

New South Wales

National Parks and Wildlife Amendment Bill 2009

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Overview of Bill

The object of this Bill is to amend the *National Parks and Wildlife Act 1974* (**the Principal Act**), the *Threatened Species Conservation Act 1995* (**the TSC Act**) and other legislation so as:

- (a) to streamline and improve the operation of Part 6 of the Principal Act relating to the protection of Aboriginal objects and Aboriginal places, and
- (b) to clarify certain provisions relating to Aboriginal lands reserved under Part 4A of the Principal Act, and
- (c) to strengthen provisions relating to stop work orders and interim protection orders, and
- (d) to enable remediation directions to be given where certain damage or harm has occurred in or as a result of the commission of offences under the Principal Act, and
- (e) to strengthen provisions relating to protected fauna directions, and
- (f) to increase the penalties for certain offences to include additional penalties per day for each day that the offence continues, and

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- (g) to create an offence of selling a protected native plant without a tag (where a flora plan of management requires such a tag), and
- (h) to clarify that easements, rights of way and licences may be granted through or over land reserved under the Principal Act for the purposes of enabling access to other land for occupiers as well as owners of that other land, and
- (i) to provide that easements, rights of way and licences may be granted for the erection, use or maintenance of broadcasting facilities, and
- (j) to insert new provisions (broadly consistent with provisions in Chapter 8 of the *Protection of the Environment Operations Act 1997*) into the Principal Act relating to sentencing, continuing offences, orders that courts may make in connection with offences and matters relating to evidence, and
- (k) to bring together certain provisions of the Principal Act relating to criminal and other proceedings into a new Part for ease of use by the reader, and
- (l) to alter the composition of the Aboriginal Cultural Heritage Advisory Committee and ensure that all appointed members of that Committee are Aboriginal persons, and
- (m) to insert new provisions (broadly consistent with provisions in Chapter 8 of the *Protection of the Environment Operations Act 1997*) into the TSC Act relating to sentencing, continuing offences, orders that courts may make in connection with offences and matters relating to evidence, and
- (n) to bring together certain provisions of the TSC Act relating to criminal and other proceedings into a new Part for ease of use by the reader, and
- (o) to insert provisions into the TSC Act to deal with matters relating to offences by corporations, the time within which criminal proceedings may be commenced, ancillary offences and evidentiary matters, and
- (p) to provide that land that is vested in an Aboriginal Land Council and that is reserved under Part 4A of the Principal Act is exempt from local government rates, other than water supply special rates and sewerage special rates, and
- (q) to make other miscellaneous amendments to the Principal Act, the TSC Act and other legislation.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 repeals the *National Parks and Wildlife Amendment Act 2001*.

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Schedule 1 Amendment of National Parks and Wildlife Act 1974 No 80

Amendments relating to terminology

Schedule 1 [1]–[6] and [12]–[14] make amendments:

- (a) to replace the outdated term “Aboriginals” with the currently used “Aboriginal persons”, and
- (b) to take account of the change in name of the Department of Environment and Conservation to the Department of Environment and Climate Change, and
- (c) to amend existing, and include a number of new, definitions for the purposes of the Principal Act, including the definitions for *damage* (in relation to damaging habitat), *habitat* and *pick* (in relation to picking plants).

Amendments relating to administrative matters

Schedule 1 [8] replaces section 6 of the Principal Act to take account of structural changes to the Public Service and the National Parks and Wildlife Service in particular. **Schedule 1 [7]** makes a consequential amendment.

Schedule 1 [9] omits an obsolete section of the Principal Act.

Schedule 1 [10] amends section 11 (5) of the Principal Act to provide that the personnel borrowed under that section may be used for the purposes of the *Marine Parks Act 1997* in addition to the purposes of the Principal Act, the *Wilderness Act 1987* and the TSC Act.

Amendments relating to advisory committees

Schedule 1 [11], [110] and [111] amend section 24 of, and Schedule 8 to, the Principal Act to clarify that there are two types of advisory committees constituted under section 24:

- (a) a regional advisory committee constituted for each administrative region under section 24 (2), and
- (b) additional advisory committees that may be constituted by the Minister administering the Principal Act (*the Minister*) for particular purposes determined by the Minister under section 24 (3).

The amendments make it clear that Schedule 8 applies only to regional advisory committees and that the Minister may determine the constitution and procedure of an additional advisory committee constituted under section 24 (3).

Amendments relating to Part 4A Aboriginal lands

Part 4A of the Principal Act deals with the lease and reservation under that Act of certain Aboriginal lands as national parks, historic sites, state conservation areas, regional parks, nature reserves, karst conservation reserves or Aboriginal areas. Division 2 of Part 4A deals with negotiations for such leases. **Schedule 1 [15]** inserts

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proposed section 71J (3) into the Principal Act to provide that the parties described in that section may (but are under no obligation to) enter into and conduct negotiations for the purposes of the Division.

Section 71AK of the Principal Act provides that a lease under Part 4A of the Principal Act may be varied only by the agreement of the parties, not inconsistent with that Act, or by an Act of Parliament. **Schedule 1 [16]** amends section 71AK to provide that such an agreement must also include the Aboriginal owner board members.

Section 71AL of the Principal Act provides that on the expiry of a lease under Part 4A of the Principal Act, the Minister holds over under the lease until such time as the lease is renewed or replaced. **Schedule 1 [17]** inserts proposed section 71AL (4) into the Principal Act to clarify, for the avoidance of doubt, that the expiry of a term of a lease under Part 4A does not affect the reservation under the Principal Act of the land that is the subject of the lease as a national park, historic site, state conservation area, regional park, nature reserve, karst conservation reserve or Aboriginal area.

Schedule 1 [18] inserts proposed section 71AN (8) into the Principal Act to provide for the standard exclusion of liability for acts done in good faith by members of boards of management for Aboriginal lands leased and reserved under Part 4A of that Act.

Schedule 1 [19] inserts proposed section 71AO (6A) into the Principal Act to provide that a board of management may delegate the exercise of its functions to other persons.

Schedule 1 [20] amends section 71AQ of the Principal Act in relation to the accounting and reporting requirements of boards of management.

Section 72 (1F) of the Principal Act deals with plans of management for lands reserved or dedicated under Part 4A of that Act. Section 72 (1F) provides that, in the case of lands for which a plan of management was not in force when the lands were reserved or dedicated under Part 4A, a plan of management is to be prepared by the board of management for the lands within 2 years after that reservation or dedication.

Schedule 1 [21] amends section 72 (1F) to provide that in that case such a plan of management is to be prepared within 5 years after the reservation or dedication.

Schedule 1 [22] replaces section 72A (4) of the Principal Act to provide that a single plan of management may include provisions relating to any or all of the following different types of land:

- (a) land reserved under Part 4 of that Act,
- (b) land reserved under Part 4A of that Act,
- (c) land acquired or occupied or proposed to be acquired or occupied under Part 11 of that Act.

Amendments relating to Aboriginal objects and Aboriginal places

Part 6 of the Principal Act contains various provisions to protect Aboriginal objects and Aboriginal places. **Schedule 1 [23]–[28]** amend various provisions of that Part to streamline and improve the operation of the Part.

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Schedule 1 [24] inserts a new offence provision (proposed section 86) into the Principal Act to replace the offences currently contained in sections 86 and 90 of the Principal Act.

Proposed section 86 (1) and (2) create 2 offences relating to harming Aboriginal objects—a strict liability offence in cases to criminalise harming an Aboriginal object (whether or not the person knew it was an Aboriginal object) (proposed section 86 (2)) and a knowledge offence with a higher penalty where it can be proved that the offender knew that the object that the offender harmed was an Aboriginal object (proposed section 86 (1)).

Specifically, proposed section 86 (1) makes it an offence to harm an object that the person knows is an Aboriginal object. The offence carries a maximum penalty of 5,000 penalty units (currently \$550,000) or imprisonment for 2 years, or both (in the case of an individual) and 10,000 penalty units (currently \$1,100,000) (in the case of a corporation). Proposed section 86 (2) makes it an offence to harm an Aboriginal object (whether or not the person knows it is an Aboriginal object). The offence carries a maximum penalty of 1,000 penalty units (currently \$110,000) or imprisonment for 6 months, or both (in the case of an individual) and 2,000 penalty units (currently \$220,000) (in the case of a corporation).

Proposed section 86 (3) deals with harm to Aboriginal places. Declarations of Aboriginal places are published in the Gazette (see section 84 of the Principal Act). The new provision makes it an offence to harm an Aboriginal place (whether or not the person knows it is an Aboriginal place). The offence carries a maximum penalty of 5,000 penalty units (currently \$550,000) or imprisonment for 2 years, or both (in the case of an individual) and 10,000 penalty units (currently \$1,100,000) (in the case of a corporation).

In the proposed section, *harm* in relation to an object or place is defined to include any act or omission that:

- (a) destroys, defaces, damages or desecrates the object or place, or
- (b) in relation to an object—moves the object from the land on which it had been situated, or
- (c) is specified by the regulations, or
- (d) causes or permits the object or place to be harmed in a manner referred to in paragraph (a), (b) or (c),

but does not include any act or omission that is:

- (e) trivial or negligible, or
- (f) excluded from the definition by the regulations under the Principal Act.

Schedule 1 [24] also inserts a new provision (proposed section 87) into the Principal Act to provide for defences to the new offences. Proposed section 87 (1) provides that it is a defence to a prosecution for an offence against proposed section 86 (1), (2) or (3) if the defendant shows that the harm concerned:

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- (a) was authorised by, and done in accordance with, an Aboriginal heritage impact permit (see below), but only if all the conditions of such a permit are complied with, or
- (b) was authorised by or under the *State Emergency and Rescue Management Act 1989* in relation to an emergency (within the meaning of that Act) and was reasonably necessary in order to avoid an actual or imminent threat to life or property, or
- (c) was specifically required or permitted under the express terms of a conservation agreement entered into under Division 12 of Part 4 of the Principal Act.

Other defences may also be created by regulation.

Schedule 1 [24] also inserts proposed section 87A into the Principal Act to provide that Aboriginal people are exempted from the offences in proposed section 86 (1), (2) and (3) to the extent to which those provisions would prohibit Aboriginal people from carrying out traditional cultural activities.

Section 91 of the Principal Act provides that a person who is aware of the location of an Aboriginal object that is the property of the Crown (or, not being the property of the Crown, is real property) must notify the Director-General of the Department of Environment and Climate Change (*the Director-General*) (unless the person believes on reasonable grounds that the Director-General is already aware of the location of that Aboriginal object). Failure to so notify is an offence which currently carries a penalty of 100 penalty units (currently \$11,000), in the case of an individual, and 200 penalty units (currently \$22,000) in the case of a corporation (see section 175 of the Principal Act). **Schedule 1 [26]** inserts a maximum penalty provision into section 91 to provide that in the case of continuing offences, the offender is also liable to a further maximum penalty of:

- (a) in the case of an individual—10 penalty units for each day the offence continues, or
- (b) in the case of a corporation—20 penalty units for each day the offence continues.

Schedule 1 [28] inserts proposed Division 2 (being proposed sections 90–90P) into Part 6 of the Principal Act to provide for Aboriginal heritage impact permits. Aboriginal heritage impact permits are to replace permits under current section 87 and consents under current section 90. The proposed Division deals, amongst other things, with the following:

- (a) issue of Aboriginal heritage impact permits (proposed section 90),
- (b) applications for the issue of such permits (proposed section 90A),
- (c) applications for the transfer of such permits (proposed section 90B),
- (d) the process for the grant or refusal of such applications (proposed section 90C),
- (e) variation of such permits (proposed section 90D),

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- (f) restrictions on making applications to vary or transfer such permits (proposed section 90E),
- (g) requiring applicants to provide further information in connection with such applications (proposed section 90F),
- (h) suspension or revocation of such permits (proposed section 90G),
- (i) surrender of such permits (proposed section 90H),
- (j) the imposition of conditions on the suspension, revocation or surrender of such permits (proposed section 90I),
- (k) making it an offence to contravene the conditions of such permits or conditions on the suspension, revocation or surrender of such permits (proposed section 90J),
- (l) setting out the factors the Director-General must consider in making determinations regarding such permits (proposed section 90K),
- (m) appeals to the Minister in relation to certain decisions regarding such permits (proposed section 90L),
- (n) other matters relating to the operation of such permits, the power to make regulations regarding consultation about such permits and the interaction of such permits with stop work and interim protection orders (proposed sections 90M, 90N, 90O and 90P).

Schedule 1 [23], [25] and [27] make consequential amendments.

Amendments relating to stop work orders, interim protection orders and remediation directions

Section 91AA (6) of the Principal Act provides that a person must not contravene an order under that section. Section 91G of the Principal Act provides that a person who is given notice of an interim protection order under section 91F of that Act must not contravene its terms. **Schedule 1 [30] and [31]** amend those provisions to provide that a person must not only not contravene such an order, or its terms, but must also not cause or permit another person to contravene such an order, or its terms.

Schedule 1 [32] inserts proposed Division 3 (being proposed sections 91J–91S) into Part 6A of the Principal Act to provide for the issue of remediation directions.

Proposed section 91K provides that the Director-General may direct a person to carry out specified remediation work in a specified manner and within a specified time, if the Director-General is satisfied that any of the following has been damaged in or as a result of the commission of an offence under the Principal Act:

- (a) any land reserved under the Principal Act or acquired under Part 11 of that Act,
- (b) any critical habitat, or habitat of threatened species, an endangered population or an endangered ecological community,
- (c) any plant or animal that is of, or is part of, a threatened species, an endangered population or an endangered ecological community.

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Such a direction may be given whether or not any person has been proceeded against or convicted for the offence. The specified remediation work to be carried out by a person may include one or more of the following types of work:

- (a) work to control, abate or mitigate the damage to the land, habitat, plant or animal concerned,
- (b) work to maintain, remediate or restore the damaged land, habitat, plant or animal concerned (including replacing removed or dead plants or animals).

Proposed section 91L provides that the Director-General may direct a person to carry out specified remediation work in a specified manner and within a specified time, if the Director-General is satisfied that any Aboriginal object or any Aboriginal place has been harmed in or as a result of the commission of an offence under the Principal Act. Such a direction may be given whether or not any person has been proceeded against or convicted for the offence. The specified remediation work to be carried out by a person may include one or more of the following types of work:

- (a) work to control, abate or mitigate the harm to the Aboriginal object or Aboriginal place concerned,
- (b) work to protect, conserve, maintain, remediate or restore the harmed Aboriginal object or Aboriginal place concerned.

Other provisions of the proposed Division deal with the following:

- (a) defining certain terms for the purposes of the proposed Division (proposed section 91J),
- (b) specifying the persons to whom directions may be given (proposed section 91M),
- (c) specifying other ancillary actions that may be directed to be carried out (proposed section 91N),
- (d) providing that the Director-General may direct other persons to carry out the remediation work if the original person fails to comply with a direction (proposed section 91O),
- (e) providing that a person may enter land to carry out a direction under the proposed Division, other than any part of premises used only for residential purposes except with the consent of the occupier of the premises (proposed section 91P),
- (f) providing that it is an offence to fail to comply, without reasonable excuse, with a remediation direction (proposed section 91Q),
- (g) providing that it is an offence to wilfully delay or obstruct another person who is carrying out any action in compliance with a remediation direction or who is authorised to enter land and carry out work under the proposed Division (proposed section 91R),
- (h) providing that if a person given a remediation direction complies with the direction but was not the person who caused the damage or harm concerned, the cost of complying with the direction may be recovered as a debt in court

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from the person who actually caused the damage or harm concerned (proposed section 91S).

Schedule 1 [29] makes a consequential amendment.

Amendments relating to protection of fauna

Section 99A of the Principal Act provides that an officer of the National Parks and Wildlife Service may give directions to persons to stop feeding protected fauna and to stop any activity that is causing, or is likely to cause, distress to protected fauna. A person who fails to comply with such a direction is guilty of an offence carrying a maximum penalty of 25 penalty units (currently \$2,750). The section also currently provides that such a direction has effect only for a period of 24 hours after the time at which it was given.

Schedule 1 [33] amends section 99A (3) of the Principal Act to provide that if a person continues to fail to comply with such a direction, the person is liable to an additional penalty of 2.5 penalty units (currently \$275) per day for each day the offence continues.

