41 insert:

42A. Land under biodiversity conservation covenant, exemption for

Land is exempt for an assessment year if the land is the subject of a biodiversity conservation covenant under the *Biodiversity Conservation Act 2016* that is expressed to have effect in perpetuity and that was in force at midnight on 30 June in the financial year before the assessment year.

320. *Soil and Land Conservation Act 1945* amended

(1) This section amends the *Soil and Land Conservation Act 1945*.

(2) In the Schedule delete "*Sandalwood Act 1929*".

(3) In the Schedule insert in alphabetical order:

Biodiversity Conservation Act 2016

Schedule 1 — Matters for which regulations may be made

[s. 255(2)]

1. The taking, possession, disturbance, keeping, breeding, feeding, release, buying, import, export, supply, storage and transportation of fauna and the conduct of any business involving one or more of those activities.

2. The processing of fauna (other than fish or pearl oyster), whether for a commercial purpose or not, and the operation of fauna processing establishments.

3. The taking, growing, cultivation, buying, import, export, supply, storage and transportation of flora and the conduct of any business involving one or more of those activities.

4. Bioprospecting activity.

5. Activity that is, or is likely to be, detrimental or harmful to fauna or flora or the habitat of fauna or flora.

6. Activity that interferes with the taking of fauna or flora carried out in accordance with a licence, exemption or other authorisation under this Act.

7. Activity that interferes with the modification of a threatened ecological community carried out in accordance with an authorisation under section 45.

8. The conservation, protection and management of threatened species and threatened ecological communities.

9. The prevention, eradication, reduction and containment of key threatening processes.

10. The control of environmental pests.

11. The keeping, breeding, cultivation, culturing, import, propagation, supply, transportation, and release into the environment of, environmental pests.

12. Activity that interferes with the conduct of any research project relating to biodiversity or biodiversity components in the State.

13. The conservation, protection and management of —

    (a) the natural heritage of any declared World Heritage property in the State in a way that is consistent with the Australian World Heritage management principles and any management plan for the property; or

    (b) the natural heritage of any National Heritage place in the State in a way that is consistent with the National Heritage management principles and any management plan for the place; or

    (c) the ecological character of any declared Ramsar wetland in the State in a way that is consistent with the Australian Ramsar management principles and any management plan for the wetland; or

    (d) any Biosphere reserve in the State in a way that is consistent with the Australian Biosphere reserve management principles and any management plan for the reserve.

14. Places, plant or equipment used for the holding or storage of fauna, flora or environmental pests and the duties of persons operating or in control of such places, plant or equipment.

15. The issue, use and application of identifiers in respect of fauna, flora and other organisms.

16. The imposition, payment, collection and recovery of fees and charges in respect of prescribed matters, including, without limiting the *Interpretation Act 1984* section 45, provision for —

    (a) the payment of any fee or charge by instalments; and

    (b) the imposition of a surcharge in respect of any fee or charge paid by instalments.

17. The recovery of costs and expenses incurred under this Act.

18. A requirement for particular money paid or recovered under the regulations to be credited to the account referred to in the CALM Act section 68

19. The review by the State Administrative Tribunal or another specified person or body of decisions made under the regulations.

20. If this Act is a prescribed Act for the purposes of the *Criminal Procedure Act 2004* Part 2, offences for which infringement notices

may be issued under that Part and other matters referred to in the *Criminal Procedure Act 2004* sections 5 and 6.

21. The verification of information or documentation, including a requirement for a statutory declaration to be made about a matter.

Notes

This is a compilation of the *Biodiversity Conservation Act 2016* and includes amendments made by other written laws. For provisions that have come into operation see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

Short title	Number and year	Assent	Commencement
Biodiversity Conservation Act 2016	24 of 2016	21 Sep 2016	s. 1 and 2: 21 Sep 2016 (see s. 2(a)); Long title, Pt. 1 (other than s. 1 and 2), Pt. 5, 7 (other than s. 120(1) to (4)), Pt. 8, 11, Pt. 13 Div.1, Pt. 14 (other than s. 256), Pt. 15, Pt. 17 Div. 1 (other than s. 291(b), 292(2) to (4), 293-297, 299, 301, 302 and 304 to 309), Pt. 17 Div. 2 heading, s. 319 and Sch. 1: 3 Dec 2016 (see s. 2(b) and *Gazette* 2 Dec 2016 p. 5382); Pt. 2-4, Pt. 6, Pt. 7 (s. 120(1)-(4)), Pt. 10, Pt. 12, Pt. 13 Div. 2-4, s. 256, Pt. 16, s. 291(b), 292(2)-(4), 293-297, 299, 301, 302, 304-317, 318(1) and (2)(a) and 320: 1 Jan 2019 (see s. 2(b) and *Gazette* 14 Sep 2018 p. 3305)
Environmental Protection Amendment Act 2020 s. 113	40 of 2020	19 Nov 2020	23 Oct 2021 (see s. 2(1)(e) and SL 2021/176 cl. 2)
Directors' Liability Reform Act 2023 Pt. 3 Div. 9	9 of 2023	4 Apr 2023	4 Nov 2023 (see s. 2(e) and SL 2023/162 cl. 2)

Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA legislation website.

Short title	Number and year	Assent	Commencement
Biodiversity Conservation Act 2016	24 of 2016	21 Sep 2016	Pt. 9 and s. 318(2)(b): to be proclaimed (see s. 2(b))
Aquatic Resources Management Act 2016 Pt. 19 Div. 1	53 of 2016	29 Nov 2016	To be proclaimed (see s. 2(b))
Evidence Act 2025 s. 492(1)	15 of 2025	25 Sep 2025	18 Sep 2027 (see s. 2(e) and SL 2026/190 cl. 2)

Defined terms

[This is a list of terms defined and the provisions where they are defined. The list is not part of the law.]

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