

South Australia

Biodiversity Act 2025

An Act to provide for the conservation, restoration and enhancement of biodiversity in the State for the benefit of current and future generations, to make related amendments to various Acts, to repeal the *Native Vegetation Act 1991* and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Biodiversity Act 2025*.

2—Commencement

- (1) This Act comes into operation on a day to be fixed by proclamation.
- (2) Section 27(6) of the *Legislation Interpretation Act 2021* does not apply to this Act.

3—Interpretation

- (1) In this Act—

ABC means the Aboriginal Biodiversity Committee established under Part 3 Division 2 Subdivision 3;

Aboriginal person—see subsection (2);

accredited third party provider—see section 61(4);

action plan—see section 79;

Adelaide Dolphin Sanctuary has the same meaning as in the *Adelaide Dolphin Sanctuary Act 2005*;

animal includes any species of the animal kingdom, other than a human being, at any life stage from birth, or hatching from an egg, to death;

animal product means—

- (a) a dead animal; or
- (b) the whole or any part of—
 - (i) the flesh or internal organs of an animal; or
 - (ii) the feathers, wool, hair, skin or hide of an animal; or
 - (iii) the bones, horns or hooves of an animal; or
 - (iv) any other part of an animal brought within the ambit of this definition by the regulations,

but does not include a part of an animal excluded from the ambit of this definition by the regulations;

aquatic plant has the same meaning as in the *Fisheries Management Act 2007*;

authorised officer—see section 100;

bicycle has the same meaning as in the *Road Traffic Act 1961*;

biodiversity or **biological diversity** means the variety of life forms represented by plants, animals and other organisms and micro-organisms, the genes that they contain and the ecosystems and ecosystem processes of which they form a part;

Biodiversity Administration Fund means the Biodiversity Administration Fund established under Part 3 Division 3 Subdivision 3;

biodiversity agreement means—

- (a) a biodiversity agreement under section 98; or
- (b) a heritage agreement or management agreement entered into under a repealed Act; or
- (c) an agreement of a class prescribed by the regulations for the purposes of this definition;

Biodiversity Conservation Fund means the Biodiversity Conservation Fund established under Part 3 Division 3 Subdivision 2;

biodiversity management plan—see section 176;

biodiversity policy—see section 175;

Biodiversity Restoration Fund means the Biodiversity Restoration Fund established under Part 3 Division 3 Subdivision 1;

breach of this Act means a contravention of a provision of this Act or the regulations and includes a contravention of a term of a biodiversity agreement or a biodiversity management plan;

building includes a structure that is fixed to land;

Building Code has the same meaning as in the *Planning, Development and Infrastructure Act 2016*;

CAC means the Clearance Assessment Committee established under Part 3 Division 2 Subdivision 2;

clearance, in relation to a native plant, means causing or permitting the death or destruction of, or substantial damage to, the native plant;

compliance order means a compliance order under section 111;

Council means the Biodiversity Council established under Part 3 Division 2 Subdivision 1;

Council guidelines means guidelines adopted by the Council under section 174;

Country includes the lands, waterways, seas and all living things to which Aboriginal people are connected through tangible or intangible cultural heritage, including language, knowledge, cultural practice and responsibility;

craft includes—

- (a) a glider or balloon capable of carrying a person; and
- (b) a drone;

critical habitat means habitat declared to be critical habitat in accordance with section 84;

critical habitat declaration decision—see section 84(4);

critical habitat features—see section 84(3)(a);

Culturally Significant Biodiversity Entity means a native species or ecological community to which some or all Aboriginal persons attribute cultural value and which is critical to their relationship with, and adaptation to, Country that is—

- (a) identified by the relevant Aboriginal persons as a Culturally Significant Biodiversity Entity in accordance with the biodiversity policy relating to the identification, approval and management of Culturally Significant Biodiversity Entities; and
- (b) approved by the Minister as a Culturally Significant Biodiversity Entity in accordance with the biodiversity policy referred to in paragraph (a);

dealing with, a native plant, protected animal, protected animal product or protected egg, means—

- (a) selling, giving away or otherwise disposing of a native plant, protected animal, protected animal product or protected egg; or
- (b) importing a native plant, protected animal, protected animal product or protected egg from a place outside the State to a place within the State; or
- (c) exporting a native plant, protected animal, protected animal product or protected egg from a place within the State to a place outside the State;

Department means the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of this Act;

designated area means any of the following:

- (a) a reserve;
- (b) a wilderness protection area;
- (c) a wilderness protection zone;
- (d) a marine park;
- (e) a sanctuary or other conservation area under Part 7 Division 1;
- (f) land that is subject to a biodiversity agreement;
- (g) any other land prescribed by the regulations for the purposes of this definition;

designated list means—

- (a) the threatened species list; or
- (b) the threatened ecological communities list; or
- (c) an ecological entities list established and maintained under section 72;

ecological community means an association of co-occurring native species that meets the criteria prescribed by the regulations for the purposes of this definition;

ecological entity means a spatially delineated level of biological organisation that meets the criteria prescribed by the regulations for the purposes of this definition;

ecosystem means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit;

egg includes any part of an egg or egg shell;

endemic, in relation to a native species or ecological community, means a native species or ecological community that is native, and restricted, to a particular geographical region;

environmental benefit credit—see section 59(1);

ERD Court means the Environment, Resources and Development Court established under the *Environment, Resources and Development Court Act 1993*;

export, in relation to a native plant, protected animal, protected animal product or protected egg, includes to remove the native plant, protected animal, protected animal product or protected egg (as the case may be) from the State for any reason;

farming a protected animal means—

(a) to—

- (i) keep a protected animal or protected egg; or
- (ii) slaughter or destroy in any other manner a protected animal in captivity,

for the purposes of producing an animal product of the animal; or

(b) to—

- (i) keep a protected animal or protected egg; or
- (ii) sell a protected animal or protected egg; or
- (iii) export a protected animal or protected egg,

for the purposes of selling live animals or protected eggs to another person who is permitted to undertake the activities referred to in paragraph (a) in respect of animals of the same species;

firearm has the same meaning as in the *Firearms Act 2015*;

fish has the same meaning as in the *Fisheries Management Act 2007*;

forest reserve has the same meaning as in the *Forestry Act 1950*;

game reserve has the same meaning as in the *National Parks Act 1972*;

GRO means the General Registry Office at Adelaide;

harvesting a protected animal means—

- (a) to kill the protected animal in the wild; or
- (b) to capture the protected animal from the wild and then kill it,

in order to sell an animal product of the animal or to use it for any other purpose;

hunting means taking any mammal or bird that is not a protected animal and has not been domesticated or brought into captivity;

illegally taken or acquired—a native plant, protected animal, protected animal product or egg of a protected animal is illegally taken or acquired if it has been taken or acquired contrary to this Act or any other Act or law of the State, or contrary to the law of another State or a Territory of the Commonwealth;

import, in relation to a native plant, protected animal, protected animal product or protected egg, includes to bring the native plant, protected animal, protected animal product or protected egg (as the case may be) into the State for any reason;

information discovery order means an information discovery order issued under Part 8 Division 2;

infrastructure means—

- (a) the infrastructure, equipment, structures, works and other facilities used in or in connection with the supply of water, electricity, gas or other forms of energy, the provision of telecommunications or the drainage, removal or treatment of stormwater, wastewater or sewage; or
- (b) roads and their supporting structures or works; or
- (c) ports, wharfs, jetties, airstrips, railways, trams and busways,

and includes—

- (d) flood mitigation works; and
- (e) shipping channels; and
- (f) public reservoirs;

interfering with a protected animal means disrupting, disturbing or intervening in the animal's natural behaviour and includes—

- (a) harassing, molesting, chasing or herding the animal; and
- (b) causing or permitting any interference with the animal,

but does not include the catch and release of a fish or any other prescribed act or omission;

keep, in relation to a protected animal or protected egg, means be in possession of, or otherwise exercise control over, the protected animal or protected egg;

key threatening process means a threatening process declared to be a key threatening process in accordance with section 80;

land includes land submerged by water;

landscape management region means a landscape management region established under the *Landscape South Australia Act 2019*;

listed ecological entity means an ecological entity listed in an ecological entities list established and maintained under section 72;

marine park has the same meaning as in the *Marine Parks Act 2007*;

mining Act means—

- (a) the *Energy Resources Act 2000*; or
- (b) the *Hydrogen and Renewable Energy Act 2023*; or
- (c) the *Mining Act 1971*; or
- (d) the *Offshore Minerals Act 2000*; or
- (e) the *Opal Mining Act 1995*; or
- (f) the *Petroleum (Submerged Lands) Act 1982*;

mitigation hierarchy—see subsection (4);

Murray-Darling Basin has the same meaning as in the *Murray-Darling Basin Act 2008*;

native animal means—

- (a) an animal of a species that is indigenous to Australia or was present in Australia before 1400 AD; or
- (b) a migratory mammal, bird or reptile that periodically or occasionally migrates to Australia; or
- (c) an animal of a class brought within the ambit of this definition by the regulations,

but does not include an animal of a class excluded from the ambit of this definition by the regulations;

native plant means—

- (a) a plant of a species that is indigenous to Australia; or
- (b) a plant of a class brought within the ambit of this definition by the regulations,

but does not include a plant of a class excluded from the ambit of this definition by the regulations;

native plant of a relevant kind means—

- (a) a native plant that is indigenous to the State; or
- (b) a native plant that is not indigenous to the State that comprises a regulated tree; or
- (c) a native plant of a class brought within the ambit of this definition by the regulations;

native species means any native animal or native plant;

native title holder has the same meaning as in the *Native Title (South Australia) Act 1994*;

natural resources has the same meaning as in the *Landscape South Australia Act 2019*;

occupier of land means a person who has, or is entitled to, possession or control of the land (other than a mortgagee in possession unless the mortgagee has assumed active management of the land), or who is entitled to use the land as the holder of native title in the land;

owner of land means—

- (a) if the land is unalienated from the Crown—the Crown; or
- (b) if the land is alienated from the Crown by grant in fee simple—the owner (at law or in equity) of the estate in fee simple; or
- (c) if the land is subject to a lease granted under the *Crown Land Management Act 2009* or the *Pastoral Land Management and Conservation Act 1989*—the lessee under that lease; or

- (d) if the land is held from the Crown under an agreement to purchase—the person who has the right to purchase; or
- (e) in relation to dedicated land within the meaning of the *Crown Land Management Act 2009* that has not been granted in fee simple but which is under the care, control and management of a Minister, local council or other body or person—the Minister, council or other body or person,

and includes any other person of a class bought within the ambit of this definition by the regulations;

Pastoral Board means the Pastoral Board established under the *Pastoral Land Management and Conservation Act 1989*;

pastoral land means land comprised in a lease granted under the *Pastoral Land Management and Conservation Act 1989*;

pedestrian has the same meaning as in the *Road Traffic Act 1961*;

Planning Minister means the Minister responsible for the administration of the *Planning, Development and Infrastructure Act 2016*;

plant includes—

- (a) fungi; and
- (b) algae; and
- (c) flowers, seeds or any other part of a plant;

poison means any substance that might endanger the life or health of an animal;

possession—see section 139;

prescribed building means—

- (a) a building within the meaning of the *Planning, Development and Infrastructure Act 2016* (other than a fence or a Class 7A or 10B building under the Building Code) that is permanently fixed to land; or
- (b) a building of a kind contemplated by paragraph (a) that is in the course of construction if the foundations, a concrete slab or other footings have been completed; or
- (c) any other building or structure of a class declared by the Minister by notice in the Gazette to be included in the ambit of this definition,

but does not include any building or structure of a class declared by the Minister by notice in the Gazette to be excluded from the ambit of this definition;

principles of preservation of native plants means the principles set out in Schedule 3;

private land means land that is not public land;

protected animal means—

- (a) a native animal, excluding a fish, amphibian and invertebrate; or
- (b) a fish that is a threatened species and is of a class that is prescribed for the purposes of this definition; or
- (c) an amphibian or invertebrate, excluding an invertebrate that is a fish, that is a threatened species; or

- (d) any animal of a species declared by regulation to be a species of protected animal,

but does not include an animal of a class excluded from the ambit of this definition by the regulations;

protected animal product means an animal product of a protected animal;

protected egg means a fertile egg of a protected animal (but does not include a part of an egg or egg shell);

protected habitat means—

- (a) the burrow of a wombat; or
- (b) the habitat of a protected animal (including its burrows or nests) declared by the Minister by notice in the Gazette to be protected habitat for the purposes of this definition;

protected habitat protection zone means an area declared by the Minister by notice in the Gazette to be a protected habitat protection zone for the purposes of this definition;

public land means any of the following:

- (a) a reserve;
- (b) a wilderness protection area;
- (c) a wilderness protection zone;
- (d) a marine park;
- (e) a forest reserve;
- (f) unalienated land of the Crown;
- (g) land held by a Minister, agent or instrumentality of the Crown on behalf of the Crown, excluding such land that is leased to a person other than a Minister, agent or instrumentality of the Crown;

public sector agency has the same meaning as in the *Public Sector Act 2009*;

regional landscape board has the same meaning as in the *Landscape South Australia Act 2019*;

regulated act or activity—

- (a) in relation to a native plant—see section 42; or
- (b) in relation to a protected animal, protected animal product, protected egg or protected habitat—see section 64;

regulated clearance area means the regulated clearance area as defined (from time to time) by the Regulated Clearance Area Plan;

Regulated Clearance Area Plan—see Schedule 1 clause 1;

regulated tree means a native plant that would, based on the size of the circumference of the plant's trunk, or, in the case of a native plant with multiple trunks, the plant's trunks, be a regulated tree for the purposes of paragraph (a) of the definition of **regulated tree** in the *Planning, Development and Infrastructure Act 2016* if the circumference of the trunk is, or trunks are, measured in accordance with any requirements under that Act (disregarding any other requirements in respect of regulated trees under that Act);

reparation order means a reparation order under section 112;

repealed Act means—

- (a) the *Native Vegetation Management Act 1985* (repealed by the *Native Vegetation Act 1991*); or
- (b) the *Native Vegetation Act 1991* (repealed by this Act);

reserve has the same meaning as in the *National Parks Act 1972*;

River Murray Protection Area means a River Murray Protection Area under the *River Murray Act 2003*;

sanctuary means a sanctuary established under section 96;

Scientific Committee means the Scientific Committee established under Part 3 Division 2 Subdivision 4;

SEB policy—see section 175(5)(a);

sell includes—

- (a) barter, offer or attempt to sell; and
- (b) receive for sale; and
- (c) have in possession for sale; and
- (d) cause or permit to be sold or offered for sale; and
- (e) send, forward or deliver for sale; and
- (f) dispose of by any method for valuable consideration; and
- (g) dispose of to an agent for sale on consignment; and
- (h) sell for the purposes of resale;

significant environmental benefit—see subsection (5);

species includes subspecies, variety and population;

State includes any part of the sea—

- (a) that is within the limits of the State; or
- (b) that is from time to time included in the coastal waters of the State by virtue of the *Coastal Waters (State Powers) Act 1980* of the Commonwealth;

State biodiversity data—see section 172;

State Biodiversity Plan means the Plan maintained under section 173;

stratum of native plants means a layer of a plant community consisting of plants that comprise native plants and that have a similar growth habit;

substantial damage, in relation to clearance of native plants, includes (but is not limited to) the following:

- (a) the removal of a native plant or part of a native plant;
- (b) the severing of branches, limbs, stems or trunks of a native plant;
- (c) ringbarking or poisoning a native plant;
- (d) the burning of a native plant;
- (e) the draining or flooding of land or any other act or activity that results or is likely to result in the death or destruction of a native plant,

but in the case of a living native plant only occurs if the activity is likely to—

- (f) result in the death of the plant; or
- (g) negatively affect the plant's general health; or
- (h) prevent the plant's continued natural pattern of growth;

substantially intact, in relation to a stratum of native plants—see subsection (7);

take—

- (a) in relation to an animal, includes any act of catching, restraining, killing or injuring; or
- (b) in relation to a plant means any interference with a plant that does not result in substantial damage to, or death or destruction of, the plant and includes (but is not limited to) removing roots, limbs, stems, flowers, seeds or any other part of the plant;

taking device means any trap, net, snare or other thing for taking or facilitating the taking of animals and includes any substance that can be used for that purpose;

threat abatement plan—see section 81;

threatened ecological communities list—see section 71;

threatened ecological community means an ecological community listed in the threatened ecological communities list;

threatened species means a native species listed in the threatened species list;

threatened species list—see section 70;

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

trafficable quantity means a quantity prescribed by the regulations as a trafficable quantity for the purposes of this Act;

vehicle includes—

- (a) any vessel or craft; and
- (b) a caravan or trailer; and
- (c) any plant or equipment designed to be moved or operated by a driver;

wilderness protection area has the same meaning as in the *Wilderness Protection Act 1992*;

wilderness protection zone has the same meaning as in the *Wilderness Protection Act 1992*;

wombat means an animal of the species *Vombatus ursinus* or *Lasiorhinus latifrons*.

- (2) For the purposes of this Act, a person will be taken to be an **Aboriginal person** if the person—
 - (a) is of Aboriginal descent; and
 - (b) regards themselves as Aboriginal; and
 - (c) is accepted as an Aboriginal person by the relevant Aboriginal community.
- (3) For the purposes of this Act, a person will be taken to be of Aboriginal descent if the person is biologically descended from the persons who inhabited Australia before European settlement.
- (4) For the purposes of this Act, a reference to the **mitigation hierarchy** is a reference to an order of priority to be applied in relation to the clearance of native plants as follows:
 - (a) **avoidance**—measures must be taken to avoid clearance of native plants;
 - (b) **minimisation**—if clearance of native plants cannot be avoided, measures must be taken to minimise the duration, intensity and extent of the impacts of the clearance on biological diversity to the fullest possible extent (whether the impact is direct, indirect or cumulative);
 - (c) **rehabilitation or restoration**—measures should be taken to rehabilitate ecosystems that have been degraded, and to restore ecosystems that have been destroyed, by the impacts of clearance of native plants that cannot be avoided or further minimised;
 - (d) **offset**—where required under this Act, any adverse impact on native plants or ecosystems that cannot be avoided or minimised must be offset by the achievement of a significant environmental benefit that outweighs that impact.
- (5) For the purposes of this Act, a **significant environmental benefit** is achieved by measures taken, actions undertaken or requirements complied with (**restoration actions**) if the restoration actions result in an improvement of biodiversity over an ecologically meaningful timeframe taking into account the impact of the restoration actions and the clearance of native plants that the restoration actions are intended to offset.
- (6) For the purposes of subsection (5)—
 - (a) restoration actions result in an improvement of biodiversity if the viability of a native species or ecological community and any associated ecosystem functions is greater following the undertaking of the restoration actions than prior to the undertaking of those actions; and
 - (b) an ecologically meaningful timeframe is a timeframe in which the benefits of the restoration actions can accrue before the impact of the clearance of native plants that the restoration actions are intended to offset is too great to be compensated for in full.

- (7) For the purposes of this Act, a stratum of native plants will be considered to be substantially intact if, in the opinion of the CAC—
- (a) the stratum has not been seriously degraded by human activity during the immediately preceding period of 20 years; or
 - (b) the only serious degradation of the stratum by human activity during that period has been caused by fire.

4—Interaction with other Acts

- (1) Except where the contrary intention is expressed in this Act, this Act is in addition to and does not limit or derogate from the provisions of any other Act.
- (2) A requirement to obtain authorisation under this Act to carry out or undertake an act or activity (whether a regulated act or activity or otherwise) applies despite the fact that the act or activity may be authorised under another Act or law.
- (3) In the event of an inconsistency between this Act and the *Fire and Emergency Services Act 2005*, the *Fire and Emergency Services Act 2005* will prevail to the extent of the inconsistency.

5—Act to bind Crown

This Act binds the Crown in right of the State and also, so far as the legislative power of the State extends, the Crown in all its other capacities, but not so as to impose any criminal liability on the Crown.

6—Operation of Act

- (1) Subject to this section or as may be specified in a particular provision of this Act, this Act applies to the whole of the State.

Note—

See, for example, section 42.

- (2) This Act extends to an act, activity or circumstance carried out, undertaken or existing, and to a failure to carry out or undertake an act or activity, outside the State that may affect the biodiversity of the State.
- (3) This Act may also apply so as to give effect within the State or outside the State to any intergovernmental agreement relevant to the operation of this Act to which the State is a party.
- (4) Nothing in this Act prevents a native title holder from carrying out or undertaking an act or activity in the exercise of their native title rights and interests.

Part 2—Objects, principles and general duty etc

7—Objects

The objects of this Act are—

- (a) to promote biodiversity conservation and restoration as a responsibility equitably shared by all of society across all sectors and supported by individual accountability; and

- (b) to recognise and respect that Aboriginal people are the enduring custodians of the lands and waters of the State and have a fundamental role in, and knowledge of, caring for Country, including in relation to conserving and restoring biodiversity; and
- (c) to protect, restore and enhance biodiversity such that there is an improvement in the state of biodiversity at all scales and to build the resilience of biodiversity, including resilience to the impacts of climate change; and
- (d) to promote halting and reversing biodiversity loss; and
- (e) to identify and prioritise biodiversity assets for conservation and restoration across the State to inform land use planning and decision-making frameworks; and
- (f) to ensure that biodiversity management takes into account the importance of biodiversity in addressing climate change; and
- (g) to ensure that interactions with, management of and use of biodiversity is sustainable and appropriate such that the current generation maintains or enhances the health and resilience of biodiversity for the benefit of future generations.

Note—

A person or body engaged in the administration of this Act must seek to give effect to the objects in this section.

8—Principles

A person or body engaged in the administration of this Act must seek to give effect to the following principles:

- (a) that halting and reversing biodiversity loss, such that there is an improvement in the state of biodiversity, will require embracing new and transformative ways of thinking and acting to support the environment, culture, economy and wellbeing of the current generation and future generations;
- (b) that the community has a right to know about and participate in environmental decision-making;
- (c) that Aboriginal people with a strong connection to Country will be engaged in a way that is respectful and mindful of cultural sensitivities and the historical and persisting impacts of colonisation;
- (d) that decisions should be based on the best available evidence, including scientific evidence, Aboriginal knowledges and local knowledge, and be made having regard to the potential long-term, medium-term and short-term impacts of climate change;
- (e) that lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation if there are threats of serious or irreversible environmental damage.

9—Acting consistently with State Biodiversity Plan

A person or body engaged in the administration of this Act must act consistently with, and where appropriate give effect to, the State Biodiversity Plan in making decisions under this Act.

10—Aboriginal knowledges

A person or body engaged in the administration of this Act must, as far as is practicable, seek Aboriginal knowledges and, where available and endorsed by the holders of the knowledges, consider and apply the knowledges, at all times respecting the sensitivity of the sharing of cultural knowledge, in the following:

- (a) the identification, approval and management of Culturally Significant Biodiversity Entities;
- (b) preparing and reviewing the State Biodiversity Plan;
- (c) preparing and implementing plans following the listing of native species, ecological communities and ecological entities on a designated list and the declaration of critical habitat in accordance with Part 6;
- (d) preparing Council guidelines and biodiversity policies under this Act;
- (e) in the case of the Scientific Committee—carrying out an extinction inquiry under section 82.