Schedule 1 [34] replaces section 99A (4) of the Principal Act to provide that such a direction has effect for such period (not exceeding 28 days) as is specified by the officer giving the direction at the time the direction is given.

Schedule 1 [35] inserts proposed section 99A (5A)–(5E) into the Principal Act to provide that:

- (a) a person who has been given such a direction may, within 14 days of receiving the direction, appeal to the Minister against the direction (proposed section 99A (5A)), and
- (b) after hearing an appeal, the Minister may confirm the direction, or modify or rescind the direction (proposed section 99A (5B)), and
- (c) the Minister may, by order, direct a person to stop feeding protected fauna or stop any activity that is causing, or is likely to cause, distress to protected fauna (or both) (proposed section 99A (5C)).

The proposed new provisions provide that the Minister must not give a direction under proposed section 99A (5C) unless a direction in similar terms has been given to the person under section 99A and a period of 14 days has elapsed since that direction was given and no appeal has been made against the direction or, if an appeal has been made, the direction was not substantially modified or rescinded (proposed section 99A (5D)). Such a direction given by the Minister has effect for such period (not exceeding 2 years) as is specified in the direction. The Minister may extend a direction by a further period (not exceeding 2 years) (proposed section 99A (5E)).

Amendments increasing penalties for certain offences to include additional penalties for continuing offences

Sections 102, 104, 105, 105A and 107 of the Principal Act contain various offences that currently carry the general maximum penalty of 100 penalty units (currently \$11,000), in the case of an individual, and 200 penalty units (currently \$22,000) in

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the case of a corporation (see section 175 of the Principal Act). **Schedule 1 [37]–[41]** insert a maximum penalty provision into those sections to provide that in the case of continuing offences, the offender is also liable to a further maximum penalty of:

- (a) in the case of an individual—10 penalty units for each day the offence continues, or
- (b) in the case of a corporation—20 penalty units for each day the offence continues.

Amendment relating to management plans for protected native plants

Section 115A of the Principal Act deals with the preparation and adoption of flora management plans by the Director-General. **Schedule 1 [42]** inserts proposed section 115A (9) into the Principal Act to provide that if a flora plan of management adopted by the Director-General provides that no protected native plant (or part of such a plant) is to be sold unless it is tagged in accordance with the flora plan of management, a person must not sell a protected native plant (or a part of such a plant) unless it is so tagged. Contravention will be an offence that carries a maximum penalty of 100 penalty units (currently \$11,000) and an additional 10 penalty units (currently \$1,100) in respect of each whole plant that was affected by or concerned in the action that constituted the offence.

Amendments relating to threatened species, populations and ecological communities, and their habitats, and critical habitat

Schedule 1 [43] amends sections 118A (Harming or picking threatened species, endangered populations or endangered ecological communities) and 118B (Buying, selling or possessing threatened species or endangered population) of the Principal Act to make it clear that where the offences in those sections involve species presumed extinct the higher of the penalties available under those sections applies.

Schedule 1 [44]–[53] amend sections 118C (Damage to critical habitat) and 118D (Damage to habitat of threatened species, endangered populations or endangered ecological communities) of the Principal Act:

- (a) to simplify the offences in those sections to “damage” the relevant habitat rather than “acts or omissions” that damage the relevant habitat, and
- (b) to provide that “damage” in those sections includes cause or permit damage, and
- (c) to provide that the offence in section 118D also applies to damage to critical habitat, but also to provide that a person cannot be punished both under that section and under section 118C.

Amendments relating to licensing in respect of fauna, native plants and threatened species

Schedule 1 [55] inserts proposed section 123 (4)–(6) into the Principal Act to provide that the holder of a commercial fauna harvester’s licence must not, in

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connection with harming fauna (ie kangaroos) for the purposes of sale, use any carcass chiller unless the chiller is registered or on registered premises.

Schedule 1 [56] omits section 128 of the Principal Act to abolish aviary registration certificates. **Schedule 1 [36]** makes a consequential amendment.

Schedule 1 [57] amends section 132C (2) of the Principal Act to make it clear that a scientific licence does not, except in so far as the terms of the licence expressly provide, authorise the picking of native plants in the specified lands set out in that subsection.

Section 133 (4) of the Principal Act makes it an offence for the holder of a licence or certificate (whether issued under the Principal Act or under Part 6 of the TSC Act) to contravene or fail to comply with any condition or restriction attached to the licence or certificate under the Principal Act or Part 6 of the TSC Act. The offence currently carries a penalty of 100 penalty units (currently \$11,000), in the case of an individual, and 200 penalty units (currently \$22,000) in the case of a corporation (see section 175 of the Principal Act). **Schedule 1 [58]** inserts a maximum penalty provision into section 133 (4) to provide that in the case of continuing offences, the offender is also liable to a further maximum penalty of:

- (a) in the case of an individual—10 penalty units for each day the offence continues, or
- (b) in the case of a corporation—20 penalty units for each day the offence continues.

Amendments relating to finance

Schedule 1 [59] omits section 138 (1B) of the Principal Act and inserts instead proposed section 138 (1A) and (1B) to make it clear that within the National Parks and Wildlife Fund there is to be a separate account for each area of lands leased under Part 4A of that Act and that, subject to other subsections of section 138, any money paid into that Fund, including rent paid by the Minister, in respect of an area of lands leased under Part 4A is to be carried into the separate account in the Fund that relates to that area.

Schedule 1 [60] and **[61]** omit section 140 (2) of the Principal Act and insert instead proposed section 140 (2)–(3B) and (5) to clarify the levying of community service contributions that are to be paid by the holders of leases or licences to occupy or use lands within national parks, historic sites, state conservation areas, regional parks, nature reserves or karst conservation reserves.

Schedule 1 [63] and **[64]** amend section 143 (1) of the Principal Act and inserts proposed section 143 (2) and (3) to clarify the provisions relating to the charges and fees that may be made under that Act. **Schedule 1 [62]** makes a consequential amendment.

Amendments relating to leases, licences, easements etc

Schedule 1 [65] amends section 153C of the Principal Act to clarify that easements, rights of way and licences may be granted through or over land reserved under that

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Act for the purposes of enabling access to other land for occupiers as well as owners of that other land.

Section 153D of the Principal Act currently provides that easements, rights of way and licences may be granted under that section for the erection, use or maintenance of telecommunications facilities. **Schedule 1 [66]** and **[67]** amend section 153D of the Principal Act to provide that such easements, rights of way and licences may also be granted for the erection, use or maintenance of broadcasting facilities.

Other miscellaneous amendments

Section 156A of the Principal Act currently makes it an offence on or in land reserved under that Act or acquired under Part 11 of that Act to remove any water (other than for purposes authorised by or under any Act or for the purposes of personal use on the land), or damage or remove any vegetation, rock, soil, sand, stone or similar substance or damage any object or place of cultural value. **Schedule 1 [68]**, **[69]** and **[70]** amend section 156A of the Principal Act to provide that it is also an offence to cause or permit any of those things happening.

Schedule 1 [71] omits section 156A (4) and (5) of the Principal Act as a consequential amendment (see **Schedule 1 [106]**).

Section 156B of the Principal Act applies certain provisions of Chapter 7 of the *Protection of the Environment Operations Act 1997* for the purposes of investigations under the Principal Act. **Schedule 1 [72]** and **[73]** amend section 156B of the Principal Act to make it clear that those applied provisions are taken to be part of the Principal Act and that a prosecution of a person for an offence against such an applied provision is to be taken as if the offence were an offence under the Principal Act.

Schedule 1 [74] makes a consequential amendment.

Schedule 1 [75] inserts proposed section 156C into the Principal Act as an exclusion of personal liability provision.

Schedule 1 [76] inserts proposed section 160 (9) and (10) into the Principal Act to allow penalty notices to be withdrawn. (**Schedule 1 [77]** renumbers and moves section 160 after it is amended.)

Schedule 1 [78] and **[79]** amend sections 160E (Notice to remove structure) and 160F (Notice prohibiting use of structure) of the Principal Act to increase the maximum penalty for failure to comply with a notice under those sections. The amendments increase the penalty from 20 penalty units (currently \$2,200) to 20 penalty units (currently \$2,200) and, in the case of a continuing offence, a further penalty of 2 penalty units (currently \$220) for each day the offence continues.

Section 164 (1) (a) of the Principal Act provides that if an authorised officer suspects that an offence against that Act or the regulations has been or is being committed and that any relevant animal, native plant, Aboriginal object or article is likely to be in or upon any premises or vehicle, the authorised officer may stop the vehicle, enter and search any such premises or vehicle, and seize any such animal, native plant, Aboriginal object (not being real property) or article found. **Schedule 1 [80]** inserts

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proposed section 164 (3) into the Principal Act to provide that the authorised officer may make certain directions to that occupier of the premises or owner of the vehicle regarding the animal, native plant, Aboriginal object or article seized.

Section 167 (1) of the Principal Act provides that where any property seized under section 164 of that Act or delivered up under section 165 of that Act is fauna or is perishable, it may be disposed of, by way of sale or otherwise, by an authorised officer. **Schedule 1 [81]** inserts proposed section 167 (5) and (6) into the Principal Act to further deal with such sales or disposals of such fauna or perishable property.

Schedule 1 [82] amends section 174 of the Principal Act to provide that notices by or under that Act may be served by post both inside and outside the State.

Schedule 1 [83]–[85] amend section 175B (Offences by corporations) of the Principal Act to make that section consistent with section 169 of the *Protection of the Environment Operations Act 1997*. The amendments remove the “no knowledge” defence in relation to corporations that contravene the Principal Act or regulations under that Act. The amendments also allow evidence of the opinion, belief or purpose (in addition to intention) of an officer, employee or agent of a corporation as evidence of that corporation’s state of mind in proceedings against the corporation for an alleged contravention of the Principal Act or regulations under that Act.

Schedule 1 [86] omits section 176 (1B) of the Principal Act and as a consequence of the insertion of proposed section 190 by **Schedule 1 [106]** (see below). (**Schedule 1 [89]** renumbers and moves the proposed provision.)

Schedule 1 [87], [88] and **[99]** amend sections 176 and 181 of the Principal Act to update references to certain court documents.

Schedule 1 [90] amends section 176A (Restraint etc of breaches of Act) of the Principal Act to provide that orders under that section may restrain breaches of the regulations under that Act as well as breaches of that Act. **Schedule 1 [91]** inserts proposed section 176A (4) into the Principal Act to provide that for the purposes of that section, the term *breach* includes a threatened or apprehended breach. (Note, **Schedule 1 [92]** renumbers and moves section 176A after it is amended.)

Schedule 1 [93] inserts proposed section 176B (Ancillary offences) into the Principal Act. The new provision makes it an offence for a person to aid, abet, counsel or procure another person to commit, or to attempt to commit, or to conspire to commit, an offence under another provision of that Act or the regulations. On conviction of the offence a person is liable to the same penalty as was applicable to that other provision.

Schedule 1 [94] omits section 177 (Compensation) of the Principal Act as a consequential amendment (see proposed Division 3 of Part 15 in **Schedule 1 [106]** below).

Schedule 1 [95] and **[96]** amend section 179 of the Principal Act to make it clear that legal proceedings under that Act or the regulations (or the TSC Act or the regulations under that Act) may be taken in the name of the Director-General and that proceedings for offences against the Principal Act may be instituted in the Land and Environment Court in its summary jurisdiction only by the Director-General or an

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officer of the Service authorised by the Director-General for the purposes of that section. (Note, **Schedule 1 [97]** renumbers and moves section 179 after it is amended.)

Schedule 1 [98]–[102] make a number of miscellaneous amendments to section 181 (Evidentiary provisions etc) of the Principal Act. (Note, **Schedule 1 [103]** renumbers and moves section 181 after it is amended.)

Schedule 1 [104] replaces section 185 (4) of the Principal Act to take account of changes in water management legislation and enable leases, licences, easements or rights of way to be granted under that Act in respect of any lands within a special area (within the meaning of the *Sydney Water Catchment Management Act 1998* and the *Hunter Water Act 1991*) in accordance with a protocol agreed between the Minister and the relevant catchment management agency or in accordance with a plan of management that applies to the land concerned that deals with the granting of such leases, licences, easements or rights of way. (Currently such leases, licences, easements or rights of way may only be granted with the concurrence of the relevant catchment management agency.)

Amendment to insert various new miscellaneous provisions

Schedule 1 [105] inserts proposed sections 188A–188E into the Principal Act.

Proposed section 188A provides for a general exemption from the offences under the Principal Act or its regulations for things done by authorised officers and officers of the National Parks and Wildlife Service in determining whether there has been compliance with or a contravention of this Act or the regulations.

Proposed section 188B provides that section 138 (Works and structures) of the *Roads Act 1993*, being a provision that makes it an offence to take certain actions in relation to public roads (e.g. erect a structure or carry out a work in, on or over a public road) does not apply to anything done under a provision of the Principal Act in relation to a Crown road that is, or is on, land reserved under that Act.

Proposed section 188C allows for the adjustment of boundaries of reserved or acquired lands. A boundary that adjoins a public road may be adjusted from time to time to enable the boundary to follow the formed path of the road or to provide an appropriate set back from the carriageway of the road. Such an adjustment may only take place if the Director-General certifies that the adjustment will not result in any significant reduction in the size or value of lands reserved under the Principal Act.

Proposed section 188D makes provision for the maintenance or improvement of certain access roads on National Park Estate lands and enables the Minister, in certain circumstances, to determine the width of such access roads.

Proposed section 188E makes it clear that a notice or direction given, or a condition of a licence or permit imposed, under the Principal Act or the regulations that specifies a time by which, or period within which, the notice, direction or condition must be complied with continues to have effect until the notice, direction or condition is complied with even though the time has passed or the period has expired. A notice or direction, or a condition of a licence or permit, that does not specify a time by

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which, or period within which, the notice, direction or condition must be complied with continues to have effect until the notice, direction or condition is complied with.

Amendments relating to criminal and other proceedings and the layout of the Principal Act

Schedule 1 [106] inserts proposed Part 15 into the Principal Act. The amendment inserts proposed new provisions in the Principal Act relating to sentencing, continuing offences, orders that courts may make in connection with offences and matters relating to evidence. The proposed provisions are broadly consistent with provisions in Chapter 8 of the *Protection of the Environment Operations Act 1997*.

More specifically:

- (a) proposed section 190 sets out proceedings for offences under the Principal Act or the regulations under that Act may be commenced within (but not later than) 2 years after the date on which the offence occurred or on which evidence of the alleged offence first came to the attention of any authorised officer (currently such proceedings may only be commenced within 2 years of the date on which the offence occurred), and
- (b) proposed section 194 sets out the matters that a court must take into consideration (so far as they are relevant) when imposing a penalty for an offence against the Principal Act or the regulations, and
- (c) proposed section 195 provides that offences under the Principal Act and the regulations may be continuing offences, and
- (d) proposed section 196 provides that in any proceedings under the Principal Act, the onus of proving that a person had a reasonable excuse or lawful excuse (as referred to in any provision of that Act or the regulations) lies with the defendant, and
- (e) proposed Division 3 of the new Part (proposed sections 198–206) deals with the orders that a court may make after finding an offence against the Principal Act or the regulations proved (such as restoration and prevention orders, costs, expenses and compensation orders, costs and expenses of investigation orders and monetary benefits orders). **Schedule 1 [54]** makes a consequential amendment to omit a now redundant section.

The amendment also (along with the amendments in **Schedule 1 [77], [89], [92], [97]** and **[103]**) brings together a number of current provisions into the new Part for ease of use by the reader. Some of those provisions are placed in three new Divisions (proposed Division 1 (Proceedings for offences generally), proposed Division 2 (General provisions) and proposed Division 3 (Court orders in connection with offences)).

Savings and transitional amendments

Schedule 1 [107] and **[109]** make savings and transitional amendments. **Schedule 1 [108]** omits clause 39 from Schedule 3 to the Principal Act. Clause 39 was a savings and transitional provision relating to the uncommenced provisions of the *National*

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Parks and Wildlife Amendment Act 2001 which are to be repealed by proposed section 6 of this proposed Act and therefore are never to commence.

Amendments relating to the Aboriginal Cultural Heritage Advisory Committee

Schedule 1 [112] amends clause 1 (Composition) of Schedule 9 (The Aboriginal Cultural Heritage Advisory Committee) to the Principal Act. The amendment alters the composition of that Committee and provides that:

- (a) the Committee is to consist of:
 - (i) 12 members appointed by the Minister in accordance with that clause, and
 - (ii) an ex-officio member, being the Director-General (or his or her delegate), and
- (b) the ex-officio member is a non-voting member of the Committee, and
- (c) those appointed members of the Committee are to consist of:
 - (i) one member nominated by the New South Wales Aboriginal Land Council, and
 - (ii) one member nominated by the Heritage Council of New South Wales, and
 - (iii) 10 other members appointed from the following:
 - (A) nominees of Aboriginal elders groups,
 - (B) registered native title claimants,
 - (C) Aboriginal owners listed on the register under the *Aboriginal Land Rights Act 1983*.

Schedule 1 [113] amends clause 1 (4) of Schedule 9 to the Principal Act to provide that the Minister is to ensure that all the appointed members of the Aboriginal Cultural Heritage Advisory Committee are Aboriginal persons.

Schedule 2 Amendment of Threatened Species Conservation Act 1995 No 101

General amendments

Schedule 2 [1] and **[5]** update references to the Director-General and the Department of Environment and Climate Change.

Schedule 2 [2] amends section 95 of the TSC Act to provide that where a certificate has been issued by the Director-General to the effect that the Director-General has determined that an action proposed is not likely to significantly affect threatened species, populations or ecological communities, or their habitats and a licence under that Act is not required, that certificate may be issued unconditionally or subject to conditions. It is noted that section 133 (4) of the Principal Act makes it an offence for

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the holder of such a certificate to contravene or fail to comply with any condition or restriction attached to the certificate.

Schedule 2 [3] inserts proposed section 114 (6) into the TSC Act to provide that it is an offence to contravene or fail to comply with a stop work order made under Division 1 of Part 7 of that Act. The offence carries the same maximum penalty as the corresponding offence under the Principal Act carries, being, in the case of a corporation, 10,000 penalty units (currently \$1,100,000) and, in the case of a continuing offence, a further penalty of 1,000 penalty units (currently \$110,000) for each day the offence continues, or in the case of an individual, 1,000 penalty units (currently \$110,000) and, in the case of a continuing offence, a further penalty of 100 penalty units (currently \$11,000) for each day the offence continues.

Schedule 2 [4] amends section 127F (5) of the TSC Act to make it clear that the Minister must not enter into a biobanking agreement for Crown lands that are dedicated for a public purpose under the *Crown Lands Act 1989*, except with the consent of the Minister administering that Act.

Schedule 2 [6] inserts proposed section 135A into the TSC Act to protect members of the Scientific Committee and persons acting under the direction of the Scientific Committee from liability for any matter or thing done or omitted to be done in good faith for the purpose of exercising functions under that Act.

Schedule 2 [8] amends section 147 (Restraint of breaches of Act) of the TSC Act to provide that orders under that section may restrain breaches of the regulations under that Act as well as breaches of that Act. **Schedule 2 [9]** inserts proposed section 147 (4) into the TSC Act to provide that for the purposes of that section, the term *breach* includes a threatened or apprehended breach. (Note, **Schedule 2 [10]** renumbers and moves section 147 after it is amended.)

Schedule 2 [11] amends section 150 (2) of the TSC Act to increase the maximum penalty that may be prescribed for an offence created by regulation from 50 penalty units (currently \$5,500) to 200 penalty units (currently \$22,000).

Amendments relating to criminal and other proceedings and TSC Act structure

Schedule 2 [7] inserts proposed Part 9B into the TSC Act. The amendment inserts proposed new provisions (proposed Division 3 of the Part) into that Act relating to orders that courts may make after finding an offence against that Act or the regulations under that Act proved (such as restoration and prevention orders, costs, expenses and compensation orders, costs and expenses of investigation orders and monetary benefits orders). The proposed provisions are broadly consistent with provisions in Part 8.3 of Chapter 8 of the *Protection of the Environment Operations Act 1997*.

The amendment also (along with the amendments in **Schedule 2 [10] and [12]**) brings together a number of current provisions into the new Part for ease of use by the reader. Some of those provisions are placed in three new Divisions (proposed Division 1 (Proceedings for offences generally), proposed Division 2 (Restraining orders) and proposed Division 3 (Court orders in connection with offences)).

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Amendment to insert various new miscellaneous provisions

Schedule 2 [13] inserts proposed sections 152–154B into the TSC Act.

The proposed sections deal with matters relating to offences by corporations, the time within which criminal proceedings may be commenced, ancillary offences and evidentiary matters.

Savings and transitional amendment

Schedule 2 [14] makes a savings and transitional amendment. It will enable regulations of a savings and transitional nature consequent on the enactment of this proposed Act to be made.

Schedule 3 Amendment of other Acts

Schedule 3.1 amends section 25 of the *Dividing Fences Act 1991* to provide that that Act does not operate to impose any liability, or to confer any rights, with respect to dividing fences on an Aboriginal Land Council with respect to land reserved under Part 4A of the Principal Act.

Schedule 3.2 [1]–[5] make consequential amendments to sections 75U and 91 of the *Environmental Planning and Assessment Act 1979*.

Schedule 3.2 [6] updates a reference to an obsolete term.

Schedule 3.3 updates a reference to an obsolete term.

Schedule 3.4 [1] and [2] make consequential amendments to Schedules 1 and 4 to the *Licensing and Registration (Uniform Procedures) Act 2002*.

Schedule 3.5 amends section 556 of the *Local Government Act 1993* to provide that land that is vested in an Aboriginal Land Council and that is reserved under Part 4A of the Principal Act is exempt from all rates, other than water supply special rates and sewerage special rates.

Schedule 3.6 updates a reference to an obsolete term.

Schedule 3.7 [1]–[4] make amendments to section 11 of the *National Park Estate (Reservations) Act 2002* relating to adjustments to descriptions of land transferred to national park estate by that Act. **Schedule 3.7 [5]** inserts a provision to validate certain actions that would have been validly done had those amendments been in force.

Schedule 3.8 [1] amends section 10 of the *National Park Estate (Reservations) Act 2005* (Adjustment of description of land transferred to national park estate) to clarify the operation of that section. **Schedule 3.8 [2]** inserts a provision to validate certain actions that would have been validly done had the amendment in **Schedule 3.8 [1]** been in force.

Schedule 3.9 [1]–[4] make amendments to section 10 of the *National Park Estate (Southern Region Reservations) Act 2000* relating to adjustments to descriptions of

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land transferred to national park estate by that Act. **Schedule 3.9 [5]** inserts a provision to validate certain actions that would have been validly done had those amendments been in force. **Schedule 3.9 [6]** makes an amendment to clause 8 of Schedule 7 to the *National Park Estate (Southern Region Reservations) Act 2000* to make it clear that clause 8 (3) (relating to discharging certain access road land from all trusts, obligations, estates, interests, rights of way or other easements etc) does not apply to land excluded from the operation of that Schedule.

Schedule 3.9 [7] inserts clause 8 (11)–(13) into Schedule 7 to the *National Park Estate (Southern Region Reservations) Act 2000* to provide that certain specified rights of way granted under the *Forestry Act 1916* are taken to have continued in force as if they were granted under the Principal Act.

Schedule 3.10 amends section 104A of the *Native Title (New South Wales) Act 1994* to provide that a notice under proposed section 188C of the Principal Act (see **Schedule 1 [105]** above) that adjusts the boundary of land reserved under that Act, or acquired under Part 11 of that Act, that adjoins a public road does not operate to extinguish any native title rights and interests existing in relation to land or waters immediately before the notice.

Schedule 3.11 updates a reference to an obsolete term.

Schedule 3.12 replaces section 4 of the *State Records Act 1998* to update references to an obsolete term.

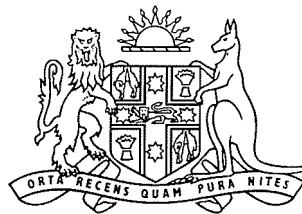
Schedule 3.13 [1]–[3] make amendments to the *Wilderness Act 1987* to update references to the Director of National Parks and Wildlife to the Director-General of the Department of Environment and Climate Change.

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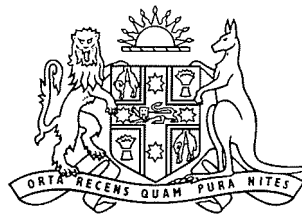
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New South Wales

National Parks and Wildlife Amendment Bill 2009

No. , 2009

A Bill for

An Act to amend the *National Parks and Wildlife Act 1974*, the *Threatened Species Conservation Act 1995* and various other Acts to make further provision with respect to the protection of Aboriginal objects and places, the protection of fauna, native plants and threatened species, and general administration and enforcement matters; and for other purposes.

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Clause 1 National Parks and Wildlife Amendment Bill 2009

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *National Parks and Wildlife Amendment Act 2009*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Repeal of National Parks and Wildlife Amendment Act 2001 No 130

The *National Parks and Wildlife Amendment Act 2001* is repealed.

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National Parks and Wildlife Amendment Bill 2009

Amendment of National Parks and Wildlife Act 1974 No 80

Schedule 1

Schedule 1 **Amendment of National Parks and Wildlife Act 1974 No 80**

[1] Section 5 Definitions

Omit the definition of *Aboriginal* in section 5 (1).

[2] Section 5 (1)

Insert in alphabetical order:

Aboriginal heritage impact permit means a permit issued under Division 2 of Part 6.

Aboriginal person has the same meaning as in the *Aboriginal Land Rights Act 1983* and *Aboriginal people* has a corresponding meaning.

damage in relation to habitat (including critical habitat) includes damage by the removal or relocation of the habitat or a part of the habitat.

exercise a function includes perform a duty.

function includes a power, authority or duty.

habitat includes habitat periodically or occasionally occupied by a species, population or ecological community.

national parks legislation means each of the following Acts and the regulations under those Acts:

- (a) this Act,
- (b) *Threatened Species Conservation Act 1995*,
- (c) *Wilderness Act 1987*,
- (d) *Marine Parks Act 1997*.

plant includes fungi and lichen.

species presumed extinct has the same meaning as in the *Threatened Species Conservation Act 1995*.

[3] Section 5 (1), definition of "Aboriginal remains"

Insert "person" after "deceased Aboriginal".

[4] Section 5 (1), definition of "Aboriginal remains"

Omit "non-Aboriginals" from paragraph (a) of the definition.

Insert instead "non-Aboriginal persons".

[5] Section 5 (1), definition of "Director-General"

Omit the definition. Insert instead:

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Schedule 1 Amendment of National Parks and Wildlife Act 1974 No 80

Director-General means the Director-General of the Department of Environment and Climate Change.

[6] Section 5 (1), definition of "pick"

Omit the definition. Insert instead:

pick a plant (including a native plant, a protected native plant and a plant that is of, or is part of, a threatened species, population or ecological community) includes gather, pluck, cut, pull up, destroy, poison, take, dig up, crush, trample, remove or injure the plant or any part of the plant.

[7] Section 5 (1), definition of "Service"

Omit "constituted by this Act". Insert instead "as referred to in section 6".

[8] Section 6

Omit the section. Insert instead:

6 The Service

The National Parks and Wildlife Service consists of the following:

- (a) the Director-General,
- (b) those members of staff of the Department of Environment and Climate Change who are principally involved in the administration of the national parks legislation,
- (c) the persons in respect of whom any arrangements under section 11 are for the time being in force.

[9] Section 10 Officers and employees

Omit the section.

[10] Section 11 Use of services of personnel of public authorities

Omit "this Act, the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995*" from section 11 (5).

Insert instead "the national parks legislation".

[11] Section 24 Constitution of advisory committees

Omit section 24 (4). Insert instead:

- (4) Schedule 8 has effect in relation to each regional advisory committee constituted under subsection (2).

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Schedule 1

- (5) The Minister may determine the constitution and procedure of an additional advisory committee constituted under subsection (3).

[12] Sections 29 (2) (a), 151 (4B) (b) (ii) and 151B (10B) (b) (ii)

Omit “Department of Environment and Conservation” wherever occurring.

Insert instead “Department of Environment and Climate Change”.

[13] Sections 45 (6) (b), 56 (7) (b), 57 (7) (b), 58Q (7) (b) and 58R (7) (b)

Insert “person” after “other Aboriginal” wherever occurring.

[14] Sections 71C (2), 71D (including the heading to that section), 71G (2) and (3), 71H, 71I (b), 71L (a), 71W (2) (b) (and the note to that section), 71AD (1) (i), 71AS (1) and (2) (d), 71AT (1), 71AU (1) (b), (2) and (3) and 71AV and the heading to Schedule 14

Omit “Aboriginals” wherever occurring.

Insert instead “Aboriginal persons”.

[15] Section 71J Minister may negotiate with Aboriginal negotiating panel and Aboriginal Land Councils

Insert after section 71J (2):

- (3) The parties referred to in this section may (but are under no obligation to) enter into and conduct negotiations for the purposes of this Division.

[16] Section 71AK Variation of lease

Insert “and the Aboriginal owner board members for the land concerned” after “agreement of the parties”.

[17] Section 71AL Holding over under lease

Insert after section 71AL (3):

- (4) For the avoidance of doubt, the expiry of a term of a lease under this Part does not affect the reservation under this Act of the land that is the subject of the lease as a national park, historic site, state conservation area, regional park, nature reserve, karst conservation reserve or Aboriginal area.

[18] Section 71AN Boards of management

Insert after section 71AN (7):

- (8) A matter or thing done or omitted to be done by a board of management, a member of a board of management or a person acting under the direction of a board of management does not, if

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the matter or thing was done or omitted to be done in good faith for the purpose of executing this Act (or any regulation under this Act), subject the member or the person so acting personally to any action, liability, claim or demand.

(9) However, any such liability attaches instead to the Crown.

[19] Section 71AO Functions of boards of management

Insert after section 71AO (6):

- (6A) A board of management may delegate the exercise of any function of the board of management under this Act (other than this power of delegation) to:
- (a) a member of the board, or
 - (b) a member of staff of the Department of Environment and Climate Change, or
 - (c) any person, or any class of persons, authorised for the purposes of this subsection by the regulations.

[20] Section 71AQ Board of management's accounts, budgets, quarterly and annual reports

Omit section 71AQ (2)–(5). Insert instead:

- (2) A board of management must, before the commencement of each financial year, prepare and submit to the Minister a detailed budget relating to its proposed operations during that financial year.
- (3) The board of management must furnish to the Minister such information relating to the budget as the Minister requests.
- (4) A board of management must monitor its financial activities to determine whether it is operating in accordance with its budget.
- (5) A board of management must in each year, as soon as practicable after 30 June, but on or before 1 October, forward to the Minister an annual report of its operations for the 12 months ending on 30 June in that year.
- (6) The regulations may prescribe the form and content of budgets and reports under this section.

[21] Section 72 Preparation of plans of management

Omit “2 years” from section 72 (1F). Insert instead “5 years”.

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Schedule 1

[22] Section 72A Plans of management for combined areas and areas adjoining State borders

Omit section 72A (4). Insert instead:

- (4) A plan of management prepared in accordance with this section may include provisions relating to any or all of the following types of land:
- (a) land reserved under Part 4,
 - (b) land reserved under Part 4A,
 - (c) land acquired or occupied or proposed to be acquired or occupied under Part 11.

[23] Part 6, Division 1, heading

Insert after the heading to Part 6:

Division 1 General

[24] Sections 86–87A

Omit sections 86 and 87. Insert instead:

86 Harming Aboriginal objects or Aboriginal places

- (1) A person must not harm an object that the person knows is an Aboriginal object.
Maximum penalty:
- (a) in the case of an individual—5,000 penalty units or imprisonment for 2 years, or both, or
 - (b) in the case of a corporation—10,000 penalty units.
- (2) A person must not harm an Aboriginal object (whether or not the person knows it is an Aboriginal object).
Maximum penalty:
- (a) in the case of an individual—1,000 penalty units or imprisonment for 6 months, or both, or
 - (b) in the case of a corporation—2,000 penalty units.
- (3) A person must not harm an Aboriginal place (whether or not the person knows it is an Aboriginal place).
Maximum penalty:
- (a) in the case of an individual—5,000 penalty units or imprisonment for 2 years, or both, or
 - (b) in the case of a corporation—10,000 penalty units.