11—General duty

- (1) A person must not carry out or undertake an act or activity that harms or has the potential to harm biodiversity unless the person takes all reasonable and practicable measures to prevent or minimise any resulting harm.
- (2) In determining what reasonable and practicable measures are required to be taken in accordance with this section, regard is to be had, amongst other things, to the following:
 - (a) the objects of this Act in section 7 and the principles in section 8;
 - (b) the likelihood of harm arising from the act or activity, taking account of factors such as the sensitivity of the affected environment or element of biodiversity;
 - (c) the potential impact of the harm, including the nature, extent and duration of any harm and the extent to which the harm might have a cumulative effect;
 - (d) the extent to which the person knows or ought reasonably to know about, or have reasonably foreseen, the likelihood of harm and ways to eliminate or minimise it;
 - (e) the availability, suitability and practicability (including cost) of measures to prevent or minimise harm or the risk of harm;
 - (f) any matters prescribed by regulations or a biodiversity policy in accordance with subsection (3).
- (3) Regulations or a biodiversity policy may specify—
 - (a) acts and activities that will, or will not, be taken to harm biodiversity; and
 - (b) matters to be taken into account in determining what reasonable and practicable measures are required to be taken under this section; and
 - (c) measures that will, or will not, be taken to constitute reasonable and practicable measures for the purposes of compliance with the duty.

- (4) A person will be taken not to be in breach of the duty under this section if they are acting—
- (a) in accordance with a requirement under this Act or another Act; or
 - (b) in accordance with a permission, right or entitlement under this or another Act; or
 - (c) in prescribed circumstances; or
 - (d) in compliance with a biodiversity policy made for that purpose.
- (5) Failure to comply with the duty under this section does not of itself constitute an offence, but—
- (a) compliance with the duty may be enforced by the issuing of a compliance order or reparation order; and
 - (b) an order may be issued or an order may be made by the ERD Court under Part 8 Division 4 Subdivision 1 in respect of non-compliance with the duty.
- (6) For the purposes of this section—
- act* includes any omission;
- harm* to biodiversity is taken to be a direct or indirect adverse impact on biodiversity that is not trivial, having regard to—
- (a) the extent and scale of the impact; and
 - (b) the sensitivity of the affected environment; and
 - (c) any matter that may be prescribed by regulations or a biodiversity policy.

Part 3—Administration

Division 1—General

12—Delegation by Minister

- (1) Subject to this section, the Minister may delegate any of the Minister's functions under this Act, or under any other Act that, in the opinion of the Minister, is relevant to the operation or administration of this Act.
- (2) A delegation—
- (a) must be made by instrument in writing; and
 - (b) may be made—
 - (i) to a particular person or body; or
 - (ii) to the person for the time being occupying a particular office or position; and
 - (c) may be made subject to conditions or limitations specified in the instrument of delegation; and
 - (d) if the instrument of delegation so provides, may be further delegated by the delegate; and

- (e) is revocable at will and does not derogate from the power of the delegator to act in any matter.
- (3) The Minister cannot delegate the function of making recommendations to the Governor.
- (4) A person to whom functions have been delegated under this section who has a direct or indirect personal or pecuniary interest in any matter in relation to which the person proposes to perform those functions must disclose the nature of the interest in writing to the delegator.
Maximum penalty: \$20 000.
- (5) It is a defence to a charge of an offence against subsection (4) to prove that the defendant was not, at the time of the alleged offence, aware of their interest in the matter.

13—Ministers not to administer Act

The following Ministers must not assume responsibility for the administration of this Act:

- (a) the Minister administering a mining Act;
- (b) the Planning Minister.

Division 2—Statutory bodies

Subdivision 1—Biodiversity Council

14—Establishment of Biodiversity Council

The *Biodiversity Council* is established.

15—Composition of Council

- (1) The Council will consist of at least 7 members and not more than 12 members appointed by the Governor, on the recommendation of the Minister, of whom—
 - (a) 1 must be a member of the CAC; and
 - (b) 2 must be members of the ABC (being persons of different genders); and
 - (c) 1 must be a member of the Scientific Committee.
- (2) The Minister must, when recommending persons for appointment to the Council, seek to ensure that, as far as is practicable, the members of the Council—
 - (a) have a balance of expertise that is relevant to addressing the conservation, restoration and enhancement of biodiversity; and
 - (b) collectively have skills, knowledge and experience in the following areas:
 - (i) terrestrial biodiversity conservation and restoration;
 - (ii) aquatic biodiversity conservation and restoration;
 - (iii) local government;
 - (iv) energy and resources;
 - (v) scientific research in relation to biodiversity;

- (vi) primary production or pastoralism;
 - (vii) land use, urban or regional planning;
 - (viii) climate change adaptation and mitigation;
 - (ix) Aboriginal knowledges.
- (3) In addition, the Minister should seek to recommend persons for appointment to the Council who can demonstrate—
- (a) a commitment to action to address biodiversity conservation, restoration and enhancement; and
 - (b) an understanding of the issues and impacts associated with biodiversity.
- (4) Subject to subsection (6), the following applies to the recommendation of persons for appointment to the Council:
- (a) 1 member must be a person selected by the Minister from a panel of 3 persons nominated by the Conservation Council of South Australia for the purposes of subsection (2)(b)(i) and (ii);
 - (b) 1 member must be a person selected by the Minister from a panel of 3 persons nominated by the Local Government Association of South Australia for the purposes of subsection (2)(b)(iii);
 - (c) 1 member must be a person selected by the Minister from a panel of 3 persons nominated by the South Australian Chamber of Mines and Energy for the purposes of subsection (2)(b)(iv);
 - (d) 1 member must be a person selected by the Minister from a panel of 3 persons nominated by Primary Producers South Australia for the purposes of subsection (2)(b)(vi);
 - (e) 1 member must be a person selected by the Minister from a panel of 3 persons nominated by the Premier's Climate Change Council established by the *Climate Change and Greenhouse Emissions Reduction Act 2007* for the purposes of subsection (2)(b)(viii).
- (5) If a body referred to in subsection (4) fails to nominate a panel in accordance with the requirements of that subsection, or the Minister considers that none of the 3 persons on a panel referred to in that subsection has the required skills, knowledge or experience, the Minister must request that the body nominate a panel of 3 persons or a panel of 3 different persons (as the case requires).
- (6) If, after the Minister makes a request under subsection (5), the body fails to nominate a panel, or the Minister considers that none of the 3 persons on a panel nominated has the required skills, knowledge or experience, the Minister may instead recommend for appointment to the Council any person who the Minister considers has the required skills, knowledge or experience.
- (7) If a body referred to in subsection (4) ceases to exist, and no other body takes over its functions, the regulations may prescribe a body to take over the ceased body's function under that subsection and, if the regulations do not do so, the Minister may make a recommendation without a nomination.
- (8) The Minister may consult with any entity the Minister thinks fit before recommending a person for appointment to the Council.

- (9) The Minister may only recommend a member of the ABC for appointment as a member of the Council on the nomination of the ABC.
- (10) The Minister will designate a member of the Council to chair meetings of the Council.
- (11) The chair of the Council may not be a member of the Public Service.

16—Functions of Council

The Council has the following functions:

- (a) to provide advice to the Minister in relation to the administration of this Act;
- (b) to provide advice to the Minister in relation to the State Biodiversity Plan, including in relation to any reviews of the Plan;
- (c) to prepare and adopt guidelines for the purposes of section 174;
- (d) to make the SEB policy and a biodiversity policy relating to environmental benefit credits and to provide advice in relation to other biodiversity policies;
- (e) to manage the Biodiversity Restoration Fund;
- (f) to keep under review the operation of the principles of preservation of native plants and to advise the Minister of any changes it considers are necessary or desirable;
- (g) to keep under review the operation of the mitigation hierarchy and to advise the Minister of any changes it considers are necessary or desirable;
- (h) to advise the Minister, and provide approvals, in relation to biodiversity agreements;
- (i) to, on application, review decisions of the CAC to refuse to give consent to applications for consent to clear native plants under Part 4 Division 3 or to revoke such a consent;
- (j) to engage the community in relation to the importance of biodiversity conservation;
- (k) such other functions assigned to it by or under this Act or by the Minister.

Subdivision 2—Clearance Assessment Committee

17—Establishment of Clearance Assessment Committee

The *Clearance Assessment Committee* is established.

18—Composition of CAC etc

- (1) The CAC will consist of the prescribed number of members.
- (2) Members of the CAC will be appointed by the Minister on the basis of the skills and expertise considered necessary to achieve its functions.
- (3) In addition, the Minister should seek to appoint persons to the CAC who can demonstrate—
 - (a) a commitment to action to address biodiversity conservation, restoration and enhancement; and
 - (b) an understanding of the issues and impacts associated with biodiversity.

- (4) One member of the CAC must be an Aboriginal person who may, but need not, be a member of the ABC.
- (5) The Minister will designate a member of the CAC to chair meetings of the CAC.
- (6) The chair of the CAC may not be a member of the Public Service.
- (7) The regulations will—
 - (a) set out requirements as to the requisite skills and expertise of the members of the CAC; and
 - (b) prescribe requirements in respect of the appointment of members of the CAC.

19—Functions of CAC

The CAC has the following functions:

- (a) to make assessments and decisions regarding clearance of native plants, including determining applications for consent to clear native plants and applications referred under the *Planning, Development and Infrastructure Act 2016*;
- (b) to make assessments and decisions regarding destruction, damage and disturbance of critical habitat under Part 6;
- (c) to apply the SEB policy;
- (d) to be a source of expert advice to the Council and the Minister in relation to native plant matters, including the management, conservation, restoration and enhancement of native plants;
- (e) to initiate enforcement action relating to the unlawful clearance of native plants in accordance with Part 8;
- (f) such other functions assigned to it by or under this Act or by the Minister.

Subdivision 3—Aboriginal Biodiversity Committee

20—Establishment of Aboriginal Biodiversity Committee

The *Aboriginal Biodiversity Committee* is established.

21—Composition of ABC etc

- (1) The ABC will consist of the prescribed number of members.
- (2) Members of the ABC will be appointed by the Minister on the basis of the environmental and cultural expertise considered necessary to achieve its functions.
- (3) In addition, the Minister should seek to appoint persons who can demonstrate—
 - (a) a commitment to action to address biodiversity conservation, restoration and enhancement; and
 - (b) an understanding of the issues and impacts associated with biodiversity.
- (4) All members of the ABC must be Aboriginal persons.
- (5) The Minister will designate a member of the ABC to chair meetings of the ABC.
- (6) The chair of the ABC may not be a member of the Public Service.

- (7) The regulations will—
- (a) set out requirements as to the requisite skills and expertise of the members of the ABC; and
 - (b) prescribe requirements in respect of the appointment of members of the ABC.

22—Functions of ABC

The ABC has the following functions:

- (a) to provide advice to the Minister in relation to the management of biodiversity from Aboriginal perspectives;
- (b) to provide advice to the Minister in relation to Aboriginal perspectives on any matters included in this Act that are relevant to Aboriginal people, including the State Biodiversity Plan;
- (c) to provide advice to the Minister in relation to the application of Aboriginal knowledges in the management of biodiversity;
- (d) to co-develop with the Minister relevant biodiversity policies, including the following:
 - (i) a policy about the consideration and application of Aboriginal knowledges in connection with the operation of this Act;
 - (ii) a policy for identifying, approving and managing Culturally Significant Biodiversity Entities;
 - (iii) a policy about cultural burning of native plants undertaken by Aboriginal persons;
- (e) such other functions assigned to it by or under this Act or by the Minister.

Subdivision 4—Scientific Committee

23—Establishment of Scientific Committee

The *Scientific Committee* is established.

24—Composition of Scientific Committee etc

- (1) The Scientific Committee will consist of the prescribed number of members.
- (2) Members of the Scientific Committee will be appointed by the Minister on the basis of the technical skills and scientific expertise considered necessary to achieve its functions.
- (3) In addition, the Minister should seek to appoint persons who can demonstrate—
 - (a) a commitment to action to address biodiversity conservation, restoration and enhancement; and
 - (b) an understanding of the issues and impacts associated with biodiversity.
- (4) One member of the Scientific Committee must be an Aboriginal person who may, but need not, be a member of the ABC.
- (5) The Minister will designate a member of the Scientific Committee to chair meetings of the Scientific Committee.

- (6) The chair of the Scientific Committee may not be a member of the Public Service.
- (7) The regulations will—
 - (a) set out requirements as to the requisite skills and expertise of the members of the Scientific Committee; and
 - (b) prescribe requirements in respect of the appointment of members of the Scientific Committee.

25—Functions of Scientific Committee

- (1) The primary function of the Scientific Committee is to make final listing decisions and provisional listings in respect of the designated lists.
- (2) In addition, the Scientific Committee has the following functions:
 - (a) to provide advice on matters in relation to Part 6, including advice relating to the assessment, listing and recovery of native species, ecological communities and ecological entities;
 - (b) to prepare nominations under Part 6 for native species, ecological communities and ecological entities;
 - (c) to review and provide advice on nominations and assessments in relation to listing decisions under Part 6;
 - (d) to provide advice in relation to the adequacy of the eligibility criteria prescribed for the purposes of section 73;
 - (e) to review and provide advice on nominations, assessments and declarations of critical habitat under Part 6;
 - (f) to review and provide advice on action plans and threat abatement plans under Part 6;
 - (g) to undertake extinction inquiries in accordance with section 82;
 - (h) to provide advice in relation to the adequacy of the designated lists required to be maintained under Part 6 and the effectiveness of the listing processes;
 - (i) to report annually on the operation of Part 6, including on the maintenance of the designated lists required to be maintained under that Part;
 - (j) to provide advice in relation to the State Biodiversity Plan and other relevant plans and policies developed under this Act;
 - (k) such other functions assigned to it by or under this Act or by the Minister.

Subdivision 5—Other committees, advisory bodies and trusts

26—Other committees and advisory bodies

- (1) The Council may, with the approval of the Minister, establish such committees as the Council thinks fit to advise or assist the Council.
- (2) A committee established under subsection (1) may, but need not, consist of or include members of the Council.
- (3) The Minister may establish such committees and advisory bodies as the Minister thinks fit for the purposes of this Act.

- (4) One member of a committee or advisory body established under this section must be an Aboriginal person who may, but need not, be a member of the ABC.
- (5) The regulations may make any provisions necessary or desirable in relation to a committee or advisory body established under this section.

27—Ability to establish trusts

The regulations may establish a trust for the purposes of this Act and make any provisions necessary or desirable in relation to such a trust.

Subdivision 6—Conditions of membership, remuneration, procedures and other matters

28—Conditions of membership

- (1) A member of the Council and any committee or advisory body established by or under this Act will be appointed on conditions determined by the Minister for a term, not exceeding 3 years, specified in the instrument of appointment and, at the expiration of a term of office, is eligible for reappointment.
- (2) The Minister may remove a member of the Council or a committee or advisory body established by or under this Act from office—
 - (a) for breach of, or non-compliance with, a condition of appointment; or
 - (b) for failing to carry out duties of office satisfactorily; or
 - (c) for neglect of duty; or
 - (d) for misconduct.
- (3) The office of a member of the Council or a committee or advisory body established by or under this Act becomes vacant if the member—
 - (a) dies; or
 - (b) completes a term of office and is not reappointed; or
 - (c) resigns by written notice to the Minister; or
 - (d) is removed from office under subsection (2).

29—Remuneration

A member of the Council and any committee or advisory body established by or under this Act is entitled to such remuneration, allowances and expenses as the Minister may determine (if any).

30—Procedures

The procedures of the Council and any committee or advisory body established by or under this Act will be as prescribed by regulation or, to the extent that they are not prescribed, as determined by—

- (a) in the case of procedures of the Council or a committee established by the Council—the Council; or
- (b) in the case of procedures of the CAC, ABC, Scientific Committee or a committee or advisory body established by the Minister—the Minister; or

- (c) in the case of procedures of a committee or advisory body and to the extent that the procedure is not determined by the Council or the Minister—by the committee or advisory body.

31—Application of Public Sector (Honesty and Accountability) Act

The *Public Sector (Honesty and Accountability) Act 1995* applies to a member of the Council and any committee established by or under this Act as if the Council or committee were an advisory body and the Minister responsible for the administration of this Act were the relevant Minister.

32—Staff

- (1) There must be a secretary to the Council and each committee and advisory body established by or under this Act and such other staff to assist the Council and each committee and advisory body as the Minister thinks fit.
- (2) Each secretary and other members of staff are to be Public Service employees.
- (3) The Council and each committee and advisory body established by or under this Act may, under an arrangement established by the Minister administering an administrative unit of the Public Service, make use of the services or staff of that administrative unit.

33—Annual reports

- (1) The Council, CAC, ABC and Scientific Committee must, on or before 31 October in each year, prepare and present to the Minister a report on the work of the Council, CAC, ABC or Scientific Committee (as the case requires) in carrying out its functions and achieving the objects of this Act during the financial year ending on the preceding 30 June.
- (2) The Minister must, within 6 sitting days after receiving a report presented under this section, cause copies of the report to be laid before both Houses of Parliament and publish the report on a website determined by the Minister.

34—Delegation

- (1) Subject to this section, the Council or a committee or advisory body established by or under this Act may, with the approval of the Minister, delegate any of its functions.
- (2) A delegation—
 - (a) must be made by instrument in writing; and
 - (b) may be made—
 - (i) to a particular person or body; or
 - (ii) to a person for the time being occupying a particular office or position; and
 - (c) may be made subject to conditions or limitations specified in the instrument of delegation; and
 - (d) if the instrument of delegation so provides, may be further delegated by the delegate; and
 - (e) is revocable at will and does not derogate from the power of the delegator to act in any matter.

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- (3) A delegation may only be made to a local council or an officer of a local council under this section with the written approval of the relevant council.
 - (4) A person to whom functions have been delegated under this section who has a direct or indirect personal or pecuniary interest in any matter in relation to which the person proposes to perform those functions must disclose the nature of the interest in writing to the delegator.
Maximum penalty: \$20 000.
 - (5) A person who is a member of a local council or the governing body of a body corporate to which functions have been delegated under this section must not take part in any deliberations or decisions of the local council or body corporate made in accordance with the delegation in relation to any matter in which that person has a direct or indirect personal or pecuniary interest.
Maximum penalty: \$20 000.
 - (6) It is a defence to a charge of an offence against subsection (4) or (5) to prove that the defendant was not, at the time of the alleged offence, aware of their interest in the matter.

35—Validity of acts of Council, committees, advisory bodies and trusts

No act or proceeding of the Council or a committee, advisory body or trust established by or under this Act is invalid by reason only of a vacancy in the office of a member, or a defect in the appointment of a member.

Division 3—Funds

Subdivision 1—Biodiversity Restoration Fund

36—Biodiversity Restoration Fund

- (1) There will be a fund kept in a separate account at the Treasury to be called the *Biodiversity Restoration Fund*.
- (2) The Biodiversity Restoration Fund is subject to the management of the Council.
- (3) The Biodiversity Restoration Fund consists of—
 - (a) money (other than the money referred to in section 39(3)(a)) that was, immediately before the commencement of this section, held in the Native Vegetation Fund under the *Native Vegetation Act 1991*; and
 - (b) money appropriated by Parliament for the purposes of the Fund; and
 - (c) grants, donations, gifts or bequests made to the Minister or the Council for purposes related to the Fund; and
 - (d) income from investment of the Fund; and
 - (e) expiation fees and penalties recovered in respect of offences under this Act or the regulations relating to native plants (other than prescribed offences); and
 - (f) payments by order of a court under this Act relating to the clearance of native plants or an administrative order in relation to such clearance; and

- (g) where an order is made by a court in relation to a contravention of a requirement to comply with the general duty under section 11—any payment specified in the order to be made to the Fund; and
 - (h) payments made in lieu of a requirement to achieve a significant environmental benefit; and
 - (i) money required or authorised by or under this or any other Act to be paid to the Fund; and
 - (j) money the Minister determines should be held and applied by the Fund; and
 - (k) money paid into the Fund from the Biodiversity Administration Fund.
- (4) Subject to subsection (5), the Council may apply any part of the Biodiversity Restoration Fund—
- (a) towards ecological restoration, including, but not limited to, re-establishing, enhancing, preserving, managing and researching native plants; or
 - (b) in accordance with section 99; or
 - (c) towards any other purpose for which the Fund may be applied under this Act.
- (5) The part of the Biodiversity Restoration Fund that constitutes payments made in lieu of a requirement to achieve a significant environmental benefit must be applied in accordance with the SEB policy.

37—Accounts and audit

- (1) The Council must keep proper accounts of receipts and payments in relation to the Biodiversity Restoration Fund.
- (2) The Auditor-General may at any time, and must at least once in each year, audit the accounts of the Biodiversity Restoration Fund.

Subdivision 2—Biodiversity Conservation Fund

38—Biodiversity Conservation Fund

- (1) There will be a fund kept in a separate account at the Treasury to be called the *Biodiversity Conservation Fund*.
- (2) The Biodiversity Conservation Fund is subject to the management and control of the Minister.
- (3) The Biodiversity Conservation Fund will consist of—
 - (a) all moneys that were, immediately before the commencement of this section, held in the Wildlife Conservation Fund under the *National Parks and Wildlife Act 1972*; and
 - (b) money appropriated by Parliament for the purposes of the Fund; and
 - (c) grants, donations, gifts or bequests made to the Minister or the Council for purposes related to the Fund; and
 - (d) income from investment of the Fund; and

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- (e) expiation fees and penalties recovered in respect of offences under this Act or the regulations relating to protected animals, protected animal products, eggs of a protected animal (whether protected eggs or otherwise) or protected habitat; and
 - (f) expiation fees and penalties recovered in respect of offences under this Act or the regulations relating to hunting; and
 - (g) expiation fees and penalties recovered in respect of offences under Part 6; and
 - (h) expiation fees and penalties recovered in respect of offences under Part 9; and
 - (i) royalty paid under this Act; and
 - (j) money arising from any sale that the Minister is authorised to make under this Act (including from the sale of any item surrendered to the Minister or seized or disposed of in accordance with this Act); and
 - (k) payments by order of the ERD Court in relation to protected animals, protected animal products, eggs of a protected animal (whether protected eggs or otherwise) or protected habitat, or an administrative order made under this Act in relation to protected animals, protected animal products, eggs of a protected animal (whether protected eggs or otherwise) or protected habitat; and
 - (l) where an order is made by the ERD Court in relation to a contravention of a requirement to comply with the general duty under section 11—any payment specified in the order to be made to the Fund; and
 - (m) money required or authorised by or under this or any other Act to be paid to the Fund; and
 - (n) money the Minister determines should be held and applied by the Fund; and
 - (o) money paid into the Fund from the Biodiversity Administration Fund.
- (4) Subject to this Act, the Minister may apply any portion of the Biodiversity Conservation Fund towards—
- (a) plant and animal conservation programs; and
 - (b) the promotion of research into—
 - (i) problems relating to the conservation of plants and animals; or
 - (ii) the impact of the issue of any permits under this Act; or
 - (iii) any other matter connected to this Act; and
 - (c) programs for the benefit of any industry requiring a permit under this Act; and
 - (d) any other purpose for which the Fund may be applied under this Act.