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- (4) Subsections (1) and (2) do not apply with respect to an Aboriginal object that is dealt with in accordance with section 85A.
- (5) A single prosecution for an offence under subsection (1) or (2) may relate to a single Aboriginal object or a group of Aboriginal objects.
- (6) If, in proceedings for an offence under subsection (1), the court is satisfied that, at the time the accused harmed the Aboriginal object concerned, the accused did not know that the object was an Aboriginal object, the court may find an offence proved under subsection (2).
- (7) Subsections (1)–(3) do not apply in relation to the following:
 - (a) work for the conservation or protection of an Aboriginal object or place that is carried out by an officer of the Service or a person under the direction of such an officer,
 - (b) any thing authorised to be done by or under the *Rural Fires Act 1997* in relation to any emergency fire fighting act within the meaning of that Act.
- (8) In this section, ***harm*** an object or place includes any act or omission that:
 - (a) destroys, defaces, damages or desecrates the object or place, or
 - (b) in relation to an object—moves the object from the land on which it had been situated, or
 - (c) is specified by the regulations, or
 - (d) causes or permits the object or place to be harmed in a manner referred to in paragraph (a), (b) or (c),but does not include any act or omission that is:
 - (e) trivial or negligible, or
 - (f) excluded from this definition by the regulations.

87 Defences

- (1) It is a defence to a prosecution for an offence under section 86 (1), (2) or (3) if the defendant shows that the harm concerned:
 - (a) was authorised by, and done in accordance with, an Aboriginal heritage impact permit, or
 - (b) was authorised by or under the *State Emergency and Rescue Management Act 1989* in relation to an emergency (within the meaning of that Act) and was reasonably

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Schedule 1

necessary in order to avoid an actual or imminent threat to life or property, or

- (c) was specifically required or permitted under the express terms of a conservation agreement entered into under Division 12 of Part 4 of this Act (being an agreement that was entered into or modified after the commencement of this section).
- (2) It is a defence to a prosecution for an offence under section 86 (2) if the defendant shows that the defendant exercised due diligence to determine whether the act or omission constituting the alleged offence would harm an Aboriginal object and determined that no Aboriginal object would be harmed.
- (3) The regulations may provide that compliance with requirements specified in the regulations, or in a code of practice adopted or prescribed by the regulations, is taken for the purposes of subsection (2) to constitute due diligence in determining whether the act or omission constituting the alleged offence would harm an Aboriginal object.
- (4) The regulations may provide for additional defences to any offence created by section 86.

87A Exemption for traditional Aboriginal cultural activities

- (1) The object of this section is to exempt Aboriginal people from the provisions of section 86 that prohibit the harming of an Aboriginal object or place.
- (2) Aboriginal people are exempt from the provisions of section 86 (1), (2) and (3) to the extent to which those provisions would, but for this section, prohibit Aboriginal people from carrying out traditional cultural activities.
- (3) This section applies to and in respect of any dependants (whether Aboriginal or not) of Aboriginal people in the same way as it applies to and in respect of Aboriginal people.

[25] Section 90 Destruction etc of Aboriginal objects or Aboriginal places

Omit the section.

[26] Section 91 Notification of sites of Aboriginal objects

Insert at the end of the section:

Maximum penalty:

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- (a) in the case of an individual—100 penalty units and, in the case of a continuing offence, a further penalty of 10 penalty units for each day the offence continues, or
- (b) in the case of a corporation—200 penalty units and, in the case of a continuing offence, a further penalty of 20 penalty units for each day the offence continues.

[27] Section 91 (as amended by item [26])

Re-number as section 89A and insert it after section 89.

[28] Part 6, Division 2

Insert before Part 6A:

Division 2 Aboriginal heritage impact permits

90 Aboriginal heritage impact permits

- (1) The Director-General may issue an Aboriginal heritage impact permit.
- (2) An Aboriginal heritage impact permit may be issued subject to conditions or unconditionally. However, a condition cannot be imposed on a permit if compliance with the condition would result in a breach of a requirement made by or under this Act.
- (3) An Aboriginal heritage impact permit may be issued in relation to a specified Aboriginal object, Aboriginal place, land, activity or person or specified types or classes of Aboriginal objects, Aboriginal places, land, activities or persons.

90A Application for issue of permit

- (1) An application may be made to the Director-General for the issue of an Aboriginal heritage impact permit.
- (2) An application must:
 - (a) be made in or to the effect of a form approved by the Director-General, and
 - (b) contain or be accompanied by such information as is required by the Director-General (as indicated in the form or in material accompanying the form), and
 - (c) be accompanied by the fee prescribed by the regulations.

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90B Application for transfer of permit

- (1) An application may be made to the Director-General for the transfer of an Aboriginal heritage impact permit to another person.

Note. Section 90E requires the application to be made only with the consent in writing of the holder of the permit.

- (2) An application for the transfer of a permit must:
- (a) be made in or to the effect of a form approved by the Director-General, and
 - (b) contain or be accompanied by such information as is required by the Director-General (as indicated in the form or in material accompanying the form), and
 - (c) be accompanied by the fee prescribed by the regulations.

90C Grant or refusal of application

- (1) The Director-General may grant or refuse an application for the issue or transfer of an Aboriginal heritage impact permit. An application is granted by the issue or transfer of the permit concerned.

- (2) The Director-General must not refuse such an application unless before doing so the Director-General has:
- (a) given notice to the applicant that the Director-General intends to do so, and
 - (b) specified in that notice the reasons for the Director-General's intention to do so, and
 - (c) given the applicant a reasonable opportunity to make submissions in relation to the matter, and
 - (d) taken into consideration any such submissions by the applicant.

Note. Section 90L enables appeals to be made in connection with permit applications within a specified period after the person is given notice of the decision concerned.

90D Variation of permits

- (1) The Director-General may vary an Aboriginal heritage impact permit (including the conditions of such a permit).
- (2) A variation includes the imposing of a condition on a permit (whether or not any conditions have already been imposed), the substitution of a condition, the omission of a condition or the amendment of a condition.

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- (3) A permit may be varied on application by the holder of the permit or on the initiative of the Director-General.
- (4) A permit may be varied at any time during its currency, including on its being transferred to another person.
- (5) A permit is varied by notice in writing given to the holder of the permit.

90E Restrictions on making applications to vary or transfer permits

- (1) An application for the variation of an Aboriginal heritage impact permit may be made only by or with the consent in writing of the holder of the permit.
- (2) An application for the transfer of an Aboriginal heritage impact permit may be made only with the consent in writing of the holder of the permit.

90F Requirement for further information

- (1) If an application has been made under this Division, the Director-General may, by notice in writing given to the applicant, require the applicant to supply to the Director-General such further information as the Director-General considers necessary and relevant to the application and specifies in the notice.
- (2) In this section:
information includes plans and specifications.

90G Suspension or revocation of permit

- (1) The Director-General may suspend or revoke an Aboriginal heritage impact permit.
- (2) A suspension or revocation of a permit is effected by notice in writing given to the holder of the permit.
- (3) A suspension may be for a specified period, or until the fulfilment of specified conditions, or until further order of the Director-General.
- (4) Without limiting subsection (1), a permit may be revoked while it is suspended.
- (5) The Director-General must not suspend or revoke a permit unless before doing so the Director-General has:
 - (a) given notice to the holder of the permit that it intends to do so, and

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- (b) specified in that notice the reasons for its intention to do so, and
 - (c) given the holder of the permit a reasonable opportunity to make submissions in relation to the proposed revocation or suspension, and
 - (d) taken into consideration any such submissions by the holder of the permit.
- (6) The reasons for suspending or revoking a permit may include (but are not limited to) the following:
- (a) the holder of the permit has obtained the permit improperly,
 - (b) a condition of the permit has been contravened,
 - (c) the activities covered by the permit are completed or no longer being carried on.
- (7) No fees are refundable on the suspension or revocation of a permit.

90H Surrender of permit

An Aboriginal heritage impact permit may, on the written application of the holder of the permit, be surrendered with the written approval of the Director-General.

90I Conditions of suspension, revocation or surrender

- (1) The Director-General may, by notice in writing, impose conditions on the suspension or revocation of, or the approval of the surrender of, an Aboriginal heritage impact permit.
- (2) Those conditions may include (but are not limited to) any conditions to which the permit was subject immediately before it was suspended, revoked or surrendered.
- (3) The Director-General may, by notice in writing, impose new conditions on, or vary or revoke any existing conditions of, the suspension, revocation or surrender of the permit.

Note. Section 90J makes it an offence to breach conditions under this section.

90J Failure to comply with conditions

(1) Offences

If any condition of an Aboriginal heritage impact permit is contravened by any person, the holder of the permit (or, if more

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than one person holds the permit, each holder of the permit) is guilty of an offence.

- (2) If any condition to which a suspension or revocation of, or the approval of the surrender of, an Aboriginal heritage impact permit is subject is contravened by any person, the holder of the permit or former permit (or, if more than one person holds or held the permit or former permit, each holder of the permit or former permit) is guilty of an offence.

Maximum penalty (subsections (1) and (2)):

- (a) in the case of an individual—1,000 penalty units or imprisonment for 6 months, or both and, in the case of a continuing offence, a further penalty of 100 penalty units for each day the offence continues, or
- (b) in the case of a corporation—2,000 penalty units and, in the case of a continuing offence, a further penalty of 200 penalty units for each day the offence continues.

- (3) **Defence**

The holder of a permit or former permit is not guilty of an offence against this section if the holder establishes that:

- (a) the contravention of the condition was caused by another person, and
- (b) that other person was not associated with the holder at the time the condition was contravened, and
- (c) the holder took all reasonable steps to prevent the contravention of the condition.

A person is associated with the holder for the purposes of paragraph (b) (but without limiting any other circumstances of association) if the person is an employee, agent, licensee, contractor or sub-contractor of the holder.

90K Factor to be considered in making determinations regarding permits

- (1) In making a decision in relation to an Aboriginal heritage impact permit, the Director-General must consider the following matters:
- (a) the objects of this Act,
- (b) actual or likely harm to the Aboriginal objects or Aboriginal place that are the subject of the permit,

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- (c) practical measures that may be taken to protect and conserve the Aboriginal objects or Aboriginal place that are the subject of the permit,
 - (d) practical measures that may be taken to avoid or mitigate any actual or likely harm to the Aboriginal objects or Aboriginal place that are the subject of the permit,
 - (e) the significance of the Aboriginal objects or Aboriginal place that are the subject of the permit,
 - (f) the results of any consultation by the applicant with Aboriginal people regarding the Aboriginal objects or Aboriginal place that are the subject of the permit,
 - (g) the social and economic consequences of making the decision,
 - (h) in connection with a permit application:
 - (i) any documents accompanying the application, and
 - (ii) any public submission that has been made under the *Environmental Planning and Assessment Act 1979* in connection with the activity to which the permit application relates and that has been received by the Director-General,
 - (i) any other matter prescribed by the regulations.
- (2) The Director-General, in making a decision in relation to an Aboriginal heritage impact permit, is not required to consider any matter other than the matters referred to in subsection (1).

90L Appeals

- (1) A person who is aggrieved by any of the following decisions of the Director-General may appeal to the Minister against the decision:
- (a) a decision to refuse any application in relation to an Aboriginal heritage impact permit or former permit,
 - (b) a decision in relation to any condition to which a permit or former permit (or a surrender of a permit) is subject,
 - (c) a decision to suspend or revoke a permit.
- (2) The Minister:
- (a) may refuse to grant the appeal, or
 - (b) may grant the appeal wholly or in part, and may give such directions in the matter as the Minister thinks appropriate.

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- (3) The decision of the Minister on the appeal is final and is binding on the Director-General and the appellant, and is to be carried into effect accordingly.
- (4) The regulations may (but need not) prescribe the manner in which an appeal is to be made under this section.
- (5) An appeal under this section is to be made within 21 days of the date of decision being appealed.
- (6) For the purposes of this section, an application is taken to be refused (unless it is earlier granted or refused) on the expiration of the period of 60 days after the date on which the application was received by the Director-General.
- (7) For the purposes of subsection (6), any period under section 90F during which an applicant is required to supply to the Director-General such further information is to be disregarded in determining whether the 60 day period referred to in that subsection has expired.

90M Date from which decision operates

A decision of the Director-General in relation to an Aboriginal heritage impact permit operates from:

- (a) the date of the decision, or
- (b) if another later date is specified by the Director-General in the decision—that other date.

90N Regulations relating to consultation

The regulations may make provision for or with respect to the following:

- (a) consultation that must be undertaken in relation to an application that relates to an Aboriginal heritage impact permit (including the nature, extent and timing of the consultation),
- (b) the persons, or classes of persons, who must be so consulted (including but not limited to Aboriginal people with a cultural association with the object or land concerned),
- (c) the opportunity of persons, or classes of persons, so consulted to make submissions as part of the consultation.

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90O Interaction between permits and stop work and interim protection orders

For the avoidance of doubt, the existence of an Aboriginal heritage impact permit does not prevent the making of an order under Division 1 of Part 6A or an interim protection order under Division 2 of Part 6A.

90P Validity of permits

If public notice of the issue of an Aboriginal heritage impact permit is given in accordance with the regulations, the validity of the permit cannot be questioned in any legal proceedings except in proceedings commenced in the Land and Environment Court before the expiration of 3 months from the date on which such public notice was given.

[29] Part 6A, heading

Omit the heading to Part 6A. Insert instead:

Part 6A Stop work orders, interim protection orders and remediation directions

[30] Section 91AA Director-General may make stop work order

Omit “A person must not contravene or fail to comply with an order under this section.” from section 91AA (6).

Insert instead:

A person must not:

- (a) contravene an order under this section, or
- (b) cause or permit another person to contravene such an order.

[31] Section 91G Failure to comply with interim protection order

Omit “A person who is given notice of an interim protection order under section 91F must not contravene or fail to comply with its terms.”.

Insert instead:

A person who is given notice of an interim protection order under section 91F must not:

- (a) contravene the terms of the order, or
- (b) cause or permit another person to contravene the terms of the order.

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[32] Part 6A, Division 3

Insert after Division 2:

Division 3 Remediation directions

91J Definitions

In this Division:

damage:

- (a) in relation to land reserved under this Act or acquired under Part 11, includes:
 - (i) harming an animal, or picking a plant, that is in or on that land, or
 - (ii) damming, diverting or polluting any waters on that land, or
 - (iii) damage to anything in or on the land (such as a building, structure, pipe, sign, gate, fence etc or any object or place of cultural value), or
 - (iv) removal of anything, or part of anything, in or on the land, and
- (b) in relation to a plant, includes picking the plant, and
- (c) in relation to an animal, includes harming the animal.

landholder means a person who owns land or who, whether by reason of ownership or otherwise, is in lawful occupation or possession, or has lawful management or control, of land.

pollute waters has the same meaning as in the *Protection of the Environment Operations Act 1997*.

waters includes a stream, creek, river, estuary, dam, lake or reservoir.

91K Directions for remedial work relating to damage to land, habitat and plants and animals

- (1) The Director-General may, by notice in writing, direct a person to carry out specified remediation work in a specified manner and within a specified time, if the Director-General is satisfied that:
 - (a) any land reserved under this Act or acquired under Part 11, or
 - (b) any critical habitat, or habitat of threatened species, an endangered population or an endangered ecological community, or

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- (c) any plant or animal that is of, or is part of, a threatened species, an endangered population or an endangered ecological community,
has been damaged in or as a result of the commission of an offence under this Act (whether or not any person has been proceeded against or convicted for the offence).
- (2) The specified remediation work to be carried out by a person may include one or more of the following types of work:
 - (a) work to control, abate or mitigate the damage to the land, habitat, plant or animal concerned,
 - (b) work to maintain, remediate or restore the damaged land, habitat, plant or animal concerned (including replacing removed or dead plants or animals).
- (3) A direction under this section may be varied or revoked by a further notice in writing.