Subdivision 3—Biodiversity Administration Fund

39—Biodiversity Administration Fund

- (1) There will be a fund kept in a separate account at the Treasury to be called the *Biodiversity Administration Fund*.

- (2) The Biodiversity Administration Fund is subject to the management and control of the Minister.
- (3) The Biodiversity Administration Fund consists of—
 - (a) a prescribed amount of money that was, immediately before the commencement of this section, held in the Native Vegetation Fund under the *Native Vegetation Act 1991*; and
 - (b) money appropriated by Parliament for the purposes of the Fund; and
 - (c) income from investment of the Fund; and
 - (d) expiation fees and penalties recovered in respect of offences that are not referred to in section 36(3) or section 38(3); and
 - (e) subject to subsection (4)—fees (other than expiation fees) paid under this Act; and
 - (f) all other money that is required or authorised by or under this Act or any other law to be paid into the Fund; and
 - (g) money the Minister determines should be held and applied by the Fund.
- (4) If an application to clear native plants is made to a local council or other body corporate or other person acting under delegation from the CAC, the prescribed fee paid by the applicant under this Act may be retained by the local council or other body or person.
- (5) The Minister may apply any part of the Biodiversity Administration Fund—
 - (a) in paying any amount into the Biodiversity Restoration Fund or the Biodiversity Conservation Fund that the Minister determines should be held and applied for the purposes of that fund rather than under this section (and any such determination will have effect according to its terms); or
 - (b) for any other purpose to further the objects of this Act or to support the operation or administration of this Act; or
 - (c) in making any other payment required or authorised by or under this Act.

Subdivision 4—General

40—Ability to establish other funds

The regulations may establish a fund for the purposes of this Act and make any provisions necessary or desirable in relation to such a fund.

41—Investment

Any money in a fund maintained under this Division that is not for the time being required for the purposes for which that fund may be applied under this Division may be invested in a manner determined by the Minister.

Part 4—Native plants

Division 1—Preliminary

42—Regulated acts or activities

- (1) For the purposes of this Part, the following acts or activities are *regulated acts or activities*:
 - (a) clearance of native plants of a relevant kind on land (whether public land or otherwise) within the regulated clearance area or on public land outside the regulated clearance area;
 - (b) clearance of native plants on land that is subject to a biodiversity agreement;
 - (c) taking a native plant of a relevant kind from public land;
 - (d) taking a native plant of a prescribed species;
 - (e) dealing with a native plant of a prescribed species;
 - (f) an act or activity prescribed by the regulations for the purposes of this subsection that relates to native plants;
 - (g) attempting, assisting in, or taking part in the process of an act or activity referred to in a preceding paragraph.
- (2) Despite subsection (1), for the purposes of this Part, the acts and activities specified in Schedule 2 as amended from time to time by regulation are not regulated acts or activities if carried out or undertaken in accordance with any requirements, and subject to any restrictions, set out in that Schedule.

Note—

However, see also Part 6 Division 5 in relation to requirements in respect of critical habitat features of critical habitat (which may comprise or constitute native plants).

43—Clearing and taking of plants by Aboriginal persons

- (1) This section does not apply to the clearance or taking of—
 - (a) a plant of a prescribed species; or
 - (b) a plant by a prescribed means or in prescribed circumstances.
- (2) Nothing in this Part prevents an Aboriginal person from clearing or taking a native plant for the purposes of using the plant for a non-commercial cultural or spiritual practice (which may include using the plant as food in the course of that practice).

Note—

In clearing or taking a plant in accordance with this section, an Aboriginal person is subject to laws of general application.

44—Declaration to clear and take certain native plants

- (1) The Minister may, by notice in the Gazette, declare that native plants of a specified species that are not indigenous to the State may be cleared or taken, or both cleared and taken.

- (2) A notice under this section—
 - (a) must not relate to plants of a threatened species; and
 - (b) does not apply in relation to plants that comprise a threatened ecological community or comprise or constitute a critical habitat feature of critical habitat; and
 - (c) may only be made if the Minister is satisfied that the clearing or taking of the species at levels that could reasonably be expected as a result of the declaration would not reasonably cause the species to be considered for assessment as a threatened species in accordance with Part 6.
- (3) A notice under this section—
 - (a) must state—
 - (i) the period (if any) during which the plants may be cleared or taken; and
 - (ii) the parts of the State to which the declaration applies or that the declaration applies to the whole State (as the case may be); and
 - (b) may prescribe restrictions or conditions applicable to the declaration.
- (4) The Minister must publish a statement of reasons for a declaration under this section on the Biodiversity Register within 30 days after the notice making the declaration is published in the Gazette.
- (5) It is lawful to clear or take a native plant in accordance with a notice under this section.

Division 2—Offences

45—Offence to carry out or undertake regulated act or activity without authorisation

Subject to this Act, a person must not carry out or undertake a regulated act or activity unless the person is taken to hold an authorisation under section 48 authorising the person to carry out or undertake the regulated act or activity.

Maximum penalty:

- (a) in the case of a body corporate—a sum calculated at the prescribed rate for each hectare (or part of a hectare) of the land in relation to which the offence was committed or \$1 000 000, whichever is greater;
- (b) in the case of an individual—
 - (i) a sum calculated at the prescribed rate for each hectare (or part of a hectare) of the land in relation to which the offence was committed or \$500 000, whichever is greater; or
 - (ii) imprisonment for 5 years.

Expiation fee: \$1 500.

46—Contravention of condition of consent

A person must not contravene a condition attached to a consent given under Division 3 that is held by the person.

Maximum penalty:

- (a) in the case of a body corporate—a sum calculated at the prescribed rate for each hectare (or part of a hectare) of the land in relation to which the offence was committed or \$1 000 000, whichever is greater;
- (b) in the case of an individual—
 - (i) a sum calculated at the prescribed rate for each hectare (or part of a hectare) of the land in relation to which the offence was committed or \$500 000, whichever is greater; or
 - (ii) imprisonment for 5 years.

Expiation fee: \$1 500.

47—Illegal possession of native plants

A person must not have in their possession or control a native plant that has been illegally taken or acquired.

Maximum penalty:

- (a) in the case of a body corporate—\$500 000;
- (b) in the case of an individual—\$250 000 or imprisonment for 5 years.

Expiation fee: \$1 500.

Division 3—Authorisation

48—Authorisation to carry out or undertake regulated act or activity

- (1) For the purposes of this Part, a person is taken to hold an authorisation to carry out or undertake a regulated act or activity if—
 - (a) in the case of clearance of native plants—
 - (i) subject to section 56, the person has been given consent by the CAC in accordance with this Division to carry out or undertake the clearance; or
 - (ii) the clearance is carried out or undertaken in prescribed circumstances; or
 - (b) in the case of taking or dealing with native plants—the person has been granted a permit by the Minister under Part 9 to carry out or undertake the act or activity; or
 - (c) in the case of an act or activity prescribed by the regulations for the purposes of section 42(1)—the person has been given any authorisation required by the regulations to carry out or undertake the act or activity.

- (2) If a person who is (apart from this subsection) taken to hold an authorisation to carry out or undertake a regulated act or activity in accordance with this section fails to carry out or undertake the regulated act or activity in accordance with the consent, permit or authorisation required by the regulations (as the case requires), the person is taken not to hold the authorisation.

49—Application for consent

- (1) An application for consent to clear native plants may be made by any person.
- (2) An application for consent to clear native plants must be made in a manner and form approved by the CAC and must be accompanied by—
- (a) a report relating to the proposed clearance—
 - (i) prepared by a person; and
 - (ii) in a form,
approved by the CAC; and
 - (b) information about how the applicant has applied the mitigation hierarchy in accordance with Council guidelines made for that purpose; and
 - (c) such information as may be required by the CAC that establishes that—
 - (i) a significant environmental benefit has been, or will be, achieved in accordance with the requirements of the SEB policy; or
 - (ii) it is not reasonable or practicable for the applicant to achieve a significant environmental benefit in accordance with the requirements of the SEB policy; and
 - (d) such other information as the CAC reasonably requires; and
 - (e) the prescribed fee.
- (3) The CAC may, following receipt of an application under this section, request the applicant to provide such additional documents or information as the CAC may reasonably require to assess the application.
- (4) Without limiting the content of the report referred to in subsection (2)(a), that report must establish the category of the clearance in accordance with Council guidelines about categorising levels of clearance.
- (5) The CAC must cause a copy of the report referred to in subsection (2)(a), and a copy of any assessment report prepared by the Department in response to the making of an application under this section, to be published on the Biodiversity Register.
- (6) If an applicant provides information referred to in subsection (2)(c)(ii), the applicant must propose that they make a payment into the Biodiversity Restoration Fund in lieu of achieving a significant environmental benefit in relation to the proposed clearance.
- (7) A person may, at any time, make an application for clearance in relation to native plants, or land on which native plants are growing or situated, in respect of which an application for clearance has previously been made.

50—Matters CAC must have regard to when determining application

- (1) Subject to this Division, in deciding whether to consent to an application to clear native plants, the CAC must—
 - (a) be satisfied that the mitigation hierarchy has been applied in respect of the proposed clearance in accordance with Council guidelines made for that purpose; and
 - (b) have regard to the principles of preservation of native plants in so far as they are relevant to that decision; and
 - (c) consider the potential cumulative impact, both direct and indirect, that is reasonably likely to result from the proposed clearance in accordance with Council guidelines made for that purpose.
- (2) When determining an application to clear native plants that are growing or situated on land that forms part of a property that is used for the business of primary production, the CAC must, in exercising its limited discretion under subsection (1), have regard to the applicant's desire to operate the business as efficiently as possible.
- (3) When determining an application to clear native plants, the CAC must have regard to the principle that such plants should not be cleared if, in the opinion of the CAC—
 - (a) the land on which the plants are growing or situated will be used for a particular purpose after the clearance; and
 - (b) the regional landscape board for the landscape management region where the land is situated has, as part of its regional landscape plan under the *Landscape South Australia Act 2019*, assessed—
 - (i) the capability and preferred uses of the land; and
 - (ii) the condition of the land; and
 - (c) according to that assessment the use of the land for that purpose cannot be sustained.

51—Circumstances in which consent may be given etc

- (1) Subject to subsection (2), the CAC cannot give its consent to the clearance of native plants under this Division if the plants contain, or are constituted of, a stratum of native plants that is substantially intact.
- (2) The CAC may, despite subsection (1), but subject to the other requirements of this Division, give its consent in accordance with this section to the clearance of native plants in specified circumstances.
- (3) Subject to subsection (4), if the applicant proposes that they make a payment into the Biodiversity Restoration Fund as contemplated by section 49(6), the CAC cannot give its consent to the clearance of native plants unless the CAC is satisfied that it is not reasonable or practicable for the applicant to achieve a significant environmental benefit in accordance with the requirements of the SEB policy.
- (4) Subsection (3) does not apply to a clearance that is determined to be a small scale clearance in accordance with Council guidelines about categorising levels of clearance.

- (5) Subject to subsection (7), in deciding whether to consent to an application to clear native plants, the CAC must not make a decision that is seriously at variance with the principles of preservation of native plants.
- (6) For the purposes of subsection (5), whether a decision is seriously at variance with the principles of preservation of native plants is to be determined in accordance with Council guidelines made for that purpose.
- (7) The CAC may give its consent to the clearance of native plants in contravention of subsection (5) if the particular circumstances justify the giving of consent and—
 - (a) the CAC is satisfied that a significant environmental benefit has been, or will be, achieved in accordance with the requirements of the SEB policy; or
 - (b) if the clearance is in specified circumstances and the CAC is satisfied that it is not reasonable or practicable for the applicant to achieve a significant environmental benefit in accordance with the requirements of the SEB policy—the CAC attaches to the consent conditions in accordance with section 53(1)(b).
- (8) The CAC may give its consent to clearance of native plants under this section only if—
 - (a) the CAC is satisfied that a significant environmental benefit has been, or will be, achieved in accordance with the requirements of the SEB policy; or
 - (b) if the CAC is satisfied that it is not reasonable or practicable for the applicant to achieve a significant environmental benefit in accordance with the requirements of the SEB policy—the CAC attaches to the consent a condition in accordance with section 53(1)(b).
- (9) If the clearance that is the subject of the application under this Division relates to a native plant that is a critical habitat feature of critical habitat and is, in the opinion of the CAC, likely to negatively impact on, or hinder the recovery of, the threatened species, threatened ecological community or listed ecological entity that was the basis for the habitat's eligibility to be declared as critical habitat, the CAC must not give consent unless satisfied that the negative impact or hindrance cannot be avoided or further mitigated and—
 - (a) that the applicant has carried out or undertaken, or caused to be carried out or undertaken, an act or activity that the CAC is satisfied has offset any residual negative impacts or hindrance to positively impact on the recovery of the threatened species, threatened ecological community or listed ecological entity (as the case may be); or
 - (b) that the applicant proposes to carry out or undertake, or cause to be carried out or undertaken, an act or activity that the CAC is satisfied will offset any residual negative impacts or hindrance to positively impact on the recovery of the threatened species, threatened ecological community or listed ecological entity (as the case may be).
- (10) For the purposes of subsection (9), the CAC may not consider payment into a fund as an act or activity which offsets any residual negative impacts or hindrance caused by the clearance.

- (11) For the purposes of this section, the following are *specified circumstances*:
- (a) clearance of native plants incidental to work being undertaken by or on behalf of the Commissioner of Highways;
 - (b) subject to subsection (12), clearance of native plants required in order to erect a prescribed building or other facility that is ancillary to a prescribed building, provided that any development authorisation required by or under the *Planning, Development and Infrastructure Act 2016* has been obtained;
 - (c) clearance of native plants required in connection with the provision of infrastructure (including, to avoid doubt, renewable energy infrastructure within the meaning of the *Hydrogen and Renewable Energy Act 2023*), provided that any development authorisation required by or under the *Planning, Development and Infrastructure Act 2016* has been obtained;
 - (d) clearance of native plants required in connection with the division of land for use for residential purposes (including clearance for the construction of infrastructure), provided that any development authorisation required by or under the *Planning, Development and Infrastructure Act 2016* has been obtained;
 - (e) clearance of native plants for the purposes of establishing or maintaining a track for recreational activity involving pedestrians, bicycles or horses;
 - (f) clearance of native plants for the purposes of establishing or widening a track that is more than 5 m in width and reasonably required to provide access for commercial purposes by vehicles having at least 4 wheels, other than clearance on a road reserve, rail corridor or rail reserve;
 - (g) clearance of native plants incidental to the lawful construction or expansion of a dam situated on pastoral land.
- (12) Subsection (11)(b) does not apply to clearance of native plants undertaken in connection with subdivision of the land on which the plants are growing or situated.

52—Consultation and representations

- (1) The CAC must, before giving its consent under this Division—
- (a) consult the regional landscape board for the landscape management region in which the native plants are situated and have regard to the board's recommendations (if any) in relation to the application; and
 - (b) in the case of an application relating to clearance of native plants on pastoral land, consult the Pastoral Board and have regard to the Board's recommendations (if any) in relation to the application; and
 - (c) in the case of an application relating to clearance of native plants within a River Murray Protection Area, consult the Minister responsible for the administration of the *River Murray Act 2003* and comply with that Minister's directions (if any) in relation to the application; and
 - (d) in the case of an application relating to clearance of native plants within the Adelaide Dolphin Sanctuary that is within a class of applications prescribed by the regulations for the purposes of this paragraph, consult the Minister responsible for the administration of the *Adelaide Dolphin Sanctuary Act 2005* and—

- (i) in the case of an application relating to native plants that are mangroves—comply with that Minister's directions (if any) in relation to the application; or
 - (ii) in any other case—have regard to the views of that Minister in relation to the application.
- (2) The CAC must allow any person who desires to do so to make representations in writing to the CAC in relation to an application to clear native plants within the period of 28 days from the day on which the application is received by the CAC.
- (3) The CAC may, as it thinks fit, allow a person to appear personally or by representative before it to be heard on whether the CAC should or should not consent to an application to clear native plants.

53—Conditions of consent

- (1) A consent under this Division to the clearance of native plants is subject to such conditions as the CAC thinks fit to impose or as may be imposed by or under this or another provision of this Act and—
 - (a) if the CAC determines a significant environmental benefit is to be achieved in accordance with the requirements of the SEB policy—
 - (i) such conditions as the CAC thinks fit to ensure that a significant environmental benefit will be achieved in accordance with the requirements of the SEB policy; and
 - (ii) a condition that any measures taken, actions undertaken or requirements complied with to achieve the significant environmental benefit are taken, undertaken or complied with in accordance with a biodiversity management plan; and
 - (iii) if the land on, or in relation to, which a significant environmental benefit will be achieved is not subject to a biodiversity agreement on such terms as the CAC thinks fit—a condition requiring that such an agreement be entered into before the clearance is undertaken; or
 - (b) if the CAC is satisfied that it is not reasonable or practicable for the applicant to achieve a significant environmental benefit in accordance with the requirements of the SEB policy—
 - (i) if the CAC considers it is appropriate in the circumstances—such conditions as the CAC thinks fit to ensure an environmental benefit will be achieved; and
 - (ii) a condition requiring the applicant to make a payment into the Biodiversity Restoration Fund of an amount considered by the CAC to be sufficient to achieve the significant environmental benefit that would otherwise be required by the SEB policy, after taking into account any environmental benefit that would be achieved by compliance with a condition referred to in subparagraph (i).

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- (2) Without limiting subsection (1), consent may be subject to 1 or more of the following conditions:
- (a) a condition that the clearance be undertaken by the owner of the land on which the clearance is to be undertaken or a person authorised by the owner of the land to undertake the clearance;
 - (b) a condition requiring the applicant to—
 - (i) establish a specified number of plants of a specified species on specified land, or cause such plants to be established; and
 - (ii) nurture, protect and maintain the plants, or cause the plants to be nurtured, protected and maintained, until they are fully established or for such period as the CAC specifies;
 - (c) a condition requiring the applicant to protect native plants growing or situated on specified land, or to cause such plants to be protected;
 - (d) a condition restricting the purposes for which land referred to in a condition under paragraph (b)(i) or (c) can be used;
 - (e) a condition requiring the applicant to destroy plants of a specified species growing on specified land, or to cause such plants to be destroyed;
 - (f) a condition requiring the applicant to pay into the Biodiversity Administration Fund an amount determined by the CAC to support the administration, monitoring and enforcement of measures, actions or requirements that relate to the satisfaction of a requirement to achieve a significant environmental benefit in relation to the clearance of native plants.
- (3) If the applicant has, in accordance with section 51(9)(b), proposed to carry out or undertake, or cause to be carried out or undertaken, an act or activity to offset any residual negative impacts or hindrance caused by the clearance, the CAC must attach a condition to the consent requiring that the proposed act or activity be achieved.
- (4) Conditions imposed on consent to clear native plants are binding on, and enforceable against—
- (a) the holder of the consent; and
 - (b) the owner, and any subsequent owner, of the land to be cleared and any other land to which a condition relates; and
 - (c) an occupier of the land to be cleared and any other person who acquires the benefit of the consent.
- (5) The CAC must inform the Registrar-General of all conditions imposed under this section that relate to land (including conditions under subsection (2)(d)) in accordance with section 170.

54—Assignment of consent

- (1) The CAC may, on application, assign a consent to undertake clearance under this Division to another person.
- (2) An application for the assignment of a consent under this section must be made in a manner and form approved by the CAC.

- (3) A consent assigned under subsection (1) is subject to the same conditions to which it was subject immediately before it was assigned.
- (4) If the CAC assigns a consent under subsection (1), the person to whom it is assigned becomes the holder of the consent.

55—Other matters relating to consents

- (1) Consent to undertake clearance under this Division must be given in writing and remains in force for 2 years or for such longer period (which must not be more than 5 years after the consent is given) as the CAC may fix at the time of giving consent or subsequently on application by a person who has the benefit of the consent.
- (2) If, following the giving of a consent to undertake clearance under this Division, the CAC becomes aware that information in, or provided in support of, the application for consent was incorrect or incomplete, the CAC may, by notice in writing to the holder of the consent—
 - (a) vary the consent (including by varying or removing conditions of the consent or by imposing additional conditions) to reflect the consent that would have been given had the CAC been aware of the correct or complete information at the time the application was determined; or
 - (b) revoke the consent if the application would have been refused had the CAC been aware of the correct or complete information at the time the application was determined.
- (3) The CAC must observe the rules of natural justice when considering and determining an application for consent under this Division.
- (4) The CAC must provide the applicant with a written statement of the reasons for its decision under this Division.
- (5) The CAC must cause its decisions and statements of reasons under this Division to be published on the Biodiversity Register.

56—Consent of Minister required if biodiversity agreement applies

- (1) Subject to subsection (2), native plants that are growing or situated on land that is subject to a biodiversity agreement cannot be cleared unless the Minister has also given consent to the clearance (whether conditional or unconditional).
- (2) Subsection (1) does not apply if the biodiversity agreement allows the clearance to be undertaken.
- (3) If the Minister attaches conditions to their consent under subsection (1), the CAC's consent to the clearance will be taken to be subject to the same conditions, in addition to any other conditions imposed by the CAC.

57—Application of Division if referral under Planning, Development and Infrastructure Act

- (1) Sections 50 and section 51(5) to (10) (inclusive) also apply to circumstances where the CAC is considering a development application referred to it under the *Planning, Development and Infrastructure Act 2016* as if the CAC were considering an application for consent under this Act, subject to such modifications, additions or exclusions as the CAC considers may be necessary for the purpose.

- (2) Subsection (1) does not limit the matters that the CAC may take into account in considering such an application.

58—Avoidance of duplication of procedures etc

- (1) The purpose of this section is to provide for the avoidance of unnecessary duplication of procedures and compliance requirements under the Commonwealth Act and this Act where the clearance of native plants requires consent under this Act and approval under the Commonwealth Act.
- (2) Despite any other provision of this Act, the CAC may—
- (a) accept a Commonwealth Act document as an application for consent under section 49 if (subject to subsection (5)) it complies with the requirements of this Act; and
 - (b) accept the whole or part of a plan, report, statement, assessment or other document used, or to be used, for the purposes of the Commonwealth Act as a biodiversity management plan required to be provided in relation to an application for consent to clear native plants if (subject to subsection (5)) the document has been prepared in compliance with this Act and complies with the requirements of this Act.
- (3) To avoid doubt, where a controlled action under the Commonwealth Act comprises or includes the clearance of native plants, the CAC may, when considering an application for consent to clear the native plants, use information and other material provided to the Commonwealth Minister under the Commonwealth Act for the purpose of deciding whether to give their approval to the controlled action under that Act.
- (4) If a controlled action under the Commonwealth Act comprises or includes the clearance of native plants, the CAC—
- (a) must, if the Commonwealth Minister has given their approval to the controlled action, consider whether the conditions (if any) to be imposed on the consent should be consistent with the conditions (if any) attached to the Commonwealth Minister's approval under the Commonwealth Act; and
 - (b) may impose a condition on the consent that requires compliance with all or some of the conditions attached to the Commonwealth Minister's approval under the Commonwealth Act.
- (5) A document accepted under subsection (2)—
- (a) may be in a form that does not comply with the requirements of this Act; and
 - (b) may include information or other material that is irrelevant for the purposes of this Act.
- (6) Once a document is accepted under subsection (2) the document will not be invalid or ineffective for the purposes of this Act because a court, tribunal or other authority has decided that it is invalid or ineffective for the purposes of the Commonwealth Act.
- (7) In this section—
- assessment report** means—
- (a) an assessment report as defined in the Commonwealth Act by reference to section 84(3), 95, 100 or 105 of that Act; or

- (b) a report under section 121 of the Commonwealth Act;

Commonwealth Act means the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth;

Commonwealth Act document means any document required under the Commonwealth Act for the purposes of approval under that Act.