91L Directions for remedial work relating to harm to Aboriginal objects and places

- (1) The Director-General may, by notice in writing, direct a person to carry out specified remediation work in a specified manner and within a specified time, if the Director-General is satisfied that:
 - (a) any Aboriginal object, or
 - (b) any Aboriginal place,has been harmed in or as a result of the commission of an offence under this Act (whether or not any person has been proceeded against or convicted for the offence).
- (2) The specified remediation work to be carried out by a person may include one or more of the following types of work:
 - (a) work to control, abate or mitigate the harm to the Aboriginal object or Aboriginal place concerned,
 - (b) work to protect, conserve, maintain, remediate or restore the harmed Aboriginal object or Aboriginal place concerned.
- (3) A direction under this section may be varied or revoked by a further notice in writing.

91M Persons to whom directions may be given

A direction under this Division may be given to any or all of the following persons:

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- (a) the current or former landholder of any land affected by the damage or harm referred to in section 91K or 91L or on which such damage or harm occurred,
- (b) any other person the Director-General reasonably believes is responsible for that damage or harm or caused or permitted that damage or harm.

91N Other ancillary actions that may be directed to be carried out

The Director-General in a direction under this Division may also direct a person to carry out the following actions:

- (a) ascertaining the nature and extent of the damage or harm concerned and furnishing the information or records obtained to other persons (including to the Director-General),
- (b) preparing, furnishing and carrying out a plan of action,
- (c) furnishing progress reports,
- (d) monitoring, sampling and analysing anything to ascertain the nature and extent of the harm concerned or the progress in remediating the harm,
- (e) vacating the land concerned (or part of it), ceasing to carry on, modifying, or not commencing, an activity on, or use of, the land (or part of it),
- (f) carrying on an activity (or an aspect of it) only during particular times or in a particular manner,
- (g) in relation to harm to an Aboriginal object or place, preparing a report on an activity's likely impact on the Aboriginal object or Aboriginal place concerned,
- (h) construction, installation or removal of anything (including plants and structures such as fencing, walls, bunds or other barriers),
- (i) erecting or displaying on the land concerned any sign or notice containing directions to persons not to enter the land or not to use the land in a specified manner or for a specified purpose or containing other directions of that kind or any other kind,
- (j) refraining from disturbance or further disturbance of the land concerned in a specified manner or below a specified depth,
- (k) informing the Director-General of any change in the ownership or occupancy of the land concerned, to the

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extent that the person subject to the requirement is aware of the change,

- (l) in relation to harm to an Aboriginal object or place, consulting with Aboriginal community groups or representatives (for example to develop a strategy or plan in relation to the remediation work),
- (m) in relation to harm to an Aboriginal object, moving the object.

91O Other person may carry out remediation work if failure to comply with direction

- (1) If a person fails to comply with a direction under section 91K or 91L, the Director-General may direct any other person to enter the land concerned and carry out all or part of the specified work.
- (2) The Director-General may recover the cost of that work from the person given the direction in any court of competent jurisdiction as a debt due by that person to the Crown.

91P Entry to land to carry out direction

- (1) A person may enter land to carry out a direction under this Division.
- (2) Nothing in this Division authorises a person to enter any part of premises used only for residential purposes except with the consent of the occupier of the premises.

91Q Failure to comply with remediation direction

- (1) A person must not, without reasonable excuse:
 - (a) contravene a direction under this Division, or
 - (b) cause or permit another person to contravene such a direction.

Maximum penalty:

- (a) in the case of a corporation—2,000 penalty units and 200 penalty units for each day the offence continues, or
 - (b) in any other case—1,000 penalty units and 100 penalty units for each day the offence continues.
- (2) For the purposes of subsection (1), an example of a reasonable excuse is that the person was unable to enter land because of the refusal of access to the land by its occupier, but entry to that land was essential for the person to avoid committing the relevant offence.

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91R Delay or obstruction of remediation direction

A person must not wilfully delay or obstruct another person:

- (a) who is carrying out any action in compliance with a direction under this Division, or
- (b) who is authorised to enter land and carry out work under this Division.

Maximum penalty:

- (a) in the case of a corporation—2,000 penalty units and 200 penalty units for each day the offence continues, or
- (b) in any other case—1,000 penalty units and 100 penalty units for each day the offence continues.

91S Recovery by person given notice

If the person given a direction under this Division complies with the direction but was not the person who caused the damage or harm concerned, the cost of complying with the direction may be recovered by the person who complied with the direction as a debt in a court of competent jurisdiction from the person who caused the damage or harm.

[33] Section 99A Directions relating to protected fauna

Insert “and, in the case of a continuing offence, a further penalty of 2.5 penalty units for each day the offence continues” after “25 penalty units” in section 99A (3).

[34] Section 99A (4)

Omit the subsection. Insert instead:

- (4) A direction given by an officer of the Service under this section has effect for such period (not exceeding 28 days) as is specified by the officer at the time the direction is given.

[35] Section 99A (5A)–(5E)

Insert after section 99A (5):

- (5A) A person who has been given a direction by an officer of the Service under this section may, within 14 days of receiving the direction, appeal to the Minister against the direction.
- (5B) In deciding the appeal, the Minister may:
 - (a) confirm the direction appealed against, or
 - (b) modify or rescind the direction.

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- (5C) The Minister may, by order, direct a person to stop feeding protected fauna or stop any activity that is causing, or is likely to cause, distress to protected fauna (or both).
- (5D) The Minister must not give a direction under subsection (5C) unless:
 - (a) a direction in similar terms has been given to the person by an officer of the Service under this section, and
 - (b) a period of 14 days has elapsed since that direction was given and no appeal has been made against the direction or, if an appeal has been made, the direction was not substantially modified or rescinded.
- (5E) A direction given by the Minister under this section has effect for such period (not exceeding 2 years) as is specified in the direction. The Minister may extend a direction by a further period (not exceeding 2 years).

[36] Section 101 Buying, selling or possessing protected fauna

Omit “or an aviary registration certificate under section 128” from section 101 (4).

[37] Section 102 Directions respecting protected fauna in confinement

Insert at the end of section 102 (2):

Maximum penalty:

- (a) in the case of an individual—100 penalty units and, in the case of a continuing offence, a further penalty of 10 penalty units for each day the offence continues, or
- (b) in the case of a corporation—200 penalty units and, in the case of a continuing offence, a further penalty of 20 penalty units for each day the offence continues.

[38] Section 104 Fauna dealers

Insert at the end of section 104 (1):

Maximum penalty:

- (a) in the case of an individual—100 penalty units and, in the case of a continuing offence, a further penalty of 10 penalty units for each day the offence continues, or
- (b) in the case of a corporation—200 penalty units and, in the case of a continuing offence, a further penalty of 20 penalty units for each day the offence continues.

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[39] Section 105 Skin dealers

Insert at the end of the section:

Maximum penalty:

- (a) in the case of an individual—100 penalty units and, in the case of a continuing offence, a further penalty of 10 penalty units for each day the offence continues, or
- (b) in the case of a corporation—200 penalty units and, in the case of a continuing offence, a further penalty of 20 penalty units for each day the offence continues.

[40] Section 105A Emu breeders

Insert at the end of section 105A (1):

Maximum penalty:

- (a) in the case of an individual—100 penalty units and, in the case of a continuing offence, a further penalty of 10 penalty units for each day the offence continues, or
- (b) in the case of a corporation—200 penalty units and, in the case of a continuing offence, a further penalty of 20 penalty units for each day the offence continues.

[41] Section 107 Exhibiting protected fauna

Insert at the end of the section:

Maximum penalty:

- (a) in the case of an individual—100 penalty units and, in the case of a continuing offence, a further penalty of 10 penalty units for each day the offence continues, or
- (b) in the case of a corporation—200 penalty units and, in the case of a continuing offence, a further penalty of 20 penalty units for each day the offence continues.

[42] Section 115A Management plans for protected native plants

Insert after section 115A (8):

- (9) If a flora plan of management adopted by the Director-General provides that no protected native plant (or part of such a plant) is to be sold unless it is tagged in accordance with the flora plan of management, a person must not sell a protected native plant (or a part of such a plant) unless it is so tagged.

Maximum penalty: 100 penalty units and an additional 10 penalty units in respect of each whole plant that was affected by or concerned in the action that constituted the offence.

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Note. The term **sell** is defined by section 5 to include:

- (a) auction, barter, exchange or supply,
- (b) offer, expose, supply or receive for sale,
- (c) send, forward or deliver for sale or on sale,
- (d) dispose of under a hire-purchase agreement,
- (e) cause, permit or suffer the doing of an act referred to in paragraph (a), (b), (c) or (d),
- (f) offer or attempt to do an act so referred to,
- (g) cause, permit or suffer to be sold,
- (h) attempt to sell or offer to sell, or
- (i) have in possession for sale.

[43] Sections 118A (1) and (2) and 118B (1)

Insert “species presumed extinct,” before “endangered species” wherever occurring in paragraph (a) of the penalty provisions to those subsections.

[44] Sections 118C (1) and 118D (1)

Omit “, by an act or an omission, do anything that causes damage to” wherever occurring.

Insert instead “damage”.

[45] Section 118C (2) and (3)

Omit “act constituting the offence was done or omitted to be done” wherever occurring.

Insert instead “offence was committed”.

[46] Sections 118C (5) and 118D (2)

Omit “act constituting the offence” wherever occurring.

Insert instead “damage resulted from an act that”.

[47] Section 118C (7)

Insert after section 118C (6):

- (7) In this section, **damage** includes cause or permit damage.

[48] Section 118D (1) and 118D (4)

Omit “(other than a critical habitat)” and “(other than critical habitat)”, respectively.

[49] Section 118D (1)

Omit “the land”. Insert instead “the habitat”.

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[50] Section 118D (4)

Omit “an act or an omission of a person that causes”.

[51] Section 118D (4)

Insert “the damage resulted from an act that” after “established that”.

[52] Section 118D (4) (a) and (b)

Omit “the act or omission” wherever occurring.

[53] Section 118D (5) and (6)

Insert after section 118D (4):

- (5) If an act is an offence against both this section and section 118C, the offender is not liable to be punished twice in respect of the offence.
- (6) In this section, *damage* includes cause or permit damage.

[54] Section 118E Court may order offender to restore habitat and take other actions

Omit the section.

[55] Section 123 Commercial fauna harvester’s licence

Insert after section 123 (3):

- (4) A person licensed under subsection (1) must not, in connection with harming fauna for the purposes of sale, use any carcass chiller unless the chiller is:
 - (a) registered under this section, or
 - (b) on premises registered under section 124.
- (5) The Director-General may issue registration certificates in respect of each carcass chiller that a person licensed under subsection (1) uses in connection with harming fauna for the purposes of sale.
- (6) In this section, *carcass chiller* means any refrigeration container used for the storage of animal carcasses, and includes a refrigerated shipping container and a refrigerated truck or vehicle.

[56] Section 128 Aviary registration certificates

Omit the section.

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[57] Section 132C Scientific licences

Insert “, or the picking of any native plant,” after “the harming of fauna” in section 132C (2).

[58] Section 133 Conditions and restrictions attaching to licences and certificates and variation of licences and certificates

Insert at the end of section 133 (4):

Maximum penalty:

- (a) in the case of an individual—100 penalty units and, in the case of a continuing offence, a further penalty of 10 penalty units for each day the offence continues, or
- (b) in the case of a corporation—200 penalty units and, in the case of a continuing offence, a further penalty of 20 penalty units for each day the offence continues.

[59] Section 138 Payments into Fund

Omit section 138 (1B). Insert instead:

- (1A) Within the Fund there is to be a separate account for each area of lands leased under Part 4A.
- (1B) Subject to subsections (2) and (3), any money paid into the Fund, including rent paid by the Minister, in respect of an area of lands leased under Part 4A is to be carried into the separate account in the Fund that relates to that area.

[60] Section 140 Community service contribution

Omit section 140 (2). Insert instead:

- (2) The Director-General may levy the contribution payable by the holder of the lease or licence by serving on the holder a written notice of the contribution payable.
- (3) The notice referred to in subsection (2) may:
 - (a) relate to one or more types of community service, and
 - (b) specify a date by which the contribution must be paid.
- (3A) The amount of the contribution is due and payable to, and is recoverable by, the Director-General:
 - (a) if a date is specified in the notice referred to in subsection (2)—on that date, or
 - (b) if no such date is specified—on the expiration of one month from the service of the notice.

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(3B) Nothing in this section prevents the Director-General from issuing separate notices to the same holder of a lease or licence for different types of community service.

[61] Section 140 (5)

Insert after section 140 (4):

- (5) In this section, *community service* includes the following actions or services when undertaken or provided in connection with public health or building safety:
- (a) making an inspection,
 - (b) conducting an audit,
 - (c) receiving an application,
 - (d) granting an approval,
 - (e) providing advice (including by way of lecture or seminar),
 - (f) providing administrative services (including photocopying and the like).

[62] Section 143 Charges and fees

Omit “permit, or” from section 143 (1) (c).

Insert instead “permit,”.

[63] Section 143 (1) (e)–(g)

Insert after section 143 (1) (d):

- (e) processing an application for any permission, consent, approval, licence, registration certificate or permit (including by making an inspection or conducting an audit in connection with the application),
- (f) provides advice on request (including by way of lecture or seminar), or
- (g) provides administrative services on request (including photocopying and the like),

[64] Section 143 (2) and (3)

Insert after section 143 (1):

- (2) Nothing in this section prevents the Director-General or an officer of the Service making, demanding, levying or recovering separate charges or fees in respect of the same person for the supply of different things or carrying out of different activities.

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- (3) The services referred to in subsection (1) include, but are not limited to, health or building services provided or maintained by the Director-General in a national park, historic site, state conservation area, regional park, nature reserve, karst conservation reserve or Aboriginal area.

[65] Section 153C Easements, rights of way and licences for landlocked areas

Insert “(or any occupier)” after “the owner” wherever occurring in section 153C (1) (b) and (3) (a).

[66] Section 153D Leases, licences and easements for broadcasting or telecommunications facilities

Insert “broadcasting or” before “telecommunications” wherever occurring in section 153D (1) and (4).

[67] Section 153D (6)

Omit the subsection. Insert instead:

- (6) In this section:
broadcasting or telecommunications facility means:
(a) a facility used for the purpose of providing broadcasting services within the meaning of the *Broadcasting Services Act 1992* of the Commonwealth, or
(b) a facility within the meaning of the *Telecommunications Act 1997* of the Commonwealth.

[68] Section 156A Offence of damaging reserved land

Insert at the end of section 156A (1) (c):

, or

- (d) cause or permit any removal or damage referred to in paragraph (a), (b) or (c).

[69] Section 156A (2)

Omit “the act constituting the alleged offence”.

Insert instead “the removal or damage concerned”.

[70] Section 156A (3)

Omit “the act constituting the alleged offence is referred to in subsection (1) (c)”.

Insert instead “the offence relates to the damage of an object or place of cultural value”.

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[71] Section 156A (4) and (5)

Omit the subsections.

[72] Section 156B Powers of authorised officers

Insert “those provisions were part of this Act, but modified so that” after “as if” in section 156B (3):

[73] Section 156B (3B)

Insert after section 156B (3A):

- (3B) For the avoidance of doubt, a prosecution of a person for an offence against a provision of Chapter 7 of the POEO Act (as applying under this section) is to be taken as if the offence were an offence under this Act.

[74] Section 156B (6)

Omit the subsection.

[75] Section 156C

Insert after section 156B:

156C Exclusion of personal liability

- (1) Anything done or omitted to be done by:
- (a) the Minister, or
 - (b) the Director-General or a person acting under the direction of the Director-General, or
 - (c) an officer of the Service, or
 - (d) an ex-officio ranger, or
 - (e) an honorary ranger, or
 - (f) a member of the Council or a person acting under the direction of the Council or a member of the Council, or
 - (g) an advisory committee, a member of such a committee or a person acting under the direction of any such committee or member of a committee,

does not subject the Minister, Director-General, officer, ranger, member of the Council or of the advisory committee, or person so acting, personally to any action, liability, claim or demand if the thing was done, or omitted to be done, in good faith for the purpose of exercising functions under the national parks legislation.

- (2) However, any such liability attaches instead to the Crown.

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[76] Section 160 Penalty notice for certain offences

Insert after section 160 (8):

- (9) A prescribed person belonging to the same class of prescribed person as the person by whom a penalty notice has been served:
 - (a) may withdraw the notice within 28 days after the date on which the notice was served, and
 - (b) must withdraw the notice immediately if directed to do so by the Director-General.
- (10) The following provisions have effect in relation to an alleged offence if a penalty notice for the alleged offence is withdrawn in accordance with subsection (9):
 - (a) The amount that was payable under the notice ceases to be payable.
 - (b) Any amount that has been paid under the notice is repayable to the person by whom it was paid.
 - (c) Further penalty notices and proceedings in respect of the alleged offence may be taken against any person (including the person on whom the notice was served) as if the notice had never been served.

[77] Section 160 (as amended by item [76])

Re-number as section 192 and insert in appropriate order in Division 2 of Part 15 (as inserted by item [106]).

[78] Section 160E Notice to remove structure

Insert “and, in the case of a continuing offence, a further penalty of 2 penalty units for each day the offence continues” after “20 penalty units” in section 160E (4).

[79] Section 160F Notice prohibiting use of structure

Insert “and, in the case of a continuing offence, a further penalty of 2 penalty units for each day the offence continues” after “20 penalty units” in section 160F (3).

[80] Section 164 Powers of entry and seizure

Insert after section 164 (2):

- (3) For the purposes of subsection (1) (a) (iii), the authorised officer may direct the occupier of the premises where, or owner of the vehicle on or in which, the animal, native plant, Aboriginal object or article is seized:

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- (a) for a specified period (not exceeding 28 days):
 - (i) to retain the animal, native plant, Aboriginal object or article in or on those premises, that vehicle or at another place under the control of the occupier or owner, and
 - (ii) to feed, house or maintain (as appropriate) the animal, native plant, Aboriginal object or article, and
- (b) on a specified day within that period, deliver to the authorised officer the animal, native plant, Aboriginal object or article.

[81] Section 167 Disposal of fauna and perishable goods when seized or delivered up

Insert after section 167 (4):

- (5) When any fauna or perishable property is sold or otherwise disposed of under subsection (1):
 - (a) the buyer obtains the ownership of the fauna or property freed and discharged from any right, interest, trust or obligation to which it was subject immediately before its sale or disposal, and
 - (b) the person who was the owner of the fauna or property immediately before its sale or disposal ceases to have any claim in respect of the fauna or property or any right of action in respect of the sale or disposal except as specifically provided by this Act.
- (6) A person is not prevented from recovering damages from the Crown in respect of the sale or disposal of any fauna or perishable property under subsection (1) if the person establishes that the authorised officer who effected the sale or disposal did not act in good faith or acted without reasonable care.

[82] Section 174 Service of notices

Omit “in New South Wales” from section 174 (b).

[83] Section 175B Offences by corporations

Omit section 175B (1) (a).

[84] Section 175B (4)

Omit “intention” wherever occurring. Insert instead “state of mind”.

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[85] Section 175B (5)

Insert after section 175B (4):

- (5) In this section, the *state of mind* of a person includes:
- (a) the knowledge, intention, opinion, belief or purpose of the person, and
 - (b) the person's reasons for the intention, opinion, belief or purpose.

[86] Section 176 Proceedings for offences

Omit section 176 (1B).

[87] Section 176 (2)

Omit "separate information or complaint".

Insert instead "separate court attendance notice, summons or application".

[88] Section 176 (2)

Omit "an information or complaint".

Insert instead "a court attendance notice, summons or application".

[89] Section 176 (as amended by items [86]–[88])

Renumber as section 189 and insert in appropriate order in Division 1 of Part 15 (as inserted by item [106]).

[90] Section 176A Restraint etc of breaches of Act or regulations

Insert "or the regulations" after "this Act" in section 176A (1).

[91] Section 176A (4)

Insert after section 176A (3):

- (4) In this section, *breach* includes a threatened or apprehended breach.

[92] Section 176A (as amended by items [90] and [91])

Renumber as section 193 and insert in appropriate order in Division 2 of Part 15 (as inserted by item [106]).

[93] Section 176B

Insert after section 176A:

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176B Ancillary offences

A person who:

- (a) aids, abets, counsels or procures another person to commit, or
 - (b) attempts to commit, or
 - (c) conspires to commit,
- an offence under another provision of this Act or the regulations is guilty of an offence under that other provision and is liable, on conviction, to the same penalty applicable to an offence under that other provision.

[94] Section 177 Compensation

Omit the section.

[95] Section 179 Authority to take proceedings

Insert “, the Director-General” after “police officer” in section 179 (1).

[96] Section 179 (1A)

Omit the subsection. Insert instead:

- (1A) Proceedings for an offence under this Act may be instituted in the Land and Environment Court in its summary jurisdiction only by the following persons:
 - (a) the Director-General,
 - (b) an officer of the Service authorised by the Director-General for the purposes of this section.

[97] Section 179 (as amended by items [95] and [96])

Re-number as section 191 and insert in appropriate order in Division 1 of Part 15 (as inserted by item [106]).

[98] Section 181 Evidentiary provisions etc

Omit “an information”, “that information” and “any information” wherever occurring in section 181 (1), (2), (2A) and (4).

Insert instead “a court attendance notice, summons or application”, “that court attendance notice, summons or application” and “any court attendance notice, summons or application”, respectively.

[99] Section 181 (1)

Insert “, Aboriginal place” after “Aboriginal area”.

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[100] Section 181 (5)

Omit “or a prescribed officer of the Service”.

[101] Section 181 (7) and (9)

Omit “or an officer of the Service authorised by the Director-General” wherever occurring.

[102] Section 181 (10) and (11)

Insert after section 181 (9):

- (10) In any proceedings, a certificate purporting to be signed by the Director-General of the Department of Primary Industries (or a person authorised by that Director-General for the purposes of this subsection) stating that at a time, or during a period, specified in the certificate that a specified animal was an animal that is a pest within the meaning of Part 11 of the *Rural Lands Protection Act 1998* is evidence of the matter or matters stated in the certificate.
- (11) In any proceedings, a certificate purporting to be signed by the Director-General stating that at a time, or during a period, specified in the certificate that a specified animal was an animal whose impact is listed in Schedule 3 to the *Threatened Species Conservation Act 1995* as a key threatening process is evidence of the matter or matters stated in the certificate.

[103] Section 181 (as amended by items [98]–[102])

Renumber as section 197 and insert in appropriate order in Division 2 of Part 15 (as inserted by item [106]).

[104] Section 185 Catchment areas and special areas

Omit section 185 (4). Insert instead:

- (4) Despite any other provision of this Act, a lease, licence, easement or right of way must not be granted under this Act in respect of any land within a special area within the meaning of:
 - (a) the *Sydney Water Catchment Management Act 1998*, except with the concurrence of the Sydney Catchment Authority, or
 - (b) the *Hunter Water Act 1991*, except with the concurrence of the Hunter Water Corporation and the Director-General of the Department of Water and Energy.

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[105] Sections 188A–188E

Insert after section 188:

188A General exemption for officers enforcing the Act or the regulations

The following persons are not guilty of an offence under this Act or the regulations only because of something done by the person while exercising a function in relation to determining whether there has been compliance with or a contravention of this Act or the regulations:

- (a) an authorised officer,
- (b) an officer of the Service.

188B Non-application of section 138 of Roads Act 1993

Section 138 of the *Roads Act 1993* does not apply to anything done under a provision of this Act in relation to a Crown road that is, or is on, land reserved under this Act.

188C Adjustment of boundaries of reserved and acquired lands

- (1) This section applies to the following land:
 - (a) land reserved under this Act,
 - (b) land acquired under Part 11.
- (2) The boundary of any land to which this section applies that adjoins a public road may be adjusted from time to time to enable the boundary to follow the formed path of the road or to provide an appropriate set back from the carriageway of the road.
- (3) An adjustment of the boundary of land is to be made by the Director-General by a notice published in the Gazette.
- (4) A notice under this section may only be published with the approval of:
 - (a) the Minister, and
 - (b) to the extent that the notice applies to any Crown road—the Minister administering the *Crown Lands Act 1989*, and
 - (c) to the extent that the notice applies to a classified road—the Minister administering the provisions of the *Roads Act 1993* relating to classified roads.
- (5) The Director-General is required to certify in any notice under this section that the adjustments effected by the notice will not result in any significant reduction in the size or value of land reserved under this Act.

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- (6) The Director-General may, in a notice published under this section, declare that:
- (a) any such land (described in the notice) is part of the public road concerned and, accordingly, is vested in the roads authority for that public road under the *Roads Act 1993* or is Crown land, or
 - (b) any such land (described in the notice) ceases to be part of that public road and, accordingly, is divested from the relevant roads authority or the Crown and becomes part of the land subject to the provisions of this Act that adjoins that land.

A declaration under this subsection has effect according to its tenor, despite anything to the contrary in the *Roads Act 1993*.

- (7) Nothing in this section permits the adjustment of the boundary of any land acquired under Part 11 if it would contravene any condition of a gift or an agreement by or under which the land had been acquired.
- (8) In this section:
- appropriate set back*, in relation to a carriageway of a road, includes a set back that allows for drainage, signposts, traffic control devices, lighting and other supporting infrastructure for the road.
 - classified road*, *Crown road* and *public road* have the same meanings as in the *Roads Act 1993*.
 - land adjoining a public road* includes land in the vicinity of a public road.

188D Provisions relating to certain existing access roads on National Park Estate lands

(1) **Maintenance and improvement works**

The Director-General may authorise work to be carried out for the maintenance or improvement of an access road.

- (2) Work authorised under this section may only be carried out to enable the access road to continue to be used for the purposes for which the road was used before land on which the road is situated was vested in the Minister.

- (3) Such maintenance and improvement work may be carried out even if it involves ancillary work on reserved land that adjoins the land on which the access road is situated.

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- (4) The carrying out of work authorised under this section is not a contravention of this Act or the regulations.
- (5) **Determination of width of existing access roads**
- At the time an exclusion order is made, the Minister may, by order published in the Gazette, determine a width (not being a width greater than 30 metres) for an access road that is to be excluded from reservation under this Act by the exclusion order.
- Note.** Under the various provisions relating to access roads on National Park Estate lands, certain access roads were vested in the Minister as Part 11 land and not reserved under this Act. These provisions require the Minister to determine within specified times whether those access roads are to be excluded from reservation (and stay Part 11 land) or included in the reserved lands surrounding them.
- (6) An order under subsection (5) may:
- (a) be made only with the concurrence of the Minister administering the *Forestry Act 1916*, and
 - (b) be made by the same order that constitutes the exclusion order concerned, and
 - (c) only be made if the Minister has determined it is appropriate after considering:
 - (i) the objects of this Act, and
 - (ii) whether a road of the determined width is necessary to provide access to land in the vicinity of the road or to provide an appropriate set back (within the meaning of section 188C) from the carriageway of the road.
- (7) On the making of an order under subsection (5):
- (a) land of the determined width that follows the centreline of the access road (as it existed before the order was made) vests, if it is not already vested, in the Minister on behalf of the Crown for the purposes of Part 11 of this Act for an estate in fee simple, freed and discharged from:
 - (i) all trusts, obligations, estates, interests, rights of way or other easements, and
 - (ii) any dedication, reservation, Crown grant or vesting to which the land is subject, and any such dedication, reservation, grant or vesting is revoked, and
 - (b) the land referred to in paragraph (a) is taken to be an access road and may continue to be used for the purposes which it was used immediately before the making of the order, and

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- (c) if any land was vested in the Minister by virtue of being an access road, but is not covered by the land referred to in paragraph (a), the land is reserved as part of the reserved land within which it is situated.

(8) **Validation**

This section is taken to have commenced on 1 January 1999 and anything done on or after that date that could have been validly done under this section had it been in force is taken to have been validly done.

(9) **Definitions**

In this section:

access road means an access road to which any of the following provisions apply:

- (a) clause 5 of Schedule 9 to the *Brigalow and Nandewar Community Conservation Area Act 2005*,
- (b) clause 7 of Schedule 7 to the *Forestry and National Park Estate Act 1998*,
- (c) clause 5 of Schedule 7 to the *National Park Estate (Lower Hunter Region Reservations) Act 2006*,
- (d) clause 7 of Schedule 8 to the *National Park Estate (Reservations) Act 2002*,
- (e) clause 6 of Schedule 5 to the *National Park Estate (Reservations) Act 2003*,
- (f) clause 5 of Schedule 6 to the *National Park Estate (Reservations) Act 2005*,
- (g) clause 8 of Schedule 7 to the *National Park Estate (Southern Region Reservations) Act 2000*.

exclusion order means an order under any of the following provisions that excludes an access road from reservation under this Act:

- (a) clause 5 (5) of Schedule 9 to the *Brigalow and Nandewar Community Conservation Area Act 2005*,
- (b) clause 7 (5) of Schedule 7 to the *Forestry and National Park Estate Act 1998*,
- (c) clause 5 (7) of Schedule 7 to the *National Park Estate (Lower Hunter Region Reservations) Act 2006*,
- (d) clause 7 (6) of Schedule 8 to the *National Park Estate (Reservations) Act 2002*,

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- (e) clause 6 (7) of Schedule 5 to the *National Park Estate (Reservations) Act 2003*,
- (f) clause 5 (7) of Schedule 6 to the *National Park Estate (Reservations) Act 2005*,
- (g) clause 8 (6) of Schedule 7 to the *National Park Estate (Southern Region Reservations) Act 2000*.

188E Continuing effect of notices, directions and conditions of licences and permits

- (1) A notice or direction given, or a condition of a licence or permit imposed, under this Act or the regulations that specifies a time by which, or period within which, the notice, direction or condition must be complied with continues to have effect until the notice, direction or condition is complied with even though the time has passed or the period has expired.
- (2) A notice or direction, or a condition of a licence or permit, that does not specify a time by which, or period within which, the notice, direction or condition must be complied with continues to have effect until the notice, direction or condition is complied with.
- (3) This section does not apply to the extent that any requirement under a notice or direction, or a condition of a licence or permit, is revoked.
- (4) Nothing in this section affects the enforcement of a notice or direction or a condition of a licence or permit.

[106] Part 15

Insert after Part 14:

Part 15 Criminal and other proceedings

Division 1 Proceedings for offences generally

190 Time within which proceedings may be commenced

- (1) Proceedings for an offence under this Act or the regulations may be commenced:
 - (a) within but not later than 2 years after the date on which the offence is alleged to have been committed, or
 - (b) within but not later than 2 years after the date on which evidence of the alleged offence first came to the attention of any authorised officer.

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- (2) If subsection (1) (b) is relied on for the purpose of commencing proceedings for an offence, the court attendance notice, summons or application must contain particulars of the date on which evidence of the offence first came to the attention of any authorised officer and need not contain particulars of the date on which the offence was committed. The date on which evidence first came to the attention of any authorised officer is the date specified in the court attendance notice, summons or application, unless the contrary is established.
- (3) This section applies despite anything in the *Criminal Procedure Act 1986* or any other Act.
- (4) In this section, *evidence* of an offence means evidence of any act or omission constituting the offence.

Division 2 General provisions

194 Sentencing—matters to be considered in imposing penalty

- (1) In imposing a penalty for an offence under this Act or the regulations, the court is to take into consideration the following (so far as they are relevant):
 - (a) the extent of the harm caused or likely to be caused by the commission of the offence,
 - (b) the significance of the reserved land, Aboriginal object or place, threatened species or endangered species, population or ecological community (if any) that was harmed, or likely to be harmed, by the commission of the offence,
 - (c) the practical measures that may be taken to prevent, control, abate or mitigate that harm,
 - (d) the extent to which the person who committed the offence could reasonably have foreseen the harm caused or likely to be caused by the commission of the offence,
 - (e) the extent to which the person who committed the offence had control over the causes that gave rise to the offence,
 - (f) in relation to an offence concerning an Aboriginal object or place or an Aboriginal area—the views of Aboriginal persons who have an association with the object, place or area concerned,
 - (g) whether, in committing the offence, the person was complying with an order or direction from an employer or supervising employee,

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- (h) whether the offence was committed for commercial gain.
- (2) The court may take into consideration other matters that it considers relevant.