Division 4—Environmental benefit credits

59—Environmental benefit credits

- (1) If a person (including, to avoid doubt, an accredited third party provider)—
- (a) has achieved, or proposes to achieve, an environmental benefit (not being a significant environmental benefit required in relation to a consent to clear native plants or in accordance with any other requirement under this Act); or
 - (b) has achieved, or proposes to achieve, in accordance with a consent to clear native plants, an environmental benefit that exceeds the value of the minimum significant environmental benefit needed to offset the loss of the cleared plants,

the person may apply to the CAC to be credited with having achieved an environmental benefit (an **environmental benefit credit**).

- (2) Following receipt of an application under this section, the CAC may—
- (a) if the environmental benefit is proposed to be achieved—
 - (i) cause the proposal to achieve the environmental benefit to be published on the Biodiversity Register as an indication that an environmental benefit credit may in future be granted in respect of the proposal; or
 - (ii) grant the person an environmental benefit credit of a value determined by the CAC in accordance with the biodiversity policy relating to environmental benefit credits; or
 - (b) if the environmental benefit has been achieved—grant the person an environmental benefit credit of a value determined by the CAC in accordance with the biodiversity policy relating to environmental benefit credits.
- (3) The CAC must not grant an environmental benefit credit under this section unless the CAC is satisfied that the land that is the subject of the credit is, or will be within the period specified by the CAC, subject to a biodiversity agreement and biodiversity management plan.
- (4) The CAC may grant an environmental benefit credit to a person under this section subject to such conditions as it thinks fit.
- (5) The CAC may, by notice in writing, vary or revoke a condition of the grant of an environmental benefit credit.

60—Use of environmental benefit credit

- (1) Subject to this section, a person granted an environmental benefit credit under section 59 may apply to the CAC to—
 - (a) assign the whole or part of the credit to another person; or
 - (b) apply the whole or part of the credit against a requirement under this Act, either of the person holding the credit or another person, to achieve a significant environmental benefit.
- (2) A person assigned a credit under subsection (1)(a) or this subsection may apply to the CAC to—
 - (a) assign the whole or part of the credit to another person; or
 - (b) apply the whole or part of the credit against a requirement under this Act, either of the person holding the credit or another person, to achieve a significant environmental benefit.
- (3) Following receipt of an application under this section, the CAC may approve the assignment or application of a credit.
- (4) In considering an application under this section, the CAC may reassess the value of the credit at the time of application and adjust the value of the credit accordingly before applying it to the purpose for which the application was made.
- (5) Before granting approval in respect of an application under subsection (1)(b) or (2)(b), the CAC must have regard to the SEB policy.
- (6) The CAC may grant an approval under this section subject to such conditions as it thinks fit including (without limitation)—
 - (a) a condition requiring the execution of an agreement varying a biodiversity agreement or biodiversity management plan that relates to the land that was originally the subject of the environmental benefit credit; or
 - (b) a condition requiring the payment of an amount, determined by the CAC to be necessary to satisfactorily complete any acts or actions required by the biodiversity management plan referred to in section 59(3) that remain outstanding at the time of the approval, into a trust established for that purpose.
- (7) The CAC may, by notice in writing, vary or revoke a condition of an approval under this section.
- (8) If an approval is granted to apply a credit under subsection (1)(b) or (2)(b), the CAC must inform the Registrar-General of all conditions imposed under this section that relate to land in accordance with section 170.

61—Other matters relating to environmental benefit credits

- (1) An application under this Division—
 - (a) must be made in a manner and form approved by the CAC; and
 - (b) must be accompanied by such information as the CAC may reasonably require; and
 - (c) must be accompanied by any prescribed fee.

- (2) For the purposes of this Division, a trust may be established in accordance with section 27 for the purposes of receiving money required by section 60(6)(b) and its disbursement in the prescribed manner.
- (3) The CAC must account for the grant of an environmental benefit credit and any subsequent assignment or application against a requirement to achieve a significant environmental benefit in accordance with the regulations.
- (4) The Council may accredit, in accordance with the regulations, a person to achieve environmental benefits (to be known as an *accredited third party provider*).

Division 5—Review etc of clearance refusal or revocation

62—Review by Council of clearance refusal or revocation

- (1) A person who has made an application for consent to clear native plants under Part 4 Division 3 may apply to the Council for review of a decision of the CAC to refuse to give its consent to the clearance.
- (2) A person whose consent to clear native plants given under Part 4 Division 3 has been revoked may apply to the Council for review of the decision of the CAC to revoke the consent.
- (3) For the avoidance of doubt, the following decisions are not reviewable under this section:
 - (a) a decision of the CAC to give consent to clear native plants to an extent that is lesser than that requested by the person in their application for consent;
 - (b) a decision of the CAC as to any conditions or other requirements relating to a consent;
 - (c) a decision of the CAC pursuant to a direction of the Council under subsection (7).
- (4) An application under this section—
 - (a) must be made in a manner and form approved by the Council; and
 - (b) must be accompanied by the prescribed fee; and
 - (c) must be made within 2 months after the making of the decision.
- (5) If the reasons of the CAC are not given to the applicant for the review in writing at the time of making the decision and—
 - (a) that person (within 2 months of the making of the decision) requires the CAC to state the reasons in writing; or
 - (b) the CAC otherwise provides that person with a written statement of the reasons for its decision after making the decision,the time for making an application to the Council runs from the time at which that person receives the written statement of those reasons.
- (6) The Council may, in conducting a review under this section, examine and review the decision of the CAC on the information that was available to the CAC at the time it made its decision but the Council may, as it thinks fit, allow further information to be provided to it.

- (7) The Council may, on a review under this section—
 - (a) confirm the decision that is being reviewed; or
 - (b) direct the CAC to vary or reverse the decision that is being reviewed.
- (8) The Council must, if required by the applicant for the review, state in writing the reasons for the decision.

63—Appeal to ERD Court against review by Council of clearance refusal or revocation

- (1) If, on a review under section 62, the Council confirms the decision that was being reviewed, the person who made the application under that section may appeal to the ERD Court against that decision of the Council.
- (2) An appeal to the ERD Court under this section must be made in a manner and form determined by the Court, setting out the grounds of the application, and must be made within 2 months after the applicant is notified of the decision by the Council unless the Court, in its discretion, allows an extension of time.
- (3) If the reasons of the Council are not given to the applicant for the review under section 62 in writing at the time of making the decision and that person (within 2 months of the making of the decision) requires the Council to state the reasons in writing, the time for appealing to the ERD Court runs from the time at which that person receives the written statement of those reasons.
- (4) An appeal under this section must be referred in the first instance to a conference under section 16 of the *Environment, Resources and Development Court Act 1993*.
- (5) The ERD Court may, on hearing an appeal, do 1 or more of the following:
 - (a) confirm, vary or revoke the decision appealed against;
 - (b) order or direct a person or body to take such action as the Court thinks fit, or to refrain, either temporarily or permanently, from such action or activity as the Court thinks fit;
 - (c) make any consequential or ancillary order or direction, or impose any condition, that it considers necessary or expedient.
- (6) The ERD Court should only seek to deal with and resolve those issues raised in the appeal and should not, unless the Court considers it to be necessary or appropriate to do so, consider any aspect of the decision that is not being challenged.

Part 5—Protected animals

64—Regulated acts or activities

- (1) For the purposes of this Part, the following acts or activities are ***regulated acts or activities***:
 - (a) taking a protected animal or a protected egg;
 - (b) interfering with a protected animal;
 - (c) releasing a protected animal from captivity;
 - (d) keeping a protected animal or a protected egg;

- (e) dealing with a protected animal or a protected egg;
 - (f) farming a protected animal;
 - (g) harvesting a protected animal;
 - (h) dealing with an animal product of a protected animal that has been harvested;
 - (i) destroying, damaging or disturbing a protected habitat;
 - (j) an act or activity prescribed by the regulations for the purposes of this subsection that relates to a protected animal, protected animal product, protected egg or protected habitat;
 - (k) attempting, assisting in, or taking part in the process of an act or activity referred to in a preceding paragraph.
- (2) Despite subsection (1), for the purposes of this Part, the acts or activities specified in Schedule 4 as amended from time to time by regulation are not regulated acts or activities if carried out or undertaken in accordance with any requirements, and subject to any restrictions, set out in that Schedule.

65—Offence to carry out or undertake regulated act or activity without permit

Subject to this Act, a person must not carry out or undertake a regulated act or activity unless the person holds a permit granted by the Minister under Part 9 authorising the person to carry out or undertake the act or activity.

Maximum penalty:

- (a) in the case of a body corporate (involving a trafficable quantity)—\$1 000 000;
- (b) in the case of an individual (involving a trafficable quantity)—\$500 000 or imprisonment for 10 years;
- (c) in the case of a body corporate (not involving a trafficable quantity)—\$500 000;
- (d) in the case of an individual (not involving a trafficable quantity)—\$250 000 or imprisonment for 5 years;

Expiation fee: \$1 500.

66—Taking of animals and eggs by Aboriginal persons

- (1) This section does not apply to the taking of—
- (a) an animal, or an egg of an animal, of a prescribed species; or
 - (b) an animal or egg by a prescribed means or in prescribed circumstances.
- (2) Nothing in this Part prevents an Aboriginal person from taking a protected animal or protected egg for the purposes of using the animal or egg for a non-commercial cultural or spiritual practice (which may include using the animal or egg as food in the course of that practice).

Note—

In taking an animal or egg in accordance with this section, an Aboriginal person is subject to laws of general application.

67—Illegal possession of protected animals etc

A person must not have in their possession or control a protected animal, protected animal product or egg of a protected animal that has been illegally taken or acquired.

Maximum penalty:

- (a) in the case of a body corporate (involving a trafficable quantity)—\$1 000 000;
- (b) in the case of an individual (involving a trafficable quantity)—\$500 000 or imprisonment for 10 years;
- (c) in the case of a body corporate (not involving a trafficable quantity)—\$500 000;
- (d) in the case of an individual (not involving a trafficable quantity)—\$250 000 or imprisonment for 5 years;

Expiation fee: \$1 500.

68—Management plan in relation to harvesting relevant protected animals

- (1) The Minister must prepare a draft management plan in relation to the harvesting of each relevant protected animal.
- (2) The draft plan must—
 - (a) assess the likely impact of taking animals of that species—
 - (i) on the species concerned; and
 - (ii) on the ecosystems which animals of that species form part; and
 - (iii) on the diversity of the species of animals and plants comprising those ecosystems; and
 - (iv) on the ability of the species to maintain natural genetic diversity throughout its population; and
 - (b) identify factors that are likely to reduce or increase the number of animals of the species to be harvested; and
 - (c) identify any other factors that will affect the species as a renewable resource for the future; and
 - (d) assess whether there is a need to reduce the number of animals of the species to protect the environment, crops, stock or other property; and
 - (e) specify humane methods and procedures for the killing, capturing and killing and treatment after capture of animals in accordance with a permit under this Act; and
 - (f) address any other matters that should, in the opinion of the Minister, be addressed.
- (3) The Minister must, by notice published on a website determined by the Minister—
 - (a) state the website at which the draft plan is available; and
 - (b) invite interested persons to provide the Minister with written comments in relation to the draft plan.

- (4) A draft plan must be made available on a website specified in the notice under subsection (3) for public comment for at least 30 days before adoption by the Minister.
- (5) Before adopting the draft plan, the Minister must have regard to any comments received in relation to the draft plan during the period referred to in subsection (4) and may, if the Minister thinks fit, vary the plan to take account of those comments.
- (6) The Minister must, by notice in the Gazette—
 - (a) state that a management plan has been adopted under this section; and
 - (b) state the website at which the plan is available.
- (7) A management plan may be replaced or varied by a further plan prepared and adopted by the Minister in accordance with this section.
- (8) In this section—

relevant protected animal means an animal of the following species:

 - (a) red kangaroo—*Osphranter rufus*;
 - (b) western grey kangaroo—*Macropus fuliginosus melanops*;
 - (c) euro (wallaroo) (hill kangaroo)—*Osphranter robustus*;
 - (d) eastern grey kangaroo—*Macropus giganteus*;
 - (e) tammar wallaby—*Notamacropus eugenii*;
 - (f) western grey kangaroo—*Macropus fuliginosus fuliginosus*;
 - (g) a species prescribed by regulation for the purposes of this definition.

69—Declaration to take certain protected animals

- (1) The Minister may, by notice in the Gazette, declare that 1 or both of the following may be taken:
 - (a) protected animals of a specified species;
 - (b) protected eggs of a specified species of protected animal.
- (2) A notice under this section—
 - (a) must not relate to animals or eggs of a threatened species; and
 - (b) may only be made if the Minister is satisfied that the taking of the species at levels that could reasonably be expected as a result of the declaration would not reasonably cause the species to be considered for assessment as a threatened species in accordance with Part 6; and
 - (c) does not apply in relation to animals or eggs within—
 - (i) a reserve, other than a game reserve; or
 - (ii) a wilderness protection area or wilderness protection zone; or
 - (iii) a sanctuary; or
 - (iv) a game reserve unless the notice expressly provides that the declaration applies in relation to that reserve.

- (3) A notice under this section—
 - (a) must state—
 - (i) the period during which the animals or eggs may be taken (including, if the Minister thinks fit, the hours of the day during which animals or eggs may be taken); and
 - (ii) the parts of the State to which the declaration applies; and
 - (b) may specify that a permit granted by the Minister under section 153 is required to take the species; and
 - (c) may prescribe restrictions or conditions applicable to the declaration.
- (4) The Minister must publish a statement of reasons for a declaration under this section on the Biodiversity Register within 30 days after the notice making the declaration is published in the Gazette.
- (5) It is lawful to take a protected animal or protected egg in accordance with a notice under this section.

Part 6—Threatened species, threatened ecological communities and listed ecological entities

Division 1—Designated lists

70—Threatened species list

The Minister must establish and maintain a *threatened species list* that—

- (a) contains the native species that are eligible to be included in the list; and
- (b) includes the following categories:
 - (i) nationally extinct;
 - (ii) nationally extinct in the wild;
 - (iii) nationally critically endangered;
 - (iv) nationally endangered;
 - (v) nationally vulnerable;
 - (vi) nationally conservation dependent;
 - (vii) SA extinct;
 - (viii) SA extinct in the wild;
 - (ix) SA critically endangered;
 - (x) SA endangered;
 - (xi) SA vulnerable;
 - (xii) SA rare;
 - (xiii) any other category prescribed by the regulations.

71—Threatened ecological communities list

The Minister must establish and maintain a *threatened ecological communities list* that—

- (a) contains the ecological communities eligible to be included in the list; and
- (b) includes the following categories:
 - (i) nationally collapsed;
 - (ii) nationally critically endangered;
 - (iii) nationally endangered;
 - (iv) nationally vulnerable;
 - (v) SA collapsed;
 - (vi) SA critically endangered;
 - (vii) SA endangered;
 - (viii) SA vulnerable;
 - (ix) SA rare;
 - (x) any other category prescribed by the regulations.

72—Ecological entities list

The Minister may establish and maintain a list in respect of any ecological entity, other than a native species, ecological community or critical habitat, that—

- (a) contains the ecological entities eligible to be included in the list; and
- (b) includes any prescribed categories.

Division 2—Eligibility

73—Eligibility criteria

- (1) The Governor may, by regulation made on the recommendation of the Minister, prescribe the criteria to be applied to determine the eligibility of a native species, ecological community or ecological entity to be included in a designated list and in a particular category of a designated list.
- (2) The Minister must, in recommending eligibility criteria to be prescribed for the purposes of subsection (1), be satisfied that the criteria—
 - (a) only relate to matters of biodiversity conservation; and
 - (b) take into account national and international best practice in relation to criteria and categories.
- (3) Before recommending eligibility criteria to be prescribed for the purposes of subsection (1), the Minister must consult with the Scientific Committee on the proposed criteria.

Division 3—Processes

74—Establishing or revoking designated lists

- (1) A designated list will be established by the Minister in accordance with processes prescribed by the regulations.
- (2) An ecological entities list established and maintained under section 72 may be revoked by the Minister in circumstances prescribed by the regulations and in accordance with processes determined by the Minister or prescribed by the regulations.

75—Listing decision

For the purposes of this Part, a *listing decision* in respect of a designated list is a decision to—

- (a) add a native species, ecological community or ecological entity to a designated list; or
- (b) remove a native species, ecological community or ecological entity from a designated list; or
- (c) move a native species, ecological community or ecological entity to a different category within a designated list; or
- (d) otherwise amend a designated list in relation to a native species, ecological community or ecological entity; or
- (e) not amend a designated list in a manner referred to in a preceding paragraph.

76—Listing process

- (1) Subject to section 77, a listing decision may only be made in accordance with the process set out in this section.
- (2) Any entity (including the Department or Scientific Committee) may, in a manner and form determined by the Minister, nominate a native species, ecological community or other ecological entity to the Minister for a listing assessment.
- (3) The Minister may reject a nomination under subsection (2) in the following circumstances:
 - (a) the nomination was not made in a manner or form determined by the Minister or does not contain sufficient documentation or evidence;
 - (b) the Minister considers that the nomination is vexatious, frivolous or not made in good faith;
 - (c) the Minister considers that it is unlikely that the nomination will result in a listing decision referred to in section 75(a) to (d) (inclusive).
- (4) Before the Minister rejects a nomination, the Minister must seek the advice of the Scientific Committee.
- (5) The Minister must, unless the nomination is rejected, undertake a listing assessment against the eligibility criteria prescribed in accordance with section 73 within the prescribed period and make a preliminary listing decision.

- (6) The Minister's preliminary listing decision must take into account any advice provided by the Scientific Committee and must be made in accordance with any requirements prescribed by the regulations.
- (7) After a preliminary listing decision has been made, the Minister must—
 - (a) notify the entity that made the nomination of the preliminary listing decision; and
 - (b) publish a notice on a website determined by the Minister that invites submissions on the preliminary listing decision; and
 - (c) if the listing decision relates to a fish or aquatic plant—notify the Minister responsible for the administration of the *Fisheries Management Act 2007* of the preliminary listing decision; and
 - (d) carry out any other consultation prescribed for the purposes of this paragraph.
- (8) After the Minister has complied with subsection (7), the Minister must refer the preliminary listing decision to the Scientific Committee for a final listing decision.
- (9) The Scientific Committee must, by notice in the Gazette, make a final listing decision in accordance with any requirements prescribed by the regulations and within the prescribed period.
- (10) Before the Scientific Committee makes a final listing decision, the Scientific Committee must consider any submissions received in relation to the preliminary listing decision, insofar as the submissions relate to biodiversity conservation.
- (11) The Scientific Committee must cause a statement of reasons for the final listing decision to be published on the Biodiversity Register.
- (12) The Minister must update the designated list in respect of which the final listing decision is made in accordance with that decision and publish the updated list on the Biodiversity Register.

77—Expedited listing process

- (1) The Minister and the Scientific Committee need not follow the process set out in section 76 in the following circumstances:
 - (a) to incorporate or reflect a list, or a change to such a list, in another Australian jurisdiction relating to a native species or ecological community;
 - (b) to make a minor amendment to a designated list;
 - (c) to make a provisional listing under section 78.
- (2) In this section—

Australian jurisdiction means the Commonwealth or another State or a Territory of the Commonwealth;

minor amendment means an amendment to reflect a change in nomenclature, minor taxonomic revisions or typographical errors, or an amendment in prescribed circumstances.

78—Provisional listing

- (1) The Scientific Committee may, by notice in the Gazette, make a provisional listing in the following circumstances:
 - (a) if a native species or ecological community is discovered in the State and is considered by the Scientific Committee to be threatened;
 - (b) if a new native species or new ecological community is described resulting from a taxonomic revision and is considered by the Scientific Committee to be threatened;
 - (c) if a native species that was presumed to be extinct or extinct in the wild (whether nationally or in the State) has been located or reintroduced in the State and is considered by the Scientific Committee to be threatened;
 - (d) if an ecological community that was presumed to be collapsed (whether nationally or in the State) has been located or reintroduced in the State and is considered by the Scientific Committee to be threatened;
 - (e) if an event rapidly changes the extinction risk or potential extinction risk of a native species or ecological community;
 - (f) in circumstances of a kind prescribed by the regulations.
- (2) Circumstances prescribed under subsection (1)(f) must relate to matters of biodiversity conservation.
- (3) A provisional listing expires—
 - (a) on the making of a final listing decision in place of that provisional listing; or
 - (b) 2 years after the provisional listing is made,whichever occurs sooner.
- (4) If a provisional listing has been made in respect of a native species or ecological community, that species or community (as the case may be) will be taken to be a threatened species or threatened ecological community (as the case requires) during the period that the provisional listing is in operation.
- (5) In this section—

threatened means eligible, or likely to be eligible, to be the subject of a listing decision referred to in section 75(a) to (d) (inclusive).

Division 4—Protection of threatened species, threatened ecological communities and listed ecological entities etc

79—Action plans

- (1) The Minister may prepare and publish on the Biodiversity Register an *action plan* in respect of a threatened species, threatened ecological community, listed ecological entity or critical habitat.
- (2) In preparing an action plan, the Minister must—
 - (a) take into account any advice provided by the Scientific Committee; and

- (b) undertake such consultation on the proposed plan as the Minister considers appropriate; and
 - (c) have regard to any submissions received during the consultation period.
- (3) If an action plan relates to a native species or ecological community that is a Culturally Significant Biodiversity Entity, the Minister must undertake such engagement with Aboriginal persons and groups as the Minister considers appropriate, having regard to any relevant policy or other document published under this Act, and must take into account any feedback provided by such persons and groups.
- (4) An action plan may refer to, apply or incorporate, wholly or partially and with or without modification, any document prepared or published by an entity referred to in the plan.
- (5) The regulations may prescribe matters relating to an action plan, including in relation to the form and content of, and procedures for developing, a plan.
- (6) The Minister must—
 - (a) take reasonable steps to implement an action plan; and
 - (b) report on the implementation and effectiveness of the plan in accordance with the requirements prescribed by the regulations for the purposes of this paragraph.

80—Declaration of key threatening process

The Minister may, by notice in the Gazette, declare a threatening process to be a key threatening process if, in the Minister's opinion—

- (a) it adversely affects 1 or more threatened species, threatened ecological communities or listed ecological entities; or
- (b) it could cause 1 or more native species that are not threatened species to become eligible to be added to the threatened species list; or
- (c) it could cause 1 or more ecological communities that are not threatened ecological communities to become eligible to be added to the threatened ecological communities list.

81—Threat abatement plans

- (1) The Minister may prepare and publish on the Biodiversity Register a ***threat abatement plan*** in respect of a key threatening process.
- (2) In preparing a threat abatement plan, the Minister must—
 - (a) take into account any advice provided by the Scientific Committee; and
 - (b) undertake such consultation on the proposed plan as the Minister considers appropriate; and
 - (c) have regard to any submissions received during the consultation period.
- (3) A threat abatement plan may refer to, apply or incorporate, wholly or partially and with or without modification, any document prepared or published by an entity referred to in the plan.
- (4) The regulations may prescribe matters relating to a threat abatement plan including in relation to the form and content of, and procedures for developing, a plan.

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- (5) The Minister must—
- (a) take reasonable steps to implement a threat abatement plan; and
 - (b) report on the implementation and effectiveness of the plan in accordance with the requirements prescribed by the regulations for the purposes of this paragraph.

82—Extinction inquiry

- (1) If the Scientific Committee considers that—
- (a) it is possible that a native species endemic to the State has, after the commencement of this section, become extinct in the State or extinct in the wild in the State; or
 - (b) it is possible that an ecological community endemic to the State has, after the commencement of this section, collapsed in the State,
- the Scientific Committee must undertake an inquiry into the potential extinction of the native species or the potential collapse of the ecological community (as the case requires) in the State.
- (2) If the Scientific Committee considers that—
- (a) it is possible that a native species not endemic to the State has, after the commencement of this section, become extinct in the State or extinct in the wild in the State; or
 - (b) it is possible that an ecological community not endemic to the State has, after the commencement of this section, collapsed in the State,
- the Scientific Committee may undertake an inquiry into the potential extinction of the native species or the potential collapse of the ecological community (as the case requires) in the State.
- (3) The regulations will prescribe requirements in relation to the conduct of an inquiry under this section.

83—Protection of threatened species of fish

- (1) If a species of fish is added to the threatened species list, the Minister must consult with the Minister responsible for the administration of the *Fisheries Management Act 2007* to determine appropriate mechanisms for ongoing protection of the species aimed at ensuring sustainability of the species.
- (2) If, after consultation under subsection (1), the Minister determines that protections under the *Fisheries Management Act 2007* are appropriate, the Minister may not prescribe the species of fish for the purposes of the definition of *protected animal* in section 3.

Division 5—Protection of critical habitat

84—Declaration of critical habitat

- (1) The Minister may, by notice in the Gazette, declare habitat of a threatened species, threatened ecological community or listed ecological entity to be critical habitat if the habitat is eligible to be so declared in accordance with subsection (2).

- (2) A habitat is eligible to be critical habitat if, in the opinion of the Minister after consideration of the biodiversity policy referred to in section 175(4)(c), the habitat significantly contributes to the conservation of a threatened species, threatened ecological community or listed ecological entity such that its loss would increase the risk of extinction or collapse, or negatively impact on the recovery, of the threatened species, threatened ecological community or listed ecological entity (as the case may be).
- (3) A declaration under subsection (1) must identify the habitat by reference to—
 - (a) the features that make it eligible to be critical habitat in accordance with subsection (2) (the *critical habitat features*); and
 - (b) the area in which the habitat is located.
- (4) The Minister must make a *critical habitat declaration decision*, being a decision to—
 - (a) make a declaration under subsection (1); or
 - (b) repeal a declaration made under subsection (1); or
 - (c) amend a declaration made under subsection (1); or
 - (d) not make a decision of a kind referred to in a preceding paragraph,within 6 months following the making of a final listing decision of a kind referred to in section 75(a) to (d) (inclusive) or on the recommendation of the Scientific Committee, and may make such a decision at any other time.
- (5) The Minister must publish a statement of reasons for any critical habitat declaration decision on the Biodiversity Register within 30 days after the decision is made.
- (6) Before making a critical habitat declaration decision, the Minister must—
 - (a) take into account any advice provided by the Scientific Committee; and
 - (b) undertake public consultation, and such other engagement as the Minister considers appropriate, on the proposed declaration in the manner the Minister considers appropriate; and
 - (c) where reasonably practicable, seek to consult with any owners of land affected by the proposed declaration and any other person with a legal or equitable interest in that land or with a prescribed right in relation to that land; and
 - (d) if the proposed declaration relates to a native species or ecological community that is a Culturally Significant Biodiversity Entity—undertake such engagement with Aboriginal persons and groups as the Minister considers appropriate, having regard to any relevant policy or other document published under this Act, and take into account any feedback provided by such persons and groups; and
 - (e) have regard to any submissions received during the consultation period.
- (7) The Minister may make a critical habitat declaration decision referred to in subsection (4)(b) or (c) if the Minister considers that the decision is appropriate on the basis of the eligibility requirements under subsection (2).

85—Minister may enter into agreement or arrange for action plan

The Minister may take steps to engage with the owner of land on which critical habitat is located to do 1 or both of the following:

- (a) enter into a biodiversity agreement to protect the habitat;
- (b) arrange for the preparation of an action plan under section 79 in respect of the habitat.

86—Offence to destroy, damage or disturb critical habitat without authorisation

- (1) Subject to this Act, a person must not destroy, damage or disturb critical habitat features of critical habitat unless the person is taken to hold an authorisation under section 88 authorising the person to carry out or undertake the destruction, damage or disturbance (as the case requires).

Maximum penalty:

- (a) in the case of a body corporate—\$1 000 000;
- (b) in the case of an individual—\$500 000 or imprisonment for 5 years.

Expiation fee: \$1 500.

- (2) For the purposes of an offence against subsection (1), the Minister may make a biodiversity policy in relation to each critical habitat that outlines what does or does not constitute destruction, damage or disturbance of critical habitat features of that habitat and whether a person has committed an offence against subsection (1) will be determined in accordance with the policy.

87—Destroying, damaging or disturbing critical habitat by Aboriginal persons

- (1) This section does not apply to the destruction, damage or disturbance of, or in respect of—
 - (a) critical habitat, or critical habitat features of critical habitat, of a prescribed class; or
 - (b) critical habitat features of critical habitat by a prescribed means or in prescribed circumstances.
- (2) Nothing in this Division prevents an Aboriginal person from destroying, damaging or disturbing critical habitat features of critical habitat for the purposes of using the critical habitat features for a non-commercial cultural or spiritual practice (which may include using the features as food in the course of that practice).

Note—

In destroying, damaging or disturbing critical habitat features of critical habitat in accordance with this section, an Aboriginal person is subject to laws of general application.

88—Authorisation to destroy, damage or disturb critical habitat features

- (1) For the purposes of section 86, a person is taken to hold an authorisation to destroy, damage or disturb critical habitat features of critical habitat if—
 - (a) in the case of destruction, damage or disturbance that constitutes a regulated act or activity under Part 4 carried out or undertaken in respect of critical habitat features that comprise or constitute native plants—
 - (i) in the case of a regulated act or activity under Part 4 constituting clearance of native plants—
 - (A) subject to section 56, the person has been given written consent by the CAC in accordance with Part 4 Division 3 to clear the critical habitat features; or
 - (B) the act or activity is carried out or undertaken in prescribed circumstances; or
 - (ii) in the case of a regulated act or activity under Part 4 constituting taking native plants—the person has been granted a permit by the Minister under Part 9 to take the critical habitat features; or
 - (b) in any other case—the person has been given consent by the CAC in accordance with this Division to destroy, damage or disturb the critical habitat features.
- (2) If a person who is (apart from this subsection) taken to hold an authorisation to destroy, damage or disturb critical habitat features of critical habitat in accordance with this section fails to destroy, damage or disturb the critical habitat features in accordance with the consent or permit (as the case requires), the person is taken not to hold the authorisation.

89—Application for consent

- (1) An application for consent under this Division may be made by any person.
- (2) An application for consent under this Division must be made in a manner and form approved by the CAC and must be accompanied by—
 - (a) such information as the CAC reasonably requires; and
 - (b) the prescribed fee.
- (3) The CAC may, following receipt of an application under this section, request the applicant to provide such additional documents or information as the CAC may reasonably require to assess the application.
- (4) A person may, at any time, make an application for destroying, damaging or disturbing critical habitat features of critical habitat, or land on which critical habitat is situated, in respect of which an application under this section has previously been made.

90—Circumstances in which consent may be given etc

- (1) If proposed destruction, damage or disturbance of critical habitat features of critical habitat that is the subject of an application under section 89 is, in the opinion of the CAC, likely to negatively impact on, or hinder the recovery of, the threatened species, threatened ecological community or listed ecological entity that was the basis for the habitat's eligibility to be declared as critical habitat, the CAC must not give consent unless satisfied that the negative impact or hindrance cannot be avoided or further mitigated and—
 - (a) that the applicant has carried out or undertaken, or caused to be carried out or undertaken, an act or activity that the CAC is satisfied has offset any residual negative impacts or hindrance to positively impact on the recovery of the threatened species, threatened ecological community or listed ecological entity (as the case may be); or
 - (b) that the applicant proposes to carry out or undertake, or cause to be carried out or undertaken, an act or activity that the CAC is satisfied will offset any residual negative impacts or hindrance to positively impact on the recovery of the threatened species, threatened ecological community or listed ecological entity (as the case may be).
- (2) For the purposes of subsection (1), the CAC may not consider payment into a fund as an act or activity which offsets any residual negative impacts or hindrance caused by the destruction, damage or disturbance of critical habitat features.

91—Consultation and representations

- (1) The CAC must, before giving its consent under this Division, undertake such consultation as is required (if any) by a scheme set out in the regulations.
- (2) The CAC must allow any person who desires to do so to make representations in writing to the CAC in relation to the giving or refusal of consent to an application to destroy, damage or disturb critical habitat features of critical habitat within the period of 28 days from the day on which the application is received by the CAC.
- (3) The CAC may, as it thinks fit, allow a person to appear personally or by representative before it to be heard on whether the CAC should or should not consent to an application to destroy, damage or disturb critical habitat features of critical habitat.

92—Conditions of consent

- (1) A consent given under this Division is subject to such conditions (if any) as the CAC thinks fit to impose.
- (2) Without limiting subsection (1), consent may be subject to a condition that the destruction, damage or disturbance of the critical habitat features of the critical habitat be undertaken by the owner of the land on which the destruction, damage or disturbance is to be undertaken or a person authorised to undertake the destruction, damage or disturbance by the owner of the land.
- (3) If the applicant has, in accordance with section 90(1)(b), proposed to carry out or undertake, or cause to be carried out or undertaken, an act or activity to offset any residual negative impacts or hindrance caused by the destruction, damage or disturbance of the critical habitat features of the critical habitat, the CAC must attach a condition to the consent requiring that the proposed act or activity be achieved.

- (4) Conditions imposed on consent given under this Division are binding on, and enforceable against—
 - (a) the holder of the consent; and
 - (b) the owner, and any subsequent owner, of the land to be cleared and any other land to which a condition relates; and
 - (c) an occupier of the land to be cleared and any other person who acquires the benefit of the consent.
- (5) The CAC must inform the Registrar-General of all conditions imposed under this section that relate to land in accordance with section 170.

93—Contravention of condition of consent

A person must not contravene a condition of a consent given under this Division that is held by the person.

Maximum penalty:

- (a) in the case of a body corporate—\$1 000 000;
- (b) in the case of an individual—\$500 000 or imprisonment for 5 years.

Expiation fee: \$1 500.

94—Assignment of consent

- (1) The CAC may, on application, assign a consent under this Division to another person.
- (2) An application for the assignment of a consent under this section must be made in a manner and form approved by the CAC.
- (3) A consent assigned under subsection (1) is subject to the same conditions to which it was subject immediately before it was assigned.
- (4) If the CAC assigns a consent under subsection (1), the person to whom it is assigned becomes the holder of the consent.

95—Other matters relating to consents

- (1) Consent under this Division must be given in writing and remains in force for 2 years or for such longer period (which must not be more than 5 years after the consent is given) as the CAC may fix at the time of giving consent or subsequently on application by a person who has the benefit of the consent.
- (2) If, following the giving of a consent under this Division, the CAC becomes aware that information in, or provided in support of, the application for consent was incorrect or incomplete, the CAC may, by notice in writing to the applicant—
 - (a) vary the consent (including by varying or removing conditions of the consent or by imposing additional conditions) to reflect the consent that would have been given had the CAC been aware of the correct or complete information at the time the application was determined; or
 - (b) revoke the consent if the application would have been refused had the CAC been aware of the correct or complete information at the time the application was determined.
- (3) The CAC must observe the rules of natural justice when considering and determining an application for consent under this Division.

- (4) The CAC must provide the applicant with a written statement of the reasons for its decision under this Division.
- (5) The CAC must cause its decisions and statements of reasons under this Division to be published on the Biodiversity Register.

Part 7—Conserved areas

Division 1—Sanctuaries and other conservation areas

96—Establishment of sanctuaries

- (1) The Minister may, by notice in the Gazette, declare land to be a sanctuary if the Minister is of the opinion that the declaration is desirable to conserve protected animals or native plants and—
 - (a) where the land is reserved for or dedicated to a public purpose—the person to whom the care, control and management of that land has been committed has consented to a declaration under this section; or
 - (b) where the land is private land, or is subject to a lease granted under the *Crown Land Management Act 2009* or the *Pastoral Land Management and Conservation Act 1989*—the owner and occupier of the land have consented to a declaration under this section.
- (2) The declaration of land as a sanctuary under subsection (1) on or after 1 January 1994 is subject to native title existing when the declaration was made.
- (3) The Minister—
 - (a) may repeal any declaration under this section; and
 - (b) where private land, or land that is subject to a lease granted under the *Crown Land Management Act 2009* or the *Pastoral Land Management and Conservation Act 1989*, constitutes a sanctuary, and the owner of that land, by instrument in writing, requests that the land should cease to be a sanctuary—must repeal the declaration under which that land is constituted as a sanctuary.
- (4) In this section—

owner means—

 - (a) in the case of private land that is held in fee simple—the holder of the estate in fee simple; or
 - (b) in the case of land that is subject to a lease granted under the *Crown Land Management Act 2009* or the *Pastoral Land Management and Conservation Act 1989*—the lessee under that lease.

97—Other conservation areas

The regulations may establish, or set out processes for establishing, conservation areas on private land, with the consent of the owner of the land, and make provision in respect of the management of such areas.

Division 2—Biodiversity agreements

98—Biodiversity agreements

- (1) The Minister may enter into a biodiversity agreement with the owner of land (including, to avoid doubt, where the Minister is the owner of the land) for the conservation, restoration or enhancement of biodiversity on the land.
- (2) A biodiversity agreement may contain such provisions as the Minister thinks fit including (without limiting the generality of this subsection) provisions to—
 - (a) restrict the use of land to which it applies; and
 - (b) require specified work or work of a specified kind to be carried out in accordance with specified standards on the land; and
 - (c) restrict the nature of work that may be carried out on the land; and
 - (d) provide for the management of the land, native plants on the land or any animals living on or visiting the land in accordance with a biodiversity management plan to be agreed from time to time between the Minister and the owner; and
 - (e) provide for the period for or within which specified measures, actions or requirements are to be taken, undertaken or complied with; and
 - (f) specify the term for which the agreement is to operate; and
 - (g) in respect of an agreement deemed to operate in perpetuity—
 - (i) provide for remission of rates or taxes in respect of the land; and
 - (ii) provide for the Minister to pay to the owner of the land an amount in respect of the decrease in the value of the land resulting from the execution of the biodiversity agreement; and
 - (h) provide for the Minister to pay to the owner of the land an amount as an incentive to enter into the biodiversity agreement.
- (3) If a biodiversity agreement specifies the term for which the agreement is to operate, the term of the agreement must not be for a period of less than 20 years.
- (4) If a biodiversity agreement does not specify the term for which the agreement is to operate, it is deemed to operate in perpetuity.
- (5) Subject to subsections (6) and (7), the Minister may, by agreement with the owner of the land to which a biodiversity agreement applies—
 - (a) vary the biodiversity agreement, including to vary the term of the agreement (but not so as to reduce the term of the agreement to a period of less than 20 years from the commencement of the agreement); or
 - (b) terminate the biodiversity agreement.
- (6) If a biodiversity agreement is deemed to operate in perpetuity in accordance with subsection (4), the agreement cannot be varied to include a term for which the agreement is to operate.

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- (7) If a biodiversity agreement (the *original agreement*) is entered into in relation to a requirement under this Act that an environmental benefit be achieved by a person, the original agreement must not be varied or terminated if that variation or termination would prevent the achievement of the required environmental benefit in full, unless the variation or termination is as a consequence of some other agreement or arrangement under this Act being entered into for the conservation, restoration or enhancement of biodiversity on the land to which the original agreement applied that, in the opinion of the Council, offers the same or more protection for biodiversity on the land than the original agreement.
 - (8) A biodiversity agreement attaches to the land and is, during the term for which the agreement operates, binding on the current owner of the land whether or not that owner was the person with whom the agreement was made.
 - (9) A biodiversity agreement is, during the term for which the agreement operates and to the extent specified in the agreement, binding on the occupier of the land.
 - (10) The Minister must not enter into, vary or terminate a biodiversity agreement under this section without first consulting and obtaining the approval of the Council.
 - (11) If—
 - (a) the Minister enters into a biodiversity agreement; or
 - (b) the Minister varies a biodiversity agreement (including varying the term of the agreement); or
 - (c) the Minister terminates a biodiversity agreement; or
 - (d) the term of a biodiversity agreement, if specified in the agreement, expires,the Minister must inform the Registrar-General of the agreement, or the variation, termination or expiry, in accordance with section 170.
 - (12) A provision of a biodiversity agreement providing for the remission of rates or taxes has effect despite any law to the contrary.
 - (13) The amount that the Minister agrees to pay in respect of the decrease in the value of the land referred to in subsection (2) must not exceed the amount of the decrease determined by the Valuer-General.
 - (14) Any money required by the Minister to meet the Minister's obligations under a biodiversity agreement entered into under this section must be paid from the Biodiversity Restoration Fund.
 - (15) If, in the opinion of the Minister, a person to whom money from the Biodiversity Restoration Fund has been paid under a biodiversity agreement has contravened a term of the agreement, the Minister may serve written notice on that person demanding repayment of the amount paid or such lesser amount as is specified in the notice.
 - (16) An amount demanded by the Minister under subsection (15) is a debt due by the person from whom it is demanded to the Minister and on recovery must be paid by the Minister into the Biodiversity Restoration Fund.
 - (17) A court that is considering a claim for payment of a debt referred to in subsection (16) may refuse to order payment of all or part of the amount if, in its opinion, the person to whom the money was paid did not contravene the terms of the agreement.

Division 3—Financial and other assistance

99—Financial and other assistance

- (1) An application may be made to the Council for financial or other assistance for 1 or more of the following purposes:
 - (a) undertaking ecological restoration on land, including, but not limited to, restoring or establishing native plants on the land;
 - (b) managing land, native plants growing or situated on land or any animals living on or visiting land;
 - (c) preserving or enhancing native plants growing or situated on land;
 - (d) undertaking research in relation to the conservation, restoration, enhancement or management of native plants growing or situated on land or of animals living on or visiting land;
 - (e) to purchase land for the purpose of conserving, protecting or enhancing native plants growing or situated on the land;
 - (f) to purchase land for the purpose of undertaking ecological restoration on the land, including, but not limited to, restoring or establishing native plants on the land.
- (2) An application must be made in a manner and form approved by the Council and must—
 - (a) set out the applicant's proposals for the application of the assistance requested by the applicant; and
 - (b) include any other information required by the Council.
- (3) The applicant's proposals must be based on Council guidelines referred to in section 174(2)(g).
- (4) In granting an application for assistance under this section, the Council must be satisfied that the land that is the subject of the application for financial assistance is, or will be, subject to a biodiversity agreement.
- (5) The Council may attach to a grant of assistance under this section such conditions as it thinks fit.
- (6) Money payable by way of financial assistance under this section must be paid from the Biodiversity Restoration Fund.
- (7) If, in the opinion of the Council, a person to whom the Council has granted financial assistance under this section—
 - (a) contravenes a condition attached to the grant of the assistance; or
 - (b) contravenes a term of a biodiversity agreement in respect of the relevant land; or
 - (c) fails, within a reasonable time, to apply the amount granted for the purpose for which it was granted,

the Council may serve written notice on that person demanding repayment of the amount granted or such lesser amount as is specified in the notice.

- (8) An amount demanded by the Council under subsection (7) is a debt due by the person from whom it is demanded to the Council and on recovery must be paid by the Council into the Biodiversity Restoration Fund.
- (9) A court that is considering a claim for payment of a debt referred to in subsection (8) may refuse to order payment of all or part of the amount claimed if, in its opinion, the person to whom the financial assistance was granted has applied it in accordance with the conditions on which it was granted or in accordance with what the person genuinely believed to be the conditions on which it was granted.

Part 8—Enforcement

Division 1—Authorised officers

100—Appointment of authorised officers

- (1) The following persons are authorised officers under this Act:
 - (a) persons appointed by the Minister;
 - (b) police officers;
 - (c) wardens appointed under the *National Parks Act 1972*, other than wardens whose appointments are limited to a particular provision or provisions of the *National Parks Act 1972* or to a particular reserve or reserves.
- (2) The Minister may only appoint an officer of a local council to be an authorised officer under this Act with the written approval of the relevant council.
- (3) If the Minister appoints an officer of a local council to be an authorised officer under this Act, the Minister must reimburse the local council for any reasonable costs incurred by the local council in connection with the appointment.
- (4) The Minister may, at any time—
 - (a) vary or revoke the appointment of an authorised officer appointed by the Minister; or
 - (b) limit the powers of an authorised officer appointed by the Minister.

101—Identification of authorised officers

- (1) A person appointed by the Minister as an authorised officer under this Act must be issued with an identity card—
 - (a) containing the person's name and a photograph of the person; and
 - (b) stating that the person is an authorised officer under this Act; and
 - (c) stating any limitations on the authorised officer's powers.
- (2) If the powers of an authorised officer appointed by the Minister have been limited, the identity card issued to the authorised officer must contain a statement of those limitations.

- (3) An authorised officer (other than a police officer in uniform) must, at the request of another person in relation to whom the authorised officer intends to exercise powers under this Part, produce for the other person's inspection—
- (a) if the officer was appointed by the Minister as an authorised officer under this Act—the identity card issued to the officer under this section; or
 - (b) if the officer is an authorised officer because the person holds an office under another Act—the identity card issued to the officer under that Act.