195 Continuing offences

- (1) A person who is guilty of an offence because the person contravenes a requirement made by or under this Act or the regulations (whether the requirement is imposed by a notice or otherwise) to do or cease to do something (whether or not within a specified period or before a particular time):
 - (a) continues, until the requirement is complied with and despite the fact that any specified period has expired or time has passed, to be liable to comply with the requirement, and
 - (b) is guilty of a continuing offence for each day the contravention continues.
- (2) This section does not apply to an offence if the relevant provision of this Act or the regulations does not provide for a penalty for a continuing offence.
- (3) This section does not apply to the extent that a requirement of a notice is revoked.

196 Onus of proof of reasonable excuse or lawful excuse

In any proceedings under this Act, the onus of proving that a person had a reasonable excuse or lawful excuse (as referred to in any provision of this Act or the regulations) lies with the defendant.

Division 3 Court orders in connection with offences

198 Operation of Division

(1) Application to proved offences

This Division applies where a court finds an offence under this Act or the regulations proved.

(2) Meaning of proved offences

Without limiting the generality of subsection (1), a court finds an offence proved if:

- (a) the court convicts the offender of the offence, or
- (b) the court makes an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999* against the offender in

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relation to the offence (in which case any order under this Division is not a punishment for the purposes of that section).

(3) **Definitions**

In this Division:

the court means the court that finds the offence proved.

the offender means the person who is found to have committed the offence.

199 Orders generally

(1) **Orders may be made**

One or more orders may be made under this Division against the offender.

(2) **Orders are additional**

Orders may be made under this Division in addition to any penalty that may be imposed or any other action that may be taken in relation to the offence.

(3) **Other action not required**

Orders may be made under this Division regardless of whether any penalty is imposed, or other action taken, in relation to the offence.

200 Orders for restoration and prevention

(1) The court may order the offender to take such steps as are specified in the order, within such time as is so specified (or such further time as the court on application may allow):

- (a) to prevent, control, abate or mitigate any harm caused by the commission of the offence, or
- (b) in relation to an offence under Part 8A involving damage to any critical habitat or habitat of a threatened species, an endangered population or an endangered ecological community—to retire, in accordance with Part 7A of the *Threatened Species Conservation Act 1995*, biodiversity credits of a number and class (if applicable) specified in the order and, if the offender does not hold sufficient biodiversity credits to comply with the direction, to acquire the necessary biodiversity credits for the purpose of retiring them, or
- (c) to make good any resulting damage, or
- (d) to prevent the continuance or recurrence of the offence.

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- (2) The court may order the offender to provide security to the court or to the Director-General for the performance of any obligation imposed under this section.
- (3) An order under subsection (2) must specify:
 - (a) the amount of the security required to be provided, and
 - (b) the kind of security required to be provided, and
 - (c) the manner and form in which the security is to be provided.
- (4) In this section:
 - biodiversity credit* has the same meaning as it has in Part 7A of the *Threatened Species Conservation Act 1995*.
 - harm* has its ordinary meaning.

201 Orders for costs, expenses and compensation at time offence proved

- (1) The court may, if it appears to the court that:
 - (a) a public authority has incurred costs and expenses in connection with:
 - (i) the prevention, control, abatement or mitigation of any harm caused by the commission of the offence, or
 - (ii) making good any resulting damage, or
 - (b) a person (including a public authority) has, by reason of the commission of the offence, suffered loss of or damage to property or has incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage,order the offender to pay to the public authority or person the costs and expenses so incurred, or compensation for the loss or damage so suffered, as the case may be, in such amount as is fixed by the order.
- (2) An order made by the Land and Environment Court under subsection (1) is enforceable as if it were an order made by the Court in Class 4 proceedings under the *Land and Environment Court Act 1979*.
- (3) The Local Court may not make an order under subsection (1) for the payment of an amount that exceeds the amount for which an order may be made by the court when exercising jurisdiction under the *Civil Procedure Act 2005*. An order made by the court

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is enforceable as if it were an order made by the court when exercising jurisdiction under that Act.

202 Recovery of costs, expenses and compensation after offence proved

- (1) If, after the court finds the offence proved:
 - (a) a public authority has incurred costs and expenses in connection with:
 - (i) the prevention, control, abatement or mitigation of any harm caused by the commission of the offence, or
 - (ii) making good any resulting damage, or
 - (b) a person (including a public authority) has, by reason of the commission of the offence, suffered loss of or damage to property or has incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage,
the person or public authority may recover from the offender the costs and expenses incurred or the amount of the loss or damage in the Land and Environment Court.
- (2) The amount of any such costs and expenses (but not the amount of any such loss or damage) may be recovered as a debt.

203 Orders regarding costs and expenses of investigation

- (1) The court may, if it appears to the court that an officer of the Service has reasonably incurred costs and expenses during the investigation of the offence, order the offender to pay to the Department of Environment and Climate Change or the Nature Conservation Trust the costs and expenses so incurred in such amount as is fixed by the order.
- (2) An order made by the Land and Environment Court under subsection (1) is enforceable as if it were an order made by the Court in Class 4 proceedings under the *Land and Environment Court Act 1979*. An order made by the Local Court under subsection (1) is enforceable as if it were an order made by the court when exercising jurisdiction under the *Civil Procedure Act 2005*.
- (3) In this section:
costs and expenses, in relation to the investigation of an offence, means the costs and expenses:

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- (a) in taking any sample or conducting any inspection, examination, test, measurement or analysis, or
- (b) of transporting, storing or disposing of evidence, during the investigation of the offence.

Nature Conservation Trust means the Nature Conservation Trust of New South Wales constituted by the *Nature Conservation Trust Act 2001*.

204 Orders regarding monetary benefits

- (1) The court may order the offender to pay, as part of the penalty for committing the offence, an additional penalty of an amount the court is satisfied, on the balance of probabilities, represents the amount of any monetary benefits acquired by the offender, or accrued or accruing to the offender, as a result of the commission of the offence.
- (2) The amount of an additional penalty for an offence is not subject to any maximum amount of penalty provided elsewhere by or under this Act.
- (3) In this section:
 - monetary benefits* means monetary, financial or economic benefits.
 - the court* does not include the Local Court.

205 Additional orders

(1) Orders

The court may do any one or more of the following:

- (a) order the offender to take specified action to publicise the offence (including the circumstances of the offence) and its environmental and other consequences and any other orders made against the person,
- (b) order the offender to take specified action to notify specified persons or classes of persons of the offence (including the circumstances of the offence) and its consequences and of any orders made against the person (including, for example, the publication in an annual report or any other notice to shareholders of a company or the notification of persons aggrieved or affected by the offender's conduct),
- (c) order the offender to carry out a specified project for the restoration or enhancement of the environment in a public place or for the public benefit,

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- (d) order the offender to pay a specified amount to the Environmental Trust established under the *Environmental Trust Act 1998*, or a specified organisation, for the purposes of a specified project for the restoration or enhancement of the environment or for general environmental purposes,
- (e) order the offender to attend, or to cause an employee or employees or a contractor or contractors of the offender to attend, a training or other course specified by the court,
- (f) order the offender to establish, for employees or contractors of the offender, a training course of a kind specified by the court.

The Local Court is not authorised to make an order referred to in paragraph (c) or (d).

(2) **Machinery**

The court may, in an order under this section, fix a period for compliance and impose any other requirements the court considers necessary or expedient for enforcement of the order.

(3) **Failure to publicise or notify**

If the offender fails to comply with an order under subsection (1) (a) or (b), the prosecutor or a person authorised by the prosecutor may take action to carry out the order as far as may be practicable, including action to publicise or notify:

- (a) the original contravention, its consequences, and any other penalties imposed on the offender, and
- (b) the failure to comply with the order.

(4) **Cost of publicising or notifying**

The reasonable cost of taking action referred to in subsection (3) is recoverable by the prosecutor or person taking the action, in a court of competent jurisdiction, as a debt from the offender.

206 Offence

A person who fails to comply with an order under this Division (except an order under section 201 or 203) is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—1,100 penalty units for each day the offence continues, or
- (b) in the case of an individual—550 penalty units for each day the offence continues.

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National Parks and Wildlife Amendment Bill 2009

Schedule 1 Amendment of National Parks and Wildlife Act 1974 No 80

[107] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1) of the Schedule:

National Parks and Wildlife Amendment Act 2009

[108] Schedule 3, clause 39

Omit the clause.

[109] Schedule 3

Insert at the end of the Schedule with appropriate Part and clause numbers:

**Part Provisions consequent on enactment of
National Parks and Wildlife Amendment
Act 2009**

Definition

In this Part, *amending Act* means the *National Parks and Wildlife Amendment Act 2009*.

Aboriginal objects and Aboriginal places: permits under section 87 and consents under section 90

- (1) A permit granted under section 87 (1) and in force immediately before the repeal of that subsection by the amending Act is taken to be an Aboriginal heritage impact permit issued under section 90 and is subject to the same terms and conditions on which it was granted.
- (2) A consent granted under section 90 (2), and in force immediately before the repeal of that subsection by the amending Act is taken to be an Aboriginal heritage impact permit issued under section 90 and is subject to the same terms and conditions on which it was granted.

Saving of acts by certain authorised officers

- (1) Any certificate purporting to be signed by a prescribed officer of the Service under section 181 (5) and in force immediately before the amendment of that subsection by the amending Act continues to be prima facie evidence of the matter or matters certified in it.
- (2) Any certificate purporting to be signed by an officer of the Service authorised by the Director-General under section 181 (7) and in force immediately before the amendment of that subsection by the amending Act continues to be prima facie evidence of the matter or matters certified in it.

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Amendment of National Parks and Wildlife Act 1974 No 80

Schedule 1

- (3) A copy of any declaration or map of critical habitat published in the Gazette, being a copy purporting to be certified by an officer of the Service authorised by the Director-General under section 181 (9) before the amendment of that subsection by the amending Act, as being a true copy of such a declaration or map, continues to be admissible in any legal proceedings and is evidence of the matter or matters contained in the declaration or map.

[110] Schedule 8, heading and source reference

Omit the heading and source reference to the Schedule. Insert instead:

Schedule 8 Regional advisory committees

(Section 24 (2) and (4))

[111] Schedule 8, clause 1A

Insert before clause 1:

1A Application

This Schedule applies to regional advisory committees constituted under section 24 (2) of this Act.

[112] Schedule 9 The Aboriginal Cultural Heritage Advisory Committee

Omit clause 1 (1) and (2). Insert instead:

- (1) The Aboriginal Cultural Heritage Advisory Committee is to consist of:
- (a) 12 members appointed by the Minister in accordance with this clause, and
 - (b) an ex-officio member, being the Director-General (or his or her delegate).
- (1A) The ex-officio member is a non-voting member of the Committee.
- (2) The appointed members of the Committee are to consist of:
- (a) one member nominated by the New South Wales Aboriginal Land Council, and
 - (b) one member nominated by the Heritage Council of New South Wales, and
 - (c) 10 other members appointed from the following:
 - (i) nominees of Aboriginal elders groups,
 - (ii) registered native title claimants,

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- (iii) Aboriginal owners listed on the register under the *Aboriginal Land Rights Act 1983*.

[113] Schedule 9, clause 1 (4) (c)

Insert at the end of clause 1 (4) (b):

, and

- (c) all the appointed members of the Committee are Aboriginal persons.

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Amendment of Threatened Species Conservation Act 1995 No 101

Schedule 2

Schedule 2 Amendment of Threatened Species Conservation Act 1995 No 101

[1] Section 4 Definitions

Omit the definition of *Department* from section 4 (1). Insert instead:

Department means the Department of Environment and Climate Change.

[2] Section 95 Determination by Director-General as to significant effect

Insert at the end of the section (after the note):

- (3) A certificate under subsection (2) may be issued unconditionally or subject to conditions.

Note. Section 133 (4) of the *National Parks and Wildlife Act 1974* provides that the holder of such a certificate must not contravene or fail to comply with any condition or restriction attached to the certificate.

[3] Section 114 Director-General may make stop work order

Insert after section 114 (5):

- (6) A person must not contravene an order under this section.
Maximum penalty (subsection (6)):
- (a) in the case of a corporation—10,000 penalty units and, in the case of a continuing offence, a further penalty of 1,000 penalty units for each day the offence continues, or
- (b) in the case of an individual—1,000 penalty units and, in the case of a continuing offence, a further penalty of 100 penalty units for each day the offence continues.

[4] Section 127F General provisions relating to biobanking agreements

Insert “or Crown land dedicated for a public purpose under that Act,” after “*Crown Lands Act 1989*,” in section 127F (5).

[5] Section 127ZM Concurrence of Director-General of Department of Planning required in certain cases

Omit “Department of Environment and Conservation” wherever occurring in section 127ZM (3), (5) and (6).

Insert instead “Department of Environment and Climate Change”.

[6] Section 135A

Insert after section 135:

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Schedule 2 Amendment of Threatened Species Conservation Act 1995 No 101

135A Exclusion of personal liability

- (1) Any matter or thing done or omitted to be done by a member of the Scientific Committee, or by any person acting under the direction of the Scientific Committee, does not, if the matter or thing was done or omitted to be done in good faith for the purpose of exercising functions under this Act, subject that member or person personally to any action, liability, claim or demand.
- (2) However, any such liability attaches instead to the Crown.

[7] Part 9B

Insert after Part 9A:

Part 9B Criminal and other proceedings

Division 1 Proceedings for offences generally

Division 2 Restraining orders

Division 3 Court orders in connection with offences

141G Operation of Division

(1) **Application to proved offences**

This Division applies where a court finds an offence under this Act or the regulations proved.

(2) **Meaning of proved offences**

Without limiting the generality of subsection (1), a court finds an offence proved if:

- (a) the court convicts the offender of the offence, or
- (b) the court makes an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999* against the offender in relation to the offence (in which case any order under this Division is not a punishment for the purposes of that section).

(3) **Definitions**

In this Division:

the court means the court that finds the offence proved.

the offender means the person who is found to have committed the offence.

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Schedule 2

141H Orders generally

(1) Orders may be made

One or more orders may be made under this Division against the offender.

(2) Orders are additional

Orders may be made under this Division in addition to any penalty that may be imposed or any other action that may be taken in relation to the offence.

(3) Other action not required

Orders may be made under this Division regardless of whether any penalty is imposed, or other action taken, in relation to the offence.

141I Orders for restoration and prevention

(1) The court may order the offender to take such steps as are specified in the order, within such time as is so specified (or such further time as the court on application may allow):

- (a)** to prevent, control, abate or mitigate any harm caused by the commission of the offence, or
- (b)** to retire, in accordance with Part 7A, biodiversity credits of a number and class (if applicable) specified in the order and, if the offender does not hold sufficient biodiversity credits to comply with the direction, to acquire the necessary biodiversity credits for the purpose of retiring them, or
- (c)** to make good any resulting damage, or
- (d)** to prevent the continuance or recurrence of the offence.

(2) The court may order the offender to provide security to the court or to the Director-General for the performance of any obligation imposed under this section.

(3) An order under subsection (2) must specify:

- (a)** the amount of the security required to be provided, and
- (b)** the kind of security required to be provided, and
- (c)** the manner and form in which the security is to be provided.

141J Orders for costs, expenses and compensation at time offence proved

(1) The court may, if it appears to the court that:

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- (a) a public authority has incurred costs and expenses in connection with:
 - (i) the prevention, control, abatement or mitigation of any harm caused by the commission of the offence, or
 - (ii) making good any resulting damage, or
- (b) a person (including a public authority) has, by reason of the commission of the offence, suffered loss of or damage to property or has incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage,
order the offender to pay to the public authority or person the costs and expenses so incurred, or compensation for the loss or damage so suffered, as the case may be, in such amount as is fixed by the order.
- (2) An order made by the Land and Environment Court under subsection (1) is enforceable as if it were an order made by the Court in Class 4 proceedings under the *Land and Environment Court Act 1979*.
- (3) The Local Court may not make an order under subsection (1) for the payment of an amount that exceeds the amount for which an order may be made by the court when exercising jurisdiction under the *Civil Procedure Act 2005*. An order made by the court is enforceable as if it were an order made by the court when exercising jurisdiction under that Act.