102—Powers of authorised officers

- (1) An authorised officer may, as may reasonably be required in connection with the administration, operation or enforcement of this Act, at any reasonable time—
- (a) enter and inspect any place; and
 - (b) enter and inspect any vehicle and for that purpose require a vehicle to stop, or to be presented for inspection at a place and time specified by the authorised officer, and board any vessel or craft; and
 - (c) inspect (including open) any thing that is in or on any place or vehicle, including a package in the postal system; and
 - (d) use reasonable force to break into or open any part of, or anything in or on, any place or vehicle, but only if the authorised officer—
 - (i) is exercising the power on the authority of a warrant issued by the Magistrates Court or a justice; or
 - (ii) is acting with the permission of the owner of the relevant land or the person apparently in charge of the vehicle (as the case requires); or
 - (iii) reasonably believes that immediate action is required in the circumstances (including in order to prevent the destruction of, or otherwise preserve, evidence of a breach of this Act); and
 - (e) give directions with respect to the stopping, securing or movement of a vehicle, plant, equipment or other thing; and
 - (f) with the authority of a warrant issued by the Magistrates Court or a justice, stop and search a person who is reasonably suspected of having, on or about their person, any thing that constitutes evidence of a breach of this Act; and
 - (g) take blood or other material (or authorise any other person to take blood or other material) from an animal (whether alive or dead) or from any animal product or egg, for the purpose of obtaining a DNA profile; and
 - (h) take measurements or place any markers, pegs, buoys or other items or equipment at any place; and
 - (i) take samples of any substance or thing from any place (including under any land) or vehicle; and
 - (j) dig up any land by the use of hand-held equipment for the purpose of taking samples; and

- (k) with the authority of a warrant issued by the Magistrates Court or a justice, to the extent to which it is reasonably required, take mechanical equipment on to any land and dig up the land, or any part of it, for the purposes of taking samples that the authorised officer reasonably suspects may constitute evidence of a breach of this Act; and
- (l) require any person to produce any documents, including a written record that reproduces in an understandable form information stored by computer, microfilm or other process, as reasonably required in connection with the administration or enforcement of this Act; and
- (m) examine, copy or take extracts from any documents or information so produced or require a person to provide a copy of any such document or information; and
- (n) take photographs, films, audio, video or other recordings; and
- (o) examine or test any vehicle, plant, equipment, fitting or other thing, or cause or require it to be so examined or tested, or seize it or require its production for such examination or testing; and
- (p) seize and retain anything that the authorised officer reasonably suspects has been used in, or may constitute evidence of, a breach of this Act, or require a person to surrender, either immediately or within a specified period and at a specified place, anything held or maintained in breach of this Act; and
- (q) without limiting the operation of paragraph (p), if the authorised officer finds any animals or plants that are being held or maintained contrary to any requirement or provision of this Act, or that are prohibited from being in the State under any other Act or law, seize and remove the animals or plants or take measures for their destruction or control; and
- (r) require a person who the authorised officer reasonably suspects has committed, is committing or is about to commit, a breach of this Act to state the person's full name and usual place of residence and to produce evidence of the person's identity; and
- (s) require a person who the authorised officer reasonably suspects has knowledge of matters in respect of which information is required for the administration or enforcement of this Act—
 - (i) to answer questions in relation to those matters; or
 - (ii) to attend at a specified place at a specified time and answer questions in relation to those matters; and
- (t) request a person holding or required to hold a consent, permit or other authority under this Act, or acting in reliance of a consent, permit or other authority under this Act, to produce the consent, permit or authority for inspection; and
- (u) give expiation notices under the *Expiation of Offences Act 1996* for alleged offences against this Act; and
- (v) exercise any power prescribed by the regulations; and

- (w) give directions reasonably required in connection with the exercise of a power conferred by any of the above paragraphs or otherwise in connection with the administration, operation or enforcement of this Act.
- (2) An authorised officer, in exercising powers under this section, may be accompanied by such assistants as are reasonably required in the circumstances.
- (3) Where an authorised officer is a police officer, the powers under this section apply in addition to any powers that the police officer has under any other Act or law.

103—Issue of warrants

- (1) The Magistrates Court or a justice must not issue a warrant for the purposes of this Part unless—
 - (a) satisfied that the warrant is reasonably required in the circumstances; and
 - (b) in the case of a warrant authorising an authorised officer to take action under section 102(1)(k)—satisfied that there are reasonable grounds to believe that a person may have committed a breach of this Act.
- (2) An application for the issue of a warrant may be made either personally or by telephone.
- (3) The grounds of an application for a warrant must be verified by affidavit.
- (4) An application for the issue of a warrant may not be made by telephone unless in the opinion of the applicant a warrant is urgently required and there is insufficient time to make the application personally.
- (5) If an application for the issue of a warrant is made by telephone, the following provisions apply:
 - (a) the applicant must inform the Magistrates Court or justice of their name and identify themselves as an authorised officer, and the Magistrates Court or justice, on receiving that information, is entitled to assume, without further inquiry, that the applicant is an authorised officer;
 - (b) the applicant must inform the Magistrates Court or justice of the grounds on which the applicant seeks the issue of the warrant;
 - (c) if it appears to the Magistrates Court or justice from the information furnished by the applicant that there are proper grounds for the issue of a warrant, the Magistrates Court or justice must inform the applicant of the facts on which the Magistrates Court or justice relies as grounds for the issue of the warrant, and must not proceed to issue the warrant unless the applicant undertakes to make an affidavit verifying those facts;
 - (d) if the applicant gives such an undertaking, the Magistrates Court or justice may then make out and sign a warrant, noting on the warrant the facts on which the Magistrates Court or justice relies as grounds for the issue of the warrant;
 - (e) the warrant will be taken to have been issued, and will come into force, when signed by the Magistrates Court or justice;
 - (f) the Magistrates Court or justice must inform the applicant of the terms of the warrant;

- (g) the applicant must, as soon as practicable after the issue of the warrant, forward to the Magistrates Court or justice an affidavit verifying the facts referred to in paragraph (c).
- (6) An authorised officer who executes a warrant must, as soon as practicable after execution of the warrant—
 - (a) prepare a notice in the prescribed form containing—
 - (i) the authorised officer's own name and a statement that they are an authorised officer under this Act; and
 - (ii) the name of the person who issued the warrant and the date and time of its issue; and
 - (iii) a description of the authority conferred by the warrant; and
 - (b) give the notice to the person affected by the warrant.
- (7) A warrant, if not executed at the expiration of 1 month from the date of its issue, then expires.

104—Provisions relating to seizure

- (1) If a thing has been seized under this Division, the following provisions apply:
 - (a) the thing must be held pending proceedings under this Act related to the thing seized, unless the Minister, on the Minister's own motion or on application, authorises its release to the person from whom it was seized, or to any person who had legal title to it at the time of its seizure, subject to such conditions as the Minister thinks fit (including conditions as to the giving of security for satisfaction of an order under paragraph (b)(ii));
 - (b) if proceedings under this Act relating to the thing are instituted within the prescribed period after its seizure and a person is, as a result of the proceedings, convicted or found guilty of an offence or is otherwise found to have breached this Act, the court may—
 - (i) order that it be forfeited to the Minister; or
 - (ii) if it has been released in accordance with paragraph (a)—
 - (A) if the thing is an animal, animal product, egg or plant—order that it be forfeited to the Minister; or
 - (B) in any other case—order that the person to whom it was released, or the person who is, as a result of the proceedings, convicted or found guilty of an offence or is otherwise found to have breached this Act, pay to the Minister an amount equal to its market value at the time of its seizure;
 - (c) if proceedings under this Act relating to the thing are instituted within the prescribed period after its seizure and a person is, as a result of the proceedings, convicted or found guilty of an offence or is otherwise found to have breached this Act, the Minister may recover from the person the costs of having retained the thing;
 - (d) if—

- (i) proceedings are not instituted under this Act relating to the thing within the prescribed period after its seizure; or
- (ii) proceedings have been so instituted but—
 - (A) no person is, as a result of the proceedings, convicted or found guilty of an offence or otherwise found to have breached this Act; or
 - (B) a person is, as a result of the proceedings, convicted or found guilty of an offence or is otherwise found to have breached this Act but no order for forfeiture is made under paragraph (b); or
 - (C) the thing is no longer required to furnish evidence for the purposes of the proceedings,

then the person from whom the thing was seized, or any person with legal title to it, is entitled to recover from the Minister (if necessary, by action in a court of competent jurisdiction) the thing itself, or if it has been damaged, destroyed, released or otherwise disposed of, compensation of an amount equal to its market value at the time of its seizure;

- (e) if the Minister is unable, after reasonable inquiry, to ascertain the whereabouts of a person to whom a thing is to be returned, the thing may be sold or disposed of as the Minister thinks fit and, if sold, the proceeds of sale must be paid into the Biodiversity Conservation Fund;
- (f) if, in the opinion of the Minister, an animal, animal product, egg or plant seized under this Act will suffer a loss in its value before the question of its forfeiture under this section can be determined, the thing may be sold or disposed of as the Minister thinks fit (unless it is required for evidentiary purposes) and, if sold, the proceeds of the sale will be dealt with under this section as if they were the thing;
- (g) if a living animal is seized under this section, the Minister may make arrangements for—
 - (i) the animal's care; or
 - (ii) if, in the opinion of the Minister—
 - (A) it is in the best interests of the welfare of the animal to be released into the wild—its release into the wild; or
 - (B) it is necessary for the welfare of the animal to be destroyed—its destruction.

(2) In this section—

owner in relation to an object seized under this section means either or both of the following persons:

- (a) a person who has legal title to the object;
- (b) a person who was, immediately before seizure of the object, legally in possession or control of the object;

prescribed period means 12 months or such longer period as the ERD Court may, on application by the Minister, allow;

thing includes—

- (a) an animal, animal product or egg; and
- (b) a plant; and
- (c) a vehicle; and
- (d) a cage or container; and
- (e) a firearm or taking device; and
- (f) a poison or other substance; and
- (g) a document or record.

105—Offence to hinder etc authorised officers

- (1) A person who—
- (a) hinders or obstructs an authorised officer, or a person assisting an authorised officer, in the exercise of powers conferred by this Act; or
 - (b) uses abusive, threatening or insulting language to an authorised officer, or a person assisting an authorised officer; or
 - (c) refuses or fails to comply with a requirement or direction of an authorised officer under this Act; or
 - (d) when required by an authorised officer under this Act to answer a question, refuses or fails to answer the question to the best of the person's knowledge, information and belief; or
 - (e) falsely represents, by words or conduct, that they are an authorised officer,
- is guilty of an offence.

Maximum penalty: \$15 000.

- (2) A person who assaults an authorised officer, or a person assisting an authorised officer in the exercise of powers under this Act, is guilty of an offence.

Maximum penalty: \$15 000 or 2 years imprisonment.

106—Self-incrimination

- (1) It is not a reasonable excuse for a person to fail to answer a question or to produce, or provide a copy of, a document or information as required under this Act on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.
- (2) If compliance by an individual with a requirement under this Act might tend to incriminate the person or make the person liable to a penalty, then—
- (a) in the case of a person who is required to produce, or provide a copy of, a document or information—the fact of production, or provision of a copy of, the document or the information (as distinct from the contents of the document or the information); or
 - (b) in any other case—the answer given in compliance with the requirement,

is not admissible in evidence against the person in proceedings for an offence or for the imposition of a penalty (other than proceedings in respect of the making of a false or misleading statement).

Division 2—Power to require or obtain information

107—Information discovery orders

- (1) An authorised officer may issue an information discovery order under this Division for the purpose of obtaining information reasonably required for the administration, operation or enforcement of this Act.
- (2) An information discovery order may be issued to any person who the authorised officer reasonably suspects has knowledge of matters, or has possession or control of a document dealing with matters, in respect of which information is required.
- (3) An information discovery order—
 - (a) must be in the form of a written notice served on the person to whom it is issued; and
 - (b) must specify the person to whom it is issued (whether by name or a description sufficient to identify the person); and
 - (c) may require information, as specified in the order, to be furnished to the authorised officer in such manner and within such period as is specified in the order; and
 - (d) must state the purpose for which the information is required; and
 - (e) must state that the person may, within 14 days, appeal to the ERD Court against the order.
- (4) If an information discovery order has been issued to a person by an authorised officer, the authorised officer may, by written notice served on the person, vary or revoke the order.
- (5) A person to whom an information discovery order is issued must comply with the order.

Maximum penalty: \$8 000.

108—Obtaining of information on non-compliance with order

- (1) If a person—
 - (a) fails to furnish information as required by an information discovery order; or
 - (b) being required by such an order to furnish information, furnishes information that is inaccurate or incomplete,

the authorised officer who issued the order may take such action as is reasonably required to obtain the information.

- (2) The reasonable costs and expenses incurred by an authorised officer in taking action under this section may be recovered by the authorised officer as a debt from the person whose failure gave rise to the action.

109—Appeal to ERD Court

- (1) A person to whom an information discovery order has been issued may appeal to the ERD Court against the order or any variation of the order.
- (2) An appeal must be made in a manner and form determined by the Court, setting out the grounds of the appeal.
- (3) Subject to this section, an appeal under this section must be made within 14 days after the order is issued or the variation is made.
- (4) The ERD Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that an appeal be made within the period fixed by this section.
- (5) An appeal must be referred in the first instance to a conference under section 16 of the *Environment, Resources and Development Court Act 1993* (and the provisions of that Act will then apply in relation to the appeal).

Division 3—Administrative remedies

110—Interpretation

In this Division—

designated authority means the Minister, the CAC or an authorised officer.

111—Compliance orders

- (1) A designated authority may issue a compliance order, or an emergency compliance order, for the purposes of securing compliance with a requirement imposed, or duty created, by or under this Act.
- (2) A compliance order—
 - (a) must be in the form of a written notice served on the person to whom it is issued; and
 - (b) must specify the person to whom it is issued (whether by name or a description sufficient to identify the person); and
 - (c) must identify the person or body issuing the order; and
 - (d) must state the grounds on which it is made with reasonable particularity; and
 - (e) may impose any requirement reasonably required for the purpose for which the order is issued including 1 or more of the following:
 - (i) a requirement that the person discontinue, or not commence, a specified activity indefinitely or for a specified period or until further notice;
 - (ii) a requirement that the person not carry on a specified activity except at specified times or subject to specified conditions;
 - (iii) a requirement that the person take specified action in a specified way, and within a specified period or at specified times or subject to specified conditions;

- (iv) a requirement that the person enter into a bond in such sum and subject to such terms and conditions specified in the order, or enter into some other arrangement specified in the order (which may include payment of a sum of money into the relevant fund under this Act), to ensure that money is available to address the costs of any damage, or threatened damage, to biodiversity;
 - (v) a requirement that the person take action to prevent or minimise any damage to biodiversity or to control any specified activity;
 - (vi) a requirement that the person undertake specified tests or monitoring;
 - (vii) a requirement that the person furnish to the Minister specified results or reports;
 - (viii) a requirement that the person appoint or engage a person with specified qualifications to prepare a plan or report or to undertake tests or monitoring required by the order; and
 - (f) must state that the person may, within 21 days, appeal to the ERD Court against the order or any subsequent variation of the order.
- (3) A designated authority may, if of the opinion that urgent action is required for the protection of biodiversity, issue an emergency compliance order imposing requirements of a kind referred to in subsection (2)(e) (other than a requirement for payment into the relevant fund under this Act) as reasonably required for the protection of biodiversity.
- (4) An emergency compliance order may be issued orally by the designated authority but, in that event, the person to whom the order is issued must be advised as soon as practicable of the person's right to appeal to the ERD Court against the order.
- (5) If an emergency compliance order is issued orally, the designated authority that issued it must confirm it in writing (with or without variations) at the earliest opportunity (and in any event within 2 business days) by written notice given to the person to whom it applies.
- (6) A designated authority may, if of the opinion that it is reasonably necessary to do so in the circumstances, include in an emergency or other compliance order a requirement for an act or omission that might otherwise constitute a breach of this Act and, in that event, a person incurs no liability to a penalty under this Act for compliance with the requirement.
- (7) A designated authority may, by written notice served on a person to whom a compliance order has been issued, vary or revoke the order.
- (8) A person to whom a compliance order is issued must comply with the order.
- Maximum penalty:
- (a) if the order was issued for the purpose of securing compliance with a requirement imposed by or under this Act and a penalty is fixed by this Act for breach of that requirement—that penalty;
 - (b) in any other case—\$70 000.
- Expiation fee: \$1 500.

- (9) A person must not hinder or obstruct a person complying with a compliance order.
Maximum penalty: \$10 000.

112—Reparation orders

- (1) If a designated authority is satisfied that a person has caused harm to biodiversity by breach of any requirement imposed, or duty created, by or under this Act, the designated authority may issue a reparation order requiring the person to do 1 or more of the following:
- (a) to take specified action within a specified period to make good any resulting damage to biodiversity (including by taking action to restore ecological function);
 - (b) without limiting paragraph (a)—
 - (i) to take specified action to achieve a significant environmental benefit in accordance with the requirements of the SEB policy; or
 - (ii) to make a payment into the Biodiversity Restoration Fund of an amount considered by the designated authority to be sufficient to achieve the significant environmental benefit that would otherwise be required by the SEB policy;
 - (c) to make a payment into the Biodiversity Conservation Fund of an amount determined to be sufficient to remedy the impact of the alleged breach;
 - (d) to make a payment into the relevant fund under this Act of an amount determined to be appropriate in the circumstances on account of any benefit that the person has gained, or can reasonably expect to gain, from the alleged breach;
 - (e) to discontinue, or not commence, a specified activity, or to take specified action in a specified way, to ensure that the person does not gain an ongoing benefit from the alleged breach.
- (2) A reparation order—
- (a) must be in the form of a written notice served on the person to whom it is issued; and
 - (b) must specify the person to whom it is issued (whether by name or a description sufficient to identify the person); and
 - (c) must identify the person or body issuing the order; and
 - (d) must state the grounds on which it is made with reasonable particularity; and
 - (e) may impose any requirement reasonably required for the purpose for which the order is issued including 1 or more of the following:
 - (i) a requirement for action to be taken to prevent or mitigate further harm to biodiversity or for a plan of action to be prepared to the satisfaction of the designated authority;
 - (ii) a requirement for specified monitoring of actions taken in accordance with a requirement imposed under subsection (1)(a), (b)(i) or (e);

- (iii) a requirement for providing specified information or reports to the designated authority;
 - (iv) a requirement that the person to whom it is issued appoint or engage a person with specified qualifications to prepare a management plan or report or to undertake monitoring required by the order; and
 - (f) must state that the person may, within 21 days, appeal to the ERD Court against the order or any subsequent variation of the order.
- (3) If the person to whom a reparation order is issued is not the owner or occupier of land in relation to which action must be taken in accordance with the order, the order authorises the person (or other person authorised by that person) to—
 - (a) enter the land with such materials and equipment as are reasonably necessary to comply with the order; and
 - (b) to enter and cross any other land specified in the order with the materials and equipment referred to in paragraph (a) for the purpose of gaining access to the land in relation to which action must be taken in accordance with the order.
- (4) The designated authority may, if of the opinion that urgent action is required to prevent or mitigate further harm, issue an emergency reparation order containing requirements of a kind referred to in subsection (2) (other than a requirement for payment into a fund under this Act) as reasonably required to prevent or mitigate further harm.
- (5) An emergency reparation order may be issued orally by the designated authority but, in that event, the person to whom the order is issued must be advised as soon as practicable of the person's right to appeal to the ERD Court against the order.
- (6) If an emergency reparation order is issued orally, the designated authority that issued it must confirm it in writing (with or without variations) at the earliest opportunity (and in any event within 2 business days) by written notice given to the person to whom it applies.
- (7) A designated authority may, if of the opinion that it is reasonably necessary to do so in the circumstances, include in an emergency or other reparation order a requirement for an act or omission that might otherwise constitute a breach of this Act and, in that event, a person incurs no liability to a penalty under this Act for compliance with the requirement.
- (8) A designated authority may, by written notice served on a person to whom a reparation order has been issued, vary or revoke the order.
- (9) A person to whom a reparation order is issued must comply with the order.
Maximum penalty:
 - (a) if the order was issued for the purpose of securing compliance with a requirement imposed by or under this Act and a penalty is fixed by this Act for breach of that requirement—that penalty;
 - (b) in any other case—\$70 000.Expiation fee: \$1 500.
- (10) A person must not hinder or obstruct a person complying with a reparation order.
Maximum penalty: \$10 000.

113—Action on non-compliance with compliance order or reparation order

- (1) If the requirements of a compliance order or reparation order are not complied with, the Minister may take any action required to give effect to the order.
- (2) Action to be taken by the Minister under subsection (1) may be taken on the Minister's behalf by an authorised officer or another person authorised by the Minister for that purpose.
- (3) An authorised officer or another person authorised by the Minister taking action under this section is authorised to enter any place, including by use of reasonable force, as is reasonably necessary at any reasonable time with any materials and equipment and with any assistance as is required.
- (4) The powers in subsection (3) are in addition to any powers an authorised officer has under this Act.
- (5) The reasonable costs and expenses incurred by the Minister in taking action under this section may be recovered as a debt from the person who failed to comply with the requirements of the compliance order or reparation order.
- (6) If an amount is recoverable from a person under this section—
 - (a) the Minister may, by notice in writing to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid by the person, and, if the amount is not paid by the person within that period, the person is liable to pay interest charged at the rate prescribed by regulation on the amount unpaid and on any unpaid interest; and
 - (b) the amount together with any interest so payable is, until paid, a first charge in favour of the Minister on all land owned by the person.

114—Registration of orders by Registrar-General

- (1) If—
 - (a) a designated authority has issued a compliance order or reparation order; and
 - (b) the order is issued in relation to an activity carried out on land, or requires a person to take action on or in relation to land,the Minister may apply to the Registrar-General for the registration of the order in relation to that land.
- (2) An application under this section must—
 - (a) define the land to which it relates; and
 - (b) comply with any requirements imposed by the Registrar-General for the purposes of this section.
- (3) The Registrar-General must on—
 - (a) due application under subsection (2); and
 - (b) the lodgement of a copy of the relevant order,register the order in relation to the land by making such entries in any register book, memorial or other book or record in the Lands Titles Registration Office or in the GRO as the Registrar-General thinks fit.

- (4) The Minister must provide to the Registrar-General notice of any variation to an order registered under this section.
- (5) An order registered under this section (as varied from time to time) is binding on each owner and occupier from time to time of the land.
- (6) The Registrar-General must, on application by the Minister, cancel the registration of an order in relation to land and make such endorsements to that effect in the appropriate register book, memorial or other book or record in respect of the land as the Registrar-General thinks fit.
- (7) The Minister may, if the Minister thinks fit, apply to the Registrar-General for cancellation of the registration of an order under this section in relation to land, and must do so—
 - (a) on revocation of the order; or
 - (b) on full compliance with the requirements of the order; or
 - (c) if action has been taken by the Minister under this Division—on payment to the Minister of any amount recoverable by the Minister under this Division in relation to the action so taken.
- (8) The Minister must, as soon as is reasonably practicable, notify each owner or occupier of the relevant land by notice in writing if—
 - (a) an order is registered under subsection (3); or
 - (b) the cancellation of the registration of an order is given effect to under subsection (7).

115—Enforceable voluntary undertakings

- (1) The Minister may accept (by written notice) a written undertaking given by a person in connection with a matter relating to a breach or alleged breach by the person of this Act.
- (2) The giving of an undertaking does not constitute an admission of guilt by the person giving the undertaking in respect of the breach or alleged breach to which the undertaking relates.
- (3) A person must not contravene an undertaking made by the person that is in effect.
Maximum penalty: \$70 000.
- (4) If the Minister considers that a person has contravened an undertaking accepted by the Minister, the Minister may apply to the ERD Court for enforcement of the undertaking.
- (5) If the ERD Court is satisfied that the person has contravened the undertaking, the Court, in addition to the imposition of any penalty, may make any of the following orders:
 - (a) an order that the person must comply with the undertaking or take specified action to comply with the undertaking;
 - (b) an order discharging the undertaking;
 - (c) an order directing the person to pay to the Minister—
 - (i) the costs of the proceedings; and

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- (ii) the reasonable costs of the Minister in monitoring compliance with the undertaking in the future;
 - (d) any other order that the Court considers appropriate in the circumstances.
 - (6) A person who has made an undertaking may, at any time, with the written agreement of the Minister—
 - (a) vary the undertaking; or
 - (b) withdraw the undertaking.
 - (7) Subject to this section, no proceedings for a breach or alleged breach of this Act may be brought against a person if an undertaking is in effect in relation to that breach.
 - (8) No proceedings for a breach or alleged breach of this Act may be brought against a person who has made an undertaking under this section in relation to that breach and who has completely discharged the undertaking.
 - (9) The Minister may accept an undertaking in relation to a breach or alleged breach before proceedings in respect of that breach have been finalised.
 - (10) If the Minister accepts an undertaking before the proceedings are finalised, the Minister must take all reasonable steps to have the proceedings discontinued as soon as possible.

Division 4—Enforcement proceedings

Subdivision 1—Civil enforcement

116—Application to ERD Court for enforcement

- (1) The following persons may apply to the ERD Court for an order to remedy or restrain a breach of this Act:
 - (a) the Minister;
 - (b) in the case of unlawful clearance of native plants or unlawful destruction, damage or disturbance of critical habitat features of critical habitat—the CAC;
 - (c) a person who owns or who has any other legal or equitable interest in land that has been, or will be, affected by the breach;
 - (d) in the case of a contravention of a term of a biodiversity agreement—a party to the agreement;
 - (e) in the case of a breach involving a Culturally Significant Biodiversity Entity—any affected Aboriginal person;
 - (f) with permission of the Court—an Aboriginal person who has a cultural or spiritual connection to the land that has been, or will be, affected by the breach;
 - (g) other than in respect of an application to restrain or remedy a breach of the general duty in section 11—any other person with the permission of the Court.

- (2) In determining whether to grant permission under subsection (1)(f) or (g), the ERD Court must be satisfied that—
- (a) there is a real or significant likelihood that the requirements for the making of an order under this section would be satisfied; and
 - (b) allowing the proceeding would be likely to promote the objects and principles of this Act; and
 - (c) the person has given written notice to the Minister asking the Minister to bring a proceeding and the Minister has failed to act within a reasonable time; and
 - (d) the proceedings would not be frivolous or vexatious or otherwise be an abuse of the process of the Court,

and may have regard to any other matter the Court considers relevant to the person's standing to bring and maintain proceedings.

- (3) Proceedings under this section may be brought in a representative capacity with the consent of all persons on whose behalf they are to be brought.
- (4) If proceedings under this section relate to the unlawful clearance of plants or the unlawful destruction, damage or disturbance of critical habitat features of critical habitat and are brought by a person other than the CAC—
- (a) the applicant must serve a copy of the application on the CAC within 3 days after filing the application with the ERD Court; and
 - (b) the Court must, on application by the CAC, join the CAC as a party to the proceedings.
- (5) An application may be made in the absence of the respondent and, if the ERD Court is satisfied on the application that the respondent has a case to answer, it may grant the applicant permission to serve a summons requiring the respondent to appear before the Court to show cause why an order should not be made under this section.
- (6) An application under this section must be referred in the first instance to a conference under section 16 of the *Environment, Resources and Development Court Act 1993*.
- (7) If—
- (a) after hearing—
 - (i) the applicant and the respondent; and
 - (ii) any other person or body who, in the opinion of the ERD Court, has a proper interest in the subject matter of the proceedings or is otherwise referred to in subsection (1) and desires to be heard in the proceedings,the Court is satisfied, on the balance of probabilities, that the respondent to the application has breached this Act; or
 - (b) the respondent fails to appear in response to the summons or, having appeared, does not avail themselves of an opportunity to be heard, and the Court is satisfied, on the balance of probabilities, that the respondent to the application has breached this Act,

the Court may, by order, exercise 1 or more of the following powers:

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- (c) require the respondent to refrain, either temporarily or permanently, from the act, activity or course of action, that constitutes the breach;
 - (d) require the respondent to make good the breach in a manner, and within a period, specified by the Court, or to take such other action as may appear appropriate to the Court, taking into account the nature and extent of the impacted biodiversity;
 - (e) require the respondent to pay to any person who has suffered loss or damage as a result of the breach, or incurred costs or expenses as a result of the breach, compensation for the loss or damage or an amount for, or towards, those costs or expenses;
 - (f) require the respondent to pay into the relevant fund under this Act an amount, determined by the Court to be appropriate in the circumstances, on account of the financial benefit that the respondent has gained, or can reasonably be expected to gain, by committing the breach;
 - (g) require the respondent to pay into the relevant fund under this Act an amount, determined by the Court, in the nature of exemplary damages (and this amount may be in addition to any amount ordered to be paid under paragraph (f));
 - (h) require the respondent to take specified action to publicise—
 - (i) the breach of this Act; and
 - (ii) the environmental and other consequences flowing from the breach; and
 - (iii) the other requirements of the order made against the respondent;
 - (i) require the respondent to refrain from an act, activity or course of action, or to undertake an act, activity or course of action, to ensure that the respondent does not gain an ongoing benefit from the breach.
- (8) The power conferred by subsection (7)(f) or (g) can only be exercised by a Judge of the ERD Court.
- (9) In assessing damages under subsection (7)(g), the ERD Court must have regard to—
- (a) the extent of the harm caused or likely to be caused by the commission of the offence; and
 - (b) the sensitivity of the receiving environment or component of biodiversity, including whether it is a threatened species, threatened ecological community, listed ecological entity or critical habitat; and
 - (c) whether the harm caused or likely to be caused impacts on a Culturally Significant Biodiversity Entity (unless that entity is included in a part of the Biodiversity Register that is not made available to the public in accordance with section 177(3) and is not otherwise known by the respondent to be a Culturally Significant Biodiversity Entity) and any impacts to Aboriginal persons; and
 - (d) whether the harm caused or likely to be caused occurs in a designated area; and

- (e) any benefit (including a financial benefit) that the respondent has gained or sought to gain by committing the breach; and
 - (f) any other matter the Court may consider relevant.
- (10) Subject to subsection (12), the ERD Court may make such order in relation to costs of proceedings under this section as it thinks just and reasonable.
- (11) Without limiting the generality of subsection (10), in determining whether to make any order in relation to costs the ERD Court may have regard to the following matters (so far as they are relevant):
 - (a) whether the applicant is pursuing a personal interest only in bringing the proceedings or is furthering a wider group interest or the public interest;
 - (b) whether or not the proceedings raise significant issues relating to the administration of this Act.
- (12) The ERD Court may only make an order in relation to costs of proceedings under this section against an applicant bringing proceedings in accordance with subsection (1)(e) or (f) if the Court is satisfied after hearing the proceedings that the application was frivolous or vexatious.
- (13) In this section—

breach of this Act includes a threatened contravention of a provision this Act, the regulations or a term of a biodiversity agreement or a biodiversity management plan.

117—Order where native plants have been cleared

- (1) Subject to subsections (7)(d) and (8), if the ERD Court is satisfied on the balance of probabilities that the respondent—
 - (a) has cleared native plants in breach of this Act; or
 - (b) has cleared native plants in accordance with the CAC's consent but has not complied with a condition of a kind referred to in section 53 attached to the consent,the Court must make an order against the respondent under section 116(7)(d).
- (2) In making the order under section 116(7)(d), the ERD Court may (or, if requested to do so by the CAC, must) consider whether the respondent should be required to enter into a biodiversity agreement in respect of the land.
- (3) The order under section 116(7)(d) must direct the respondent to—
 - (a) remove the buildings, works or plants (if any) that have been erected, undertaken or planted on the land since the clearance occurred; and
 - (b) establish plants of a species specified in the order in such numbers and on such parts of the cleared land as is specified in the order; and
 - (c) nurture, protect and maintain the plants until they are fully established or for such period as is specified in the order; and
 - (d) pay into the Biodiversity Restoration Fund an amount, determined by the ERD Court to be appropriate in the circumstances, on account of the financial benefit that the respondent has gained, or can reasonably be expected to gain, by committing the breach; and

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- (e) refrain from an act, activity or course of action, or to undertake an act, activity or course of action, to ensure that the respondent does not gain an ongoing benefit from the breach.
- (4) The order under section 116(7)(d) may do 1 or more of the following:
- (a) where some of the original plants are still growing or situated on the land—direct that they be removed so that the new plants can be established on the land;
 - (b) include such ancillary directions or orders as the ERD Court thinks fit.
- (5) If the respondent is not the owner or occupier of the land, the order authorises the respondent (or a person authorised by the respondent) to—
- (a) enter the land with such materials and equipment as are reasonably necessary to comply with the order; and
 - (b) to enter and cross any other land specified in the order with the materials and equipment referred to in paragraph (a) for the purpose of gaining access to the cleared land.
- (6) An owner or occupier of land or any other person who hinders or obstructs the respondent (or a person authorised by the respondent) in carrying out the directions of an order under this section or entering and crossing land under subsection (5) is guilty of an offence.
- Maximum penalty: \$10 000.
- (7) If the ERD Court is satisfied on the balance of probabilities that—
- (a) the owner or occupier of the cleared land did not know and could not reasonably have been expected to know of the circumstances referred to in subsection (1) requiring the making of an order under section 116(7)(d); and
 - (b) compliance with an order under section 116(7)(d) will cause financial loss to that person,
- the Court may—
- (c) assess the amount of the financial loss and order the respondent to pay that amount to the owner or occupier of the land; or
 - (d) refuse to make the order or make the order in a modified form.
- (8) If the ERD Court is satisfied that compliance with any order under section 116(7)(d) would not be reasonably practicable, it may refuse to make the order or may make the order in a modified form.
- (9) However, the ERD Court cannot take into account financial grounds when making an assessment under subsection (8) unless the Court is satisfied that it would be unduly harsh not to do so.
- (10) If, in the opinion of the ERD Court, it should refuse under subsection (7)(d) or (8) to make an order under section 116(7)(d), the Court may make an order against the respondent requiring the establishment of plants in accordance with the provisions of this section on some other land specified by the Court.

118—No development orders

- (1) If the owner of land—
 - (a) on which native plants are growing or situated is convicted of an offence against section 45 in relation to clearance of native plants; or
 - (b) is convicted or found guilty of an offence against section 46 where the effect of the contravention of the condition that constitutes the offence is that native plants growing or situated on that land have been cleared without consent,the ERD Court may, in addition to imposing a penalty for the offence, order that no development of the land in relation to which the offence was committed may be undertaken during a period (not exceeding 10 years) fixed by the Court except for the purpose of re-establishing or restoring native plants cleared in, or otherwise making good any damage to native plants caused through, the commission of the offence.
- (2) Before making an order under this section, the ERD Court must give—
 - (a) any person with a registered interest in the land; and
 - (b) if the land is within the area of a local council—the local council,a reasonable opportunity to make submissions on whether the order should be made and, if made, the term of the order.
- (3) The ERD Court may, on application, vary or revoke an order made under this section.
- (4) An application to vary or revoke an order made under this section may not be made by the owner of the land who was convicted of the offence against section 45 or 46 (the **owner**) or a person who the ERD Court considers is acting on behalf of the owner or is otherwise associated with the owner.
- (5) A person who undertakes development contrary to an order under this section is, in addition to liability for contempt of the order, guilty of an offence.

Maximum penalty:

- (a) in the case of a body corporate—\$1 000 000;
 - (b) in the case of an individual—\$500 000.
- (6) In this section—

development has the same meaning as in the *Planning, Development and Infrastructure Act 2016*;

land in relation to which the offence was committed means—

 - (a) land on which the plant is or was growing or is or was situated; and
 - (b) land that has been, or will be, affected in any way (including by an increase in its value) by reason of the commission of the offence.

119—Interim order

- (1) If, on an application under this Division or before the determination of the proceedings commenced by an application under this Division, the ERD Court is satisfied that, in order to protect biodiversity or to preserve the rights or interests of parties to the proceedings, or for any other reason, it is desirable to make an interim order under this section, the Court may make such an order.

- (2) An interim order—
 - (a) may be made on an application in the absence of the respondent; and
 - (b) may be made whether or not the application has been referred to a conference under section 116(6); and
 - (c) will be made subject to such conditions as the ERD Court thinks fit; and
 - (d) will not (as such) operate after the proceedings in which it is made are finally determined.

120—Enforcement of ERD Court orders

- (1) A person who contravenes an order of the ERD Court under this Division is, in addition to liability for contempt of the order, guilty of an offence.
Maximum penalty:
 - (a) in the case of a body corporate—\$1 000 000;
 - (b) in the case of an individual—\$500 000.
- (2) If the ERD Court makes an order under section 116(7)(d) and the respondent fails to comply with the order within the period specified by the Court, the Minister may cause any work contemplated by the order to be carried out, and may recover the reasonable costs and expenses of that work, as a debt, from the respondent.
- (3) Section 117(5) and (6) apply to, and in relation to, the Minister when acting under subsection (2) as though it were the respondent.
- (4) If an amount is recoverable from a person by the Minister under subsection (2)—
 - (a) the Minister may, by notice in writing to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid by the person, and, if the amount is not paid by the person within that period, the person is liable to pay interest charged at the rate prescribed by regulation on the amount unpaid and on any unpaid interest; and
 - (b) the amount together with any interest so payable is, until paid, a first charge in favour of the Minister on all land owned by the person.

121—Miscellaneous provisions

- (1) If the ERD Court makes an order under this Division that requires any act or activity to be carried out on land or otherwise affects the future use of land, the Court must include in the order a requirement that a copy of the order be served on the Registrar-General and that the Registrar-General note the order against the relevant certificate or other instrument of title or, in the case of land not under the *Real Property Act 1886*, against the land (and the Registrar-General must, on service of the order, make the note and then must not remove the note except in accordance with an order of the Court).
- (2) The ERD Court may order an applicant in proceedings under section 116—
 - (a) to provide security for the payment of costs that may be awarded against the applicant if the application is subsequently dismissed; and
 - (b) to give an undertaking as to the payment of any amount that may be awarded against the applicant under subsection (3).

- (3) If, on an application under section 116, the ERD Court is satisfied—
- (a) that the respondent has not breached this Act (within the meaning of that section); and
 - (b) that the respondent has suffered loss or damage as a result of the actions of the applicant; and
 - (c) that in the circumstances it is appropriate to make an order under this provision,

the Court may, on the application of the respondent (and in addition to any order as to costs), require the applicant to pay to the respondent an amount, determined by the Court, to compensate the respondent for the loss or damage which the respondent has suffered.

- (4) The ERD Court may only require an applicant bringing proceedings in accordance with section 116(1)(e) or (f) to make a payment under subsection (3) if the Court is satisfied that the application was frivolous or vexatious.
- (5) A person who fails to comply with an order of the ERD Court under this Division commits a contempt of Court.
- (6) The ERD Court may, if it considers it appropriate to do so, either on its own initiative or on the application of a party, vary or revoke an order previously made under subsection (2) or (3).
- (7) The ERD Court may, on application under this subsection by a person to whom a notice has been given under section 113(6)(a) or 120(4)(a) extend the period that has been fixed by the Minister for the purposes of the notice (and the relevant order of the Court under this subsection will then have effect according to its terms).

122—Commencement of proceedings

Proceedings under this Subdivision must be commenced—

- (a) if the proceedings relate to an offence under this Act which the respondent has expiated or of which the respondent has been convicted or found guilty—within 1 year after the date on which the respondent so expiated, or was convicted or found guilty of, the offence (as the case requires); or
- (b) in any other case—within 5 years after the date on which the breach is alleged to have occurred or, with the authorisation of the Attorney-General, within 10 years after the date on which the breach is alleged to have occurred.

123—Initiating civil proceedings to require offender to make good clearance of plants

- (1) If a court finds a person guilty—
- (a) of an offence against section 45 in relation to clearance of native plants; or
 - (b) of an offence against section 46 where the effect of the contravention of the condition that constitutes the offence is that a native plant has been cleared without the consent of the CAC,

the CAC must, within the prescribed period, initiate civil proceedings under this Subdivision in order to require the offender to make good the breach of this Act unless such proceedings have already been commenced in, or an order has already been made by, the ERD Court under this Subdivision in relation to the matter, or the finding of guilt is overturned on appeal.

(2) In this section—

prescribed period, in relation to the initiation of civil proceedings against an offender, means—

- (a) 1 year after the time within which the offender may appeal against the relevant finding of guilt; or
- (b) if an appeal is commenced—1 year after—
 - (i) the appeal is dismissed, struck out or withdrawn; or
 - (ii) any questions raised by the appeal have been finally determined.

124—Recovery of civil penalty in respect of breach

- (1) Subject to this section, if the relevant authority is satisfied that a person has committed an offence by breaching this Act, the relevant authority may, as an alternative to criminal proceedings, recover, by negotiation or by application to the ERD Court, an amount as a civil penalty in respect of the breach.
- (2) The relevant authority may determine whether to initiate proceedings for an offence or take action under this section, having regard to the seriousness of the breach, the previous record of the offender and any other relevant factors.
- (3) The relevant authority may not make an application to the ERD Court under this section to recover an amount from a person as a civil penalty in respect of a breach—
 - (a) unless the relevant authority has served on the person a notice in the prescribed form advising the person that the person may, by written notice to the relevant authority, elect to be prosecuted for the breach and the person has been allowed not less than 21 days after service of the relevant authority's notice to make such an election; or
 - (b) if the person serves written notice on the relevant authority, before the making of such an application, that the person elects to be prosecuted for the breach.
- (4) In undertaking negotiations to agree a civil penalty, the relevant authority must have regard to the principles and procedures set out in the biodiversity policy relating to the calculation of civil penalties.
- (5) The maximum amount that the relevant authority may recover by negotiation as a civil penalty in respect of a breach is the sum of the amount specified by this Act as the criminal penalty in relation to that breach and the amount of any economic benefit acquired by the person, or accrued or accruing to the person, as a result of the breach.
- (6) If, on an application by the relevant authority, the ERD Court is satisfied on the balance of probabilities that a person has breached this Act, the ERD Court may order the person to pay to the relevant authority an amount as a civil penalty (but not exceeding the amount specified by this Act as the criminal penalty in relation to that breach).

- (7) In determining the amount to be paid by a person as a civil penalty, the ERD Court must have regard to the matters set out in the biodiversity policy relating to the calculation of civil penalties.
- (8) The jurisdiction conferred by this section is to be part of the civil jurisdiction of the ERD Court.
- (9) If conduct of a person constitutes a breach of 2 or more provisions of this Act or the regulations, an amount may be recovered from the person under this section in relation to the breach of any 1 or more of those provisions (provided that the person is not liable to pay more than 1 amount as a civil penalty in respect of the same conduct).
- (10) Proceedings for an order under this section that a person pay an amount as a civil penalty in relation to a breach of this Act, or for enforcement of such an order, are stayed if criminal proceedings are started or have already been started against the person for an offence constituted by conduct that is substantially the same as the conduct alleged to constitute the breach.
- (11) Proceedings referred to in subsection (10) may only be resumed if the criminal proceedings do not result in a formal finding of guilt being made against the person.
- (12) Evidence of information given or evidence of the production of documents by a person is not admissible in criminal proceedings against the person if—
 - (a) the person gave the evidence or produced the documents in the course of negotiations or proceedings under this section for the recovery of an amount as a civil penalty in relation to a breach of this Act; and
 - (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was alleged to constitute the breach.
- (13) However, subsection (12) does not apply to criminal proceedings in respect of the making of a false or misleading statement.
- (14) Proceedings for an order under this section may be commenced at any time within 5 years after the date of the alleged breach or, with the authorisation of the Attorney-General, at any later time within 10 years after the date of the alleged breach.
- (15) In this section—

relevant authority means—

 - (a) the Minister; or
 - (b) if the breach relates to the clearance of native plants or the destruction, damage or disturbance of critical habitat features of critical habitat—the CAC.

Subdivision 2—Criminal enforcement

125—Jurisdiction of ERD Court

Offences constituted by this Act lie within the criminal jurisdiction of the ERD Court.

126—Applications during or after criminal proceedings

- (1) If, during the course of criminal proceedings before a court in respect of an offence against this Act, the prosecutor applies for an order under this Act relating to the offence, the court must deal with the application during the course of the criminal proceedings unless satisfied by the defendant that to do so would not be appropriate in the circumstances.
- (2) If an application for an order under this Act is made to a court before which a person was convicted or found guilty of an offence against this Act—
 - (a) the application may be dealt with by the court; and
 - (b) any power in relation to the relevant order may be exercised by the court, whether or not the court is constituted in the same way as when the person was convicted or found guilty of the offence.

127—Commencement of proceedings for offence

Proceedings for an offence against this Act may be commenced at any time within 5 years after the date on which the offence is alleged to have been committed or, with the authorisation of the Attorney-General, at any later time within 10 years after the date on which the offence is alleged to have been committed.

128—Offences by bodies corporate

Where a body corporate is guilty of an offence against this Act, each member of the governing body, and the manager, of the body corporate are guilty of an offence and liable to the same penalty as is prescribed for the principal offence.

129—Sentencing considerations

In imposing a penalty for an offence under this Act, the court is to consider any relevant information before the court as to the following matters:

- (a) the extent of the harm caused or likely to be caused by the offence;
- (b) the sensitivity of the receiving environment or component of biodiversity, including whether it is a threatened species, threatened ecological community, listed ecological entity or critical habitat;
- (c) whether the harm caused or likely to be caused by the offence impacts on a Culturally Significant Biodiversity Entity (unless that entity is included in a part of the Biodiversity Register that is not made available to the public in accordance with section 177(3) and is not otherwise known by the respondent to be a Culturally Significant Biodiversity Entity) and any impacts to Aboriginal persons;
- (d) whether the harm caused or likely to be caused by the offence occurs in a designated area;
- (e) any financial or other benefit that the defendant sought to gain by committing the offence,

and may consider such other matters as the court thinks fit.

Subdivision 3—Defences

130—Application of defences

- (1) A person charged with an offence against this Act bears the legal onus of proving, on the balance of probabilities, any defence under this Act.
- (2) If a statement of fact or opinion in support of a defence is challenged by the prosecution, the court must disregard that fact or opinion unless it is substantiated on oath.