141K Recovery of costs, expenses and compensation after offence proved

- (1) If, after the court finds the offence proved:
 - (a) a public authority has incurred costs and expenses in connection with:
 - (i) the prevention, control, abatement or mitigation of any harm caused by the commission of the offence, or
 - (ii) making good any resulting damage, or
 - (b) a person (including a public authority) has, by reason of the commission of the offence, suffered loss of or damage to property or has incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage,

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the person or public authority may recover from the offender the costs and expenses incurred or the amount of the loss or damage in the Land and Environment Court.

- (2) The amount of any such costs and expenses (but not the amount of any such loss or damage) may be recovered as a debt.

141L Orders regarding costs and expenses of investigation

- (1) The court may, if it appears to the court that the Director-General or a member of staff of the Department has reasonably incurred costs and expenses during the investigation of the offence, order the offender to pay to the Department or the Nature Conservation Trust the costs and expenses so incurred in such amount as is fixed by the order.
- (2) An order made by the Land and Environment Court under subsection (1) is enforceable as if it were an order made by the Court in Class 4 proceedings under the *Land and Environment Court Act 1979*. An order made by the Local Court under subsection (1) is enforceable as if it were an order made by the court when exercising jurisdiction under the *Civil Procedure Act 2005*.
- (3) In this section:
- costs and expenses*, in relation to the investigation of an offence, means the costs and expenses:
- (a) in taking any sample or conducting any inspection, test, measurement or analysis, or
- (b) of transporting, storing or disposing of evidence, during the investigation of the offence.

Nature Conservation Trust means the Nature Conservation Trust of New South Wales constituted by the *Nature Conservation Trust Act 2001*.

141M Orders regarding monetary benefits

- (1) The court may order the offender to pay, as part of the penalty for committing the offence, an additional penalty of an amount the court is satisfied, on the balance of probabilities, represents the amount of any monetary benefits acquired by the offender, or accrued or accruing to the offender, as a result of the commission of the offence.
- (2) The amount of an additional penalty for an offence is not subject to any maximum amount of penalty provided elsewhere by or under this Act.

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- (3) In this section:
monetary benefits means monetary, financial or economic benefits.
the court does not include the Local Court.

141N Additional orders

(1) **Orders**

The court may do any one or more of the following:

- (a) order the offender to take specified action to publicise the offence (including the circumstances of the offence) and its consequences and any other orders made against the person,
- (b) order the offender to take specified action to notify specified persons or classes of persons of the offence (including the circumstances of the offence) and its consequences and of any orders made against the person (including, for example, the publication in an annual report or any other notice to shareholders of a company or the notification of persons aggrieved or affected by the offender's conduct),
- (c) order the offender to carry out a specified project for the restoration or enhancement of the environment in a public place or for the public benefit.

The Local Court is not authorised to make an order referred to in paragraph (c).

(2) **Machinery**

The court may, in an order under this section, fix a period for compliance and impose any other requirements the court considers necessary or expedient for enforcement of the order.

(3) **Failure to publicise or notify**

If the offender fails to comply with an order under subsection (1) (a) or (b), the prosecutor or a person authorised by the prosecutor may take action to carry out the order as far as may be practicable, including action to publicise or notify:

- (a) the original contravention, its consequences, and any other penalties imposed on the offender, and
- (b) the failure to comply with the order.

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(4) **Cost of publicising or notifying**

The reasonable cost of taking action referred to in subsection (3) is recoverable by the prosecutor or person taking the action, in a court of competent jurisdiction, as a debt from the offender.

141O Offence

A person who fails to comply with an order under this Division (except an order under section 141J or 141L) is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—1,100 penalty units for each day the offence continues, or
- (b) in the case of an individual—550 penalty units for each day the offence continues.

[8] Section 147 Restraint of breaches of Act or regulations

Insert “or the regulations” after “this Act” in section 147 (1).

[9] Section 147 (4)

Insert after section 147 (3):

- (4) In this section, *breach* includes a threatened or apprehended breach.

[10] Section 147 (as amended by items [8] and [9])

Renumber as section 141F and insert in Division 2 of Part 9B (as inserted by item [7]).

[11] Section 150 Regulations

Omit “50 penalty units” from section 150 (2).

Insert instead “200 penalty units”.

[12] Section 151 Proceedings for offences

Renumber as section 141E and insert into Division 1 of Part 9B (as inserted by item [7]).

[13] Sections 152–154B

Insert after section 151:

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152 Offences by corporations

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision, unless the person satisfies the court that:
 - (a) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or
 - (b) the person, if in such a position, used all due diligence to prevent the contravention by the corporation.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or has been convicted under the provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation under this Act or the regulations.
- (4) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a corporation (while acting in his or her capacity as such) had, at any particular time, a particular state of mind, is evidence that the corporation had that state of mind.
- (5) In this section, the *state of mind* of a person includes:
 - (a) the knowledge, intention, opinion, belief or purpose of the person, and
 - (b) the person's reasons for the intention, opinion, belief or purpose.

153 Time within which proceedings may be commenced

- (1) Proceedings for an offence under this Act or the regulations may be commenced:
 - (a) within but not later than 2 years after the date on which the offence is alleged to have been committed, or
 - (b) within but not later than 2 years after the date on which evidence of the alleged offence first came to the attention of any authorised officer (within the meaning of the NPW Act).
- (2) If subsection (1) (b) is relied on for the purpose of commencing proceedings for an offence, the court attendance notice, summons

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or application must contain particulars of the date on which evidence of the offence first came to the attention of an authorised officer and need not contain particulars of the date on which the offence was committed. The date on which evidence first came to the attention of an authorised officer is the date specified in the court attendance notice, summons or application, unless the contrary is established.

- (3) This section applies despite anything in the *Criminal Procedure Act 1986* or any other Act.
- (4) In this section, **evidence** of an offence means evidence of any act or omission constituting the offence.

154 Ancillary offences

A person who:

- (a) aids, abets, counsels or procures another person to commit, or
- (b) attempts to commit, or
- (c) conspires to commit,

an offence under another provision of this Act or the regulations is guilty of an offence under that other provision and is liable, on conviction, to the same penalty applicable to an offence under that other provision.

154A Evidentiary provisions etc

- (1) An allegation, in a court attendance notice, summons or application in respect of an offence under this Act or the regulations, that an animal or plant is a member of a species, population or ecological community specified in that court attendance notice, summons or application is sufficient proof of the matter alleged unless the defendant proves to the contrary.
- (2) In any prosecution under this Act, any allegation in any court attendance notice, summons or application that any person is unlicensed or acting without permission or authority need not be proved, and that person is taken to be unlicensed or acting without permission or authority, as the case may be, until the contrary is proved by the production of a licence, permit or authority or otherwise.
- (3) In any proceedings for an offence under this Act or the regulations, a certificate purporting to be signed by the Director-General stating that:

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- (a) any person was or was not, on a date or within a period specified, the holder of any specified licence, certificate, consent, authority or other thing issued or granted by instrument in writing under this Act, or
 - (b) on a date or within a period so specified, any such licence, certificate, consent, authority or other thing:
 - (i) related to any specified premises, or
 - (ii) was subject to any specified conditions or restrictions, or
 - (iii) was, to any specified extent, unconditional or unrestricted, or
 - (c) an amount specified in the certificate is the amount of any charge, cost or expense incurred as specified by reason of the offence, or
 - (d) an amount specified in the certificate is the amount of any loss or damage sustained, as specified, as a result of the offence, or
 - (e) at a time, or during a period, specified in the certificate:
 - (i) a conservation agreement relating to land so specified was in force, and
 - (ii) the agreement contained the terms specified in the certificate,
- is evidence of the matter or matters so certified.
- (4) A copy of any declaration or map of critical habitat published in the Gazette, being a copy purporting to be certified by the Director-General, as being a true copy of the declaration or map published, is admissible in any proceedings and is evidence of the matter or matters contained in the declaration or map.

154B Onus of proof of reasonable excuse or lawful excuse

In any proceedings under this Act, the onus of proving that a person had a reasonable excuse or lawful excuse (as referred to in any provision of this Act or the regulations) lies with the defendant.

[14] Schedule 7 Savings, transitional and other provisions

Insert at the end of clause 1 (1) of the Schedule:

National Parks and Wildlife Amendment Act 2009, to the extent that it amends this Act

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Amendment of other Acts

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Schedule 3 Amendment of other Acts

3.1 Dividing Fences Act 1991 No 72

Section 25 Application of Act to Crown and local authorities etc

Insert at the end of section 25 (1) (d):

, or

- (e) an Aboriginal Land Council with respect to land reserved under Part 4A of the *National Parks and Wildlife Act 1974*.

3.2 Environmental Planning and Assessment Act 1979 No 203

[1] Section 75U Approvals etc legislation that does not apply

Omit section 75U (1) (d). Insert instead:

- (d) an Aboriginal heritage impact permit under section 90 of the *National Parks and Wildlife Act 1974*,

[2] Section 75U (3)

Insert “directions,” after “The following”.

[3] Section 75U (3) (b1)

Insert after section 75U (3) (b):

- (b1) a remediation direction under Division 3 (Remediation directions) of Part 6A of the *National Parks and Wildlife Act 1974*,

[4] Section 91 What is “integrated development”?

Omit the matter relating to the *National Parks and Wildlife Act 1974* from section 91 (1).

Insert instead:

National Parks and Wildlife Act 1974 s 90 grant of Aboriginal heritage impact permit

[5] Section 91 (2)

Omit “the consent required under section 90”.

Insert instead “an Aboriginal heritage impact permit required under Part 6”.

[6] Section 91 (2) (a)

Omit “a relic referred to in that section”.

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Insert instead “an Aboriginal object referred to in that Part”.

3.3 Forestry and National Park Estate Act 1998 No 163

Section 37 Application of National Parks and Wildlife Act 1974 and Threatened Species Conservation Act 1995

Omit “relic” from section 37 (2). Insert instead “object”.

3.4 Licensing and Registration (Uniform Procedures) Act 2002 No 28

[1] Schedule 1 Licences to which Part 2 of Act applies

Omit “section 133A (1) (l), aviary registration certificate” from the matter relating to the *National Parks and Wildlife Act 1974*.

[2] Schedule 4 Amendment of other Acts and statutory rules

Omit proposed section 133A (1) (l) to be inserted by Schedule 4.9.

3.5 Local Government Act 1993 No 30

Section 556 What land is exempt from all rates, other than water supply special rates and sewerage special rates?

Insert after section 556 (1) (r):

- (s) land that is vested in an Aboriginal Land Council and that is reserved under Part 4A of the *National Parks and Wildlife Act 1974*.

3.6 Lord Howe Island Act 1953 No 39

Section 38 Regulations

Omit “relic” wherever occurring in section 38 (2A) (i) and (j).

Insert instead “Aboriginal object”.

3.7 National Park Estate (Reservations) Act 2002 No 137

[1] Section 11 Adjustment of description of land transferred to national park estate

Insert “(other than land reserved or dedicated under the *National Parks and Wildlife Act 1974* or the *Forestry Act 1916*)” after “Crown land” in section 11 (4) (c).

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[2] Section 11 (4) (c1)

Insert after section 11 (4) (c):

- (c1) to the extent that the notice applies to a Crown road—the Minister administering the provisions of the *Roads Act 1993* relating to Crown roads, and

[3] Section 11 (10)

Insert in alphabetical order:

Crown road, public road or classified road means a Crown road, public road or classified road, respectively, within the meaning of the *Roads Act 1993*.

[4] Section 11 (10), definition of “public road or classified road”

Omit the definition.

[5] Section 11 (11)

Insert after section 11 (10):

- (11) Anything done before the commencement of the amendments to this section by the *National Parks and Wildlife Amendment Act 2009* that would have been validly done had those amendments been in force when it was done is validated.

3.8 National Park Estate (Reservations) Act 2005 No 84

[1] Section 10 Adjustment of description of land transferred to national park estate

Insert “(other than land reserved or dedicated under the *National Parks and Wildlife Act 1974* or the *Forestry Act 1916*)” after “Schedule 4” in section 10 (4) (c).

[2] Section 10 (11)

Insert after section 10 (10):

- (11) Anything done before the commencement of the amendment to subsection (4) (c) by the *National Parks and Wildlife Amendment Act 2009* that would have been validly done had that amendment been in force when it was done is validated.

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Schedule 3 Amendment of other Acts

3.9 National Park Estate (Southern Region Reservations) Act 2000 No 103

[1] Section 10 Adjustment of description of land transferred to national park estate

Insert “(other than land reserved or dedicated under the *National Parks and Wildlife Act 1974* or the *Forestry Act 1916*)” after “any Crown land” in section 10 (4) (c).

[2] Section 10 (4) (c1)

Insert after section 10 (4) (c):

- (c1) to the extent that the notice applies to a Crown road—the Minister administering the provisions of the *Roads Act 1993* relating to Crown roads, and

[3] Section 10 (10) (a)

Insert “*Crown road*,” before “*public road*”.

[4] Section 10 (10) (a)

Insert “Crown road,” after “means a”.

[5] Section 10 (11)

Insert after section 10 (10):

- (11) Anything done before the commencement of the amendments to this section by the *National Parks and Wildlife Amendment Act 2009* that would have been validly done had those amendments been in force when it was done is validated.

[6] Schedule 7 Land transfers—ancillary and special provisions

Insert after clause 8 (3):

- (3A) For the avoidance of doubt, subclause (3) does not apply to land referred to in clause 1 (1). This subclause is taken to have commenced on the date of commencement of clause 1.

[7] Schedule 7, clause 8 (11)–(13)

Insert after clause 8 (10):

- (11) Despite subclause (3), every right of way over an access road to which this clause applies that was duly granted under section 20A of the *Forestry Act 1916* for the benefit of a private land holding and was in force immediately before the commencement of this Act (other than the rights of way referred to in subclause (13)) is

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taken to have continued in force as if it were granted under section 149 or 153 of the *National Parks and Wildlife Act 1974* (as the case requires). Such as a right of way may from time to time be revoked or varied.

- (12) The Registrar-General must, on application by the Director-General, make a recording in the Register kept under the *Real Property Act 1900* to signify that:
- (a) the land specified in the application is subject to a right of way that is taken to have continued under subclause (11), or
 - (b) that right of way has been revoked or varied under that subclause.
- (13) Subclause (11) does not apply to the following rights of way:
- (a) a right of way that, before the commencement of this clause, has been replaced by a similar right of way granted in accordance with subclause (5),
 - (b) a right of way over land that, before the commencement of this clause, has been transferred from the Minister administering the *National Parks and Wildlife Act 1974* to another person.

3.10 Native Title (New South Wales) Act 1994 No 45

Section 104A Saving of native title rights and interests with respect to national parks and other reservations, dedications or declarations

Insert after section 104A (1) (c):

- (c1) a notice under section 188C of the *National Parks and Wildlife Act 1974* that adjusts the boundary of land reserved under that Act, or acquired under Part 11 of that Act, that adjoins a public road,
- (c2) an order under section 188D (5) of the *National Parks and Wildlife Act 1974* that operates to reserve land under that Act or vest land for the purposes of Part 11 of that Act,

3.11 Plantations and Reafforestation Act 1999 No 97

Section 55 Orders and instruments for protecting Aboriginal objects and places

Omit “relic”. Insert instead “Aboriginal object”.

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3.12 State Records Act 1998 No 17

Section 4

Omit the section. Insert instead:

4 Aboriginal objects excluded from operation of Act

- (1) This Act does not apply to an Aboriginal object and an Aboriginal object is not a record for the purposes of this Act.
- (2) In this section, *Aboriginal object* has the same meaning as in the *National Parks and Wildlife Act 1974*.

3.13 Wilderness Act 1987 No 196

[1] The whole Act (other than section 2)

Omit “Director” wherever occurring. Insert instead “Director-General”.

[2] Section 2 Definitions

Omit the definition of *Director* from section 2 (1). Insert instead:

Director-General means the Director-General of the Department of Environment and Climate Change.

[3] Section 22 Delegation

Omit “Director’s” from section 22 (2) (a).

Insert instead “Director-General’s”.