131—Notice of defences

- (1) A person who intends to rely on a defence under this Act may only do so if the person gives notice in writing of that intention to the Minister.
- (2) A notice under subsection (1) must be given—
 - (a) if the proceedings are for a summary offence—within 28 days after the summons to answer the charge is served on the person; or
 - (b) if the proceedings are for a minor indictable offence where the charge is to be dealt with in the same way as a charge of a summary offence—not less than 28 days before the date for hearing of the charge; or
 - (c) in any other case—within 7 days after the person is committed for trial.

132—General defence

- (1) It is a defence to a charge of an offence against this Act if the defendant proves that the alleged offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.
- (2) The regulations may prescribe particular circumstances in which the defence under this section does not apply or is to apply in a modified form.

133—Acts authorised under legislation

It is a defence to a charge of an offence against this Act to prove that the defendant acted—

- (a) in compliance with a requirement of, or in accordance with a power under, this Act or another Act; or
- (b) in prescribed circumstances.

134—Defences in relation to Part 5

- (1) It is a defence to a charge of an offence against section 65 in respect of taking a protected animal if the defendant proves that—
 - (a) the animal had attacked, or was attacking, any person; or
 - (b) subject to subsection (2), the animal was in dangerous proximity to any person; or
 - (c) they were acting reasonably in the best interests of the animal as the animal—
 - (i) was suffering from injury, disease or exhaustion; or

- (ii) was entangled or otherwise incapacitated by material of human origin.
- (2) The defence in subsection (1)(b) does not apply if the person in relation to whom the animal was in dangerous proximity was in that proximity deliberately so that the defence could be relied on.
- (3) It is a defence to a charge of an offence against section 65 in respect of taking a protected animal or a protected egg where it is alleged the defendant used poison in committing the offence if the defendant proves that—
- (a) the defendant used the poison in good faith for the purpose of complying with an obligation under Part 9 of the *Landscape South Australia Act 2019* or section 22 of the *Dog Fence Act 1946*; and
 - (b) the defendant exercised such precautions as the defendant might reasonably be expected to have exercised in the circumstances to avoid endangering protected animals by the use of poison.
- (4) It is a defence to a charge of an offence against section 65 in respect of interfering with a protected animal if the defendant proves that—
- (a) the defendant acted in the best interests of the animal concerned; or
 - (b) the defendant acted reasonably to frighten the animal in order to protect themselves or another person or to protect—
 - (i) property comprising plants cultivated for commercial or other purposes or animals; or
 - (ii) property of any other kind.

135—Defence in relation to hunting

It is a defence to a charge of an offence against section 166 if the defendant proves that the hunting was for the purpose of—

- (a) the destruction of animals (other than protected animals) that are endangering human life; or
- (b) the destruction of animals (other than protected animals) by the owner of any land, a member of their household, or an employee or agent of the owner, that are causing damage to crops, stock or other property on the land; or
- (c) complying with an obligation under Part 9 of the *Landscape South Australia Act 2019*.

Subdivision 4—Evidentiary provisions

136—Interpretation

In this Subdivision—

defendant includes a respondent in civil proceedings;

prosecution includes an applicant or plaintiff in civil proceedings.

137—General evidentiary matters

- (1) In proceedings under this Act, an allegation in the application or information—
 - (a) that a place is, or was at a time specified, a reserve, sanctuary or other conservation area under Part 7 Division 1, wilderness protection area or wilderness protection zone or is situated within a reserve, sanctuary or other conservation area under Part 7 Division 1, wilderness protection area or wilderness protection zone; or
 - (b) that a person is, or was at a time specified, an authorised officer; or
 - (c) that a specified act or activity was a regulated act or activity; or
 - (d) that a plant is or was a native plant; or
 - (e) that a plant is or was of a specified species; or
 - (f) that clearance or taking of a native plant was carried out or undertaken by the owner or occupier (or both the owner and occupier) of the land on which the native plant is or was growing or situated; or
 - (g) that an animal, animal product or egg is or was a protected animal, protected animal product or protected egg (as the case may be); or
 - (h) that an animal is or was of a specified species; or
 - (i) that an animal product or egg is or was the product or egg of an animal of a specified species; or
 - (j) that a specified feature of habitat is or was a critical habitat feature of critical habitat; or
 - (k) that a specified habitat is or was critical habitat; or
 - (l) that native plants to which the proceedings relate were not intentionally sown or planted by a person,is taken to be proved in the absence of proof to the contrary.
- (2) If, in proceedings under this Act, it is proved that the defendant—
 - (a) was found in possession of a plant, it will be presumed, unless the defendant proves to the contrary, that the plant was illegally taken or acquired by the defendant; or
 - (b) was found in possession of an animal, animal product or egg, it will be presumed, unless the defendant proves to the contrary, that the animal, animal product or egg was illegally taken or acquired by the defendant; or
 - (c) had possession of an animal, firearm, taking device, poison or bait capable of being used for the purpose of taking a protected animal or hunting, it will be presumed, unless the defendant proves to the contrary, that the defendant had possession of the animal, firearm, taking device, poison or bait for the purpose of taking a protected animal or for hunting (as the case requires).
- (3) In any proceedings under this Act, the onus of proving that an act or activity that is the subject of the proceedings was carried out or undertaken in accordance with the terms of any applicable Schedule, Council guidelines, biodiversity policy or other document under this Act (as the case may be) lies with the defendant.

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- (4) If in proceedings under this Act, it is proved that the defendant was found in possession or control of a trafficable quantity of protected animals, protected animal products or eggs of a protected animal (whether a protected egg or otherwise) it will be presumed, in the absence of proof to the contrary, that the animals, animal products or eggs (as the case may be) were illegally taken from the wild.
 - (5) If, in proceedings under this Act, a person seeks to rely on being an Aboriginal person, the onus of proving that they are an Aboriginal person lies on that person.
 - (6) In proceedings under this Act, the prosecution does not need to prove that the defendant knew or was reckless with respect to the following:
 - (a) in the case of proceedings relating to a plant—the particular species of the plant or that the plant was a native plant or a threatened species (as the case may be);
 - (b) in the case of proceedings relating to an animal—the particular species of the animal or that the animal was a protected animal or threatened species (as the case may be);
 - (c) in the case of proceedings relating to an animal product or egg—the particular species of the animal from which the animal product or egg derives or that the animal from which the animal product or egg derives was a protected animal or threatened species (as the case may be);
 - (d) in the case of proceedings relating to habitat—whether a feature of habitat was a critical habitat feature of critical habitat.

138—Documents and data

- (1) In proceedings under this Act, an apparently genuine document purporting to be a certificate signed by an authorised officer and certifying as to any of the following matters must be accepted as proof of the matter so certified in the absence of proof to the contrary:
 - (a) that a particular measurement, position or other thing has been determined by the use of an electronic, sonic, optical, mechanical or other device by an authorised officer or person assisting an authorised officer;
 - (b) that a remotely sensed image specified in the document—
 - (i) was captured by a specified device and is accurate to the extent indicated in the document; and
 - (ii) was captured at a specified time on a specified date; and
 - (iii) is an image of a specified place.
- (2) For the purposes of this section, a reference to an electronic, sonic, optical, mechanical or other device includes a reference to any software used by, or in relation to, such a device.
- (3) In proceedings under this Act, an apparently genuine document purporting to be a certificate signed by the Minister and certifying as to any of the following matters must be accepted as proof of the matter so certified in the absence of proof to the contrary:
 - (a) a person had, or had not, been given consent under this Act;

- (b) a person was, or was not, the holder of a permit or other authorisation under this Act;
 - (c) a designated list contained particular information;
 - (d) an entity was a Culturally Significant Biodiversity Entity.
- (4) In proceedings under this Act, an apparently genuine document purporting to be a certificate signed by the Attorney-General and certifying as to any of the following matters must be accepted as proof of the matter so certified in the absence of proof to the contrary:
- (a) that the commencement of proceedings under section 122, 124 or 127 was authorised;
 - (b) that the Attorney-General gave consent that a specified offence may be prosecuted as a major indictable offence under section 140(4).
- (5) In proceedings under this Act or other legal proceedings, an apparently genuine document appearing to be a copy of a biodiversity agreement or a biodiversity management plan certified by the Minister is to be accepted, in the absence of proof to the contrary, as proof of the agreement or plan and its terms.
- (6) In this section—
- image* includes—
- (a) a copy of an image; and
 - (b) data from which an image can be produced;
- remotely sensed image* includes—
- (a) an image captured by a device (whether a camera or otherwise) mounted on or in a satellite, craft or other such machine; and
 - (b) any other image declared by the regulations to be included in the ambit of this definition.

139—Possession

- (1) For the purposes of this Act, a person has possession of a plant, animal, animal product, egg, firearm, or any other thing included in the ambit of this section by regulation, if—
- (a) the person has physical possession or control of the thing or has the thing in the physical possession or control of another; or
 - (b) the person has and exercises access to the thing; or
 - (c) the person controls access to the thing; or
 - (d) the person occupies, or has care, control or management of, premises, or is in charge of a vehicle, vessel or craft, where the thing is found.
- (2) However, subsection (1)(d) does not apply if the person proves that—
- (a) they did not know, and could not reasonably be expected to have known, that the plant, animal, animal product, egg, firearm or other thing was on or in the premises, vehicle, vessel or craft; or

- (b) the plant, animal, animal product, egg, firearm or other thing was in the lawful possession of another or they believed on reasonable grounds that the plant, animal, animal product, egg, firearm or other thing was in the lawful possession of another.

Subdivision 5—General provisions

140—Classification of offences

- (1) Despite any other Act or law, but subject to this section, all offences under this Act are classified as minor indictable offences.
- (2) Despite any other Act or law, an offence under this Act is a summary offence if—
 - (a) the maximum fine for the offence does not exceed twice a Division 1 fine; and
 - (b) the maximum term of imprisonment (if any) for the offence does not exceed 2 years.
- (3) For the purposes of subsection (2), if a different maximum penalty is specified in relation to an offence depending on whether the offence is committed by an individual or a body corporate, the classification of the offence is to be determined by reference to the maximum penalty applicable if the offence is committed by an individual.
- (4) An offence that would, but for the operation of subsection (1), be classified as a major indictable offence may be prosecuted as a major indictable offence with the consent of the Attorney-General.

141—Aggregation of offences

- (1) If a person has committed multiple offences against Part 5—
 - (a) in relation to different species of protected animals, or animal products or eggs of protected animals of different species, and the offences were committed by the person on the same occasion or within 12 months of each other or in the course of an organised commercial activity relating to the protected animals, protected animal products or eggs of protected animals (as the case may be) carried on by the person; or
 - (b) in relation to the same species of protected animal, or animal products or eggs of protected animals of the same species, on different occasions and the offences were committed by the person within 12 months of each other or in the course of an organised commercial activity relating to the protected animals, protected animal products or eggs of protected animals (as the case may be) carried on by the person,

the person may be charged with a single offence against Part 5 in respect of all of the different species, or all of the different occasions, (as the case requires) and, subject to subsection (2), the quantity of the protected animals, protected animal products or eggs of protected animals (as the case may be) concerned for the purposes of that offence is the total quantity of the protected animals, protected animal products or eggs of protected animals (as the case requires) in respect of the different separate offences.

- (2) If a person is charged with a single offence against Part 5 and the charge relates to more than 1 kind of species of protected animal, or animal products or eggs of protected animals of more than 1 kind of species, the quantity of the protected animals, protected animal products or eggs of protected animals (as the case may be) for the purposes of the charge is a trafficable quantity if the sum of the fractions obtained by dividing the actual quantity of each kind of species of protected animal, or animal products or eggs of protected animals of each kind of species, by the quantity prescribed in relation to that kind of species for the purposes of the definition of *trafficable quantity* in section 3 is equal to or greater than 1.

142—Culturally sensitive information

On the hearing of proceedings that involve culturally sensitive information, a court may dispense with any formalities it considers appropriate in order to facilitate the hearing of that information.

143—Interest

- (1) Interest accrues on an amount payable under sections 113 and 120 and on unpaid interest under those sections in accordance with the regulations.
- (2) A person who is liable to pay an amount under the provisions referred to in subsection (1) is also liable to pay interest that accrues, or has accrued, on or in relation to that amount.
- (3) Regulations referred to in subsection (1) may (without limiting their scope) prescribe the time from which interest accrues.

144—Sale of land for non-payment

- (1) If an amount payable under this Act, or interest in relation to such an amount, is a first charge on land and has been unpaid for 1 year or more, the Minister may sell the land.
- (2) Before the Minister sells land in pursuance of this section, they must serve notice on the owner and occupier of the land—
- (a) stating the period for which the amount and interest have been unpaid; and
 - (b) stating the amount of the total liability for the amount and interest presently outstanding and charged on the land; and
 - (c) stating that if that amount is not paid in full within 1 month of service of the notice (or such longer time as the Minister may allow), the Minister intends to sell the land for non-payment of the amount and interest.
- (3) A copy of a notice must be served on the registered mortgagee or encumbrancee of the land (if any).
- (4) If the outstanding amount is not paid in full within the time allowed under subsection (2), the Minister may proceed to sell the land.
- (5) The sale will, except in the case of land held from the Crown under a lease, licence or agreement to purchase, be by public auction (and the Minister may set a reserve price for the purposes of the auction).
- (6) An auction under this section must be advertised on at least 2 separate occasions in a newspaper circulating generally throughout the State, and on a website determined by the Minister.

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- (7) If, before the date of the auction, the outstanding amount and the costs incurred by the Minister in proceeding under this section are paid to the Minister, the Minister must withdraw the land from auction.
- (8) If—
- (a) an auction fails; or
 - (b) the land is held from the Crown under a lease, licence or agreement to purchase,
- the Minister may sell the land by private contract for the best price that the Minister can reasonably obtain.
- (9) Any money received by the Minister in respect of the sale of land under this section will be applied as follows:
- (a) firstly—in paying the costs of the sale and any other costs incurred in proceeding under this section;
 - (b) secondly—in discharging the liability for the amount and interest payable under this Act;
 - (c) thirdly—in discharging any liability to the Crown for rates, charges or taxes (including rates, charges or taxes that are a first charge on the land);
 - (d) fourthly—in discharging any liability to a council for rates or any other liability to a council in respect of the land;
 - (e) fifthly—in discharging any liabilities secured by registered mortgages, encumbrances or charges;
 - (f) sixthly—in discharging any other mortgages, encumbrances and charges of which the Minister has notice;
 - (g) seventhly—in payment to the former owner of the land.
- (10) If the former owner cannot be found after making reasonable inquiries as to their whereabouts, an amount payable to the former owner must be dealt with in accordance with section 6 of the *Unclaimed Money Act 2021* as money the owner of which cannot be found.
- (11) If land is sold by the Minister in pursuance of this section, an instrument of transfer executed by the Minister will operate to vest title to the land in the purchaser.
- (12) The title vested in a purchaser under subsection (11) will be free of—
- (a) all mortgages and charges; and
 - (b) except in the case of land held from the Crown under lease or licence—all leases and licences,
- (and the Registrar-General, when registering or enrolling an instrument of transfer to vest title in the purchaser, must discharge any caveat relating to the land, and may make any note or endorsement, or take any other action in relation to any instrument, certificate, register or record, as the Registrar-General thinks fit).
- (13) An instrument of transfer passing title to land in pursuance of a sale under this section must, when lodged with the Registrar-General for registration or enrolment, be accompanied by a certificate of the Minister stating that the requirements of this section in relation to the sale of the land have been observed.

- (14) A reference in this section to land, or title to land, held from the Crown under lease, licence or agreement to purchase, is a reference to the interest of the lessee, licensee or purchaser in the land.

145—Constitution of ERD Court

Subject to this Act, the following provisions apply in respect of the constitution of the ERD Court when exercising jurisdiction under this Act:

- (a) the Court may be constituted in a manner provided by the *Environment, Resources and Development Court Act 1993* or may, if the Senior Judge of the Court so determines, be constituted of—
- (i) in relation to proceedings for an offence against this Act—a magistrate and 1 commissioner; or
 - (ii) in any case—a Judge and 1 commissioner;
- (b) the provisions of the *Environment, Resources and Development Court Act 1993* apply in relation to the Court constituted of a Judge and 1 commissioner, or a magistrate and 1 commissioner, in the same way as in relation to a full bench of the Court;
- (c) the Court may not be constituted of or include a commissioner unless—
- (i) in a case where only 1 commissioner is to sit (whether alone or with another member or members of the Court)—the commissioner; or
 - (ii) in any other case—at least 1 commissioner,
- is a commissioner who has been specifically designated by the Governor as a person who has wide practical knowledge of, and experience in, the preservation and management of biodiversity.

146—Assessment of costs and expenses

For the purposes of this Act, the reasonable costs and expenses that have been or would be incurred by the Minister in taking any action are to be assessed by reference to the reasonable costs and expenses that would have been or would be incurred in having the action taken by independent contractors engaged for that purpose.

147—Vicarious liability

For the purposes of this Act, an act or omission of an employee or agent will be taken to be the act or omission of the employer or principal unless it is proved that the act or omission did not occur in the course of the employment or agency.

148—Statement of officer evidence against body corporate

In proceedings for an offence against this Act by a body corporate or proceedings against a body corporate for the payment of an amount as a civil penalty in respect of an alleged breach of this Act, a statement made by an officer of the body corporate is admissible as evidence against the body corporate.

149—Recovery from related bodies corporate

- (1) If—
 - (a) an amount is payable by a body corporate in accordance with this Act or an order of a court made under this Act; and
 - (b) at the time of the breach giving rise to that liability, that body and another body were related bodies corporate,the related bodies corporate are jointly and severally liable to make the payment.
- (2) In this section—

related body corporate has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

Subdivision 6—Appeals

150—Appeal to ERD Court against prescribed order

- (1) A person to whom a prescribed order has been issued under this Act may appeal to the ERD Court against the order or any variation of the order.
- (2) Subject to subsection (3), an appeal must be made within 21 days after the order or variation of the order is served.
- (3) The ERD Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that an appeal be made within the period referred to in subsection (2).
- (4) An appeal under this section must be referred in the first instance to a conference under section 16 of the *Environment, Resources and Development Court Act 1993*.
- (5) Subject to subsection (6), the making of an appeal to the ERD Court does not affect the operation of an order or any variation of an order to which the appeal relates or prevent the taking of action to implement the order or the order as varied.
- (6) The ERD Court, or the person or body that issued the order may, on their own initiative or on application by a party to an appeal, suspend the operation of the order or variation of the order until the determination of an appeal.
- (7) A suspension under subsection (6) may be made subject to specified conditions, and may be varied or revoked by the ERD Court or by the person or body that granted the suspension at any time.
- (8) The ERD Court may, on hearing an appeal, do 1 or more of the following:
 - (a) confirm, vary or revoke the order or any variation of an order appealed against;
 - (b) remit the subject matter of the appeal to the person or body who issued the order or variation of the order for further consideration;
 - (c) order or direct a person or body to take such action as the Court thinks fit, or to refrain, either temporarily or permanently, from such action or activity as the Court thinks fit;
 - (d) make any consequential or ancillary order or direction, or impose any condition, that it considers necessary or expedient.

(9) In this section—

prescribed order means a compliance order, reparation order or order to comply with an enforceable voluntary undertaking under section 115.

151—Appeals to Supreme Court

(1) Subject to the rules of the Supreme Court, an appeal lies against—

- (a) an order of a court made in the exercise of the jurisdiction conferred by Division 4 Subdivision 1 of this Part; or
- (b) a decision by a court not to make an order under Division 4 Subdivision 1 of this Part,

to the Supreme Court.

(2) An appeal under this section must be instituted within 60 days of the date of the decision or order subject to appeal, or such longer period as may be allowed by the Supreme Court.

Part 9—Permits

152—Prescribed matters

Without limiting section 183, the regulations may—

- (a) prescribe different classes of permits for the purposes of this Act; and
- (b) prescribe circumstances in which the Minister must not grant a permit; and
- (c) prescribe matters that must be taken into account in relation to the grant of, or the conditions to be attached to, particular kinds of permits; and
- (d) prescribe conditions that must be attached to particular kinds of permits (which may include conditions requiring the payment of a fee or royalty); and
- (e) create offences relating to any acts or activities authorised by a permit or connected to any such acts or activities.

153—Permits—general matters

(1) Subject to this Part, the Minister may grant to any person a permit contemplated by this Act.

(2) An applicant for a permit under this Act—

- (a) must make the application in a manner and form determined by the Minister; and
- (b) must, subject to any applicable waiver or reduction, pay to the Minister the prescribed fee in respect of the permit at the time of making the application.

(3) The Minister may refuse to grant a permit under any provision of this Act if, in the Minister's opinion—

- (a) the applicant is not a fit and proper person to hold the permit; or
- (b) the grant of the permit would not be consistent with considerations prescribed by the regulations in relation to such permits or is otherwise not permitted by the regulations; or

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- (c) to grant the permit would be inconsistent with the objects or principles of this Act or is not otherwise in the public interest; or
 - (d) the applicant should fulfil certain requirements specified by the Minister before the permit is granted and the applicant has not fulfilled those requirements; or
 - (e) the applicant has previously contravened a requirement of this Act or a repealed Act; or
 - (f) the applicant has previously contravened a condition, or requirement, of a permit, or has had a permit revoked, under this Act or the former Act.
- (4) The Minister may, at any time by notice given to the holder of a permit—
- (a) vary the permit; or
 - (b) vary or revoke a condition of the permit.
- (5) A permit—
- (a) is subject to such limitations, restrictions and conditions as may be required by the regulations or that the Minister thinks fit and includes in the permit; and
 - (b) may be suspended or revoked by the Minister by notice given to the holder of the permit—
 - (i) if the holder of the permit has, in the opinion of the Minister, contravened any limitation, restriction or condition of the permit; or
 - (ii) if the holder of the permit has contravened this Act or a prescribed law; or
 - (iii) if, in the opinion of the Minister, the holder of the permit is no longer a fit and proper person; or
 - (iv) if, in the opinion of the Minister, it is in the interests of conservation to do so; or
 - (v) in any other circumstances that the Minister considers reasonable.
- (6) A permit—
- (a) comes into operation on the day fixed in the permit for its commencement or, if no such day is fixed, on the day on which it is granted; and
 - (b) expires on the day fixed in, or determined in accordance with, the permit for its expiry or, if no such day is fixed or determinable, on the expiration of 12 months from the day on which it came into operation.
- (7) The holder of a permit may surrender the permit to the Minister if the Minister so allows.
- (8) If the holder of a permit applies for the reissue of the permit for a successive term and the application is not decided before the expiry of the term of the permit, the permit continues in operation after the expiry until the application for the reissue of the permit is determined, unless the permit is subject to a condition that provides otherwise.

(9) A permit granted under a provision of this Act may be assigned to another person only if it is a permit for a prescribed activity or a permit of a prescribed class and the assignment complies with any prescribed conditions.

(10) In this section—

former Act means the *National Parks and Wildlife Act 1972*.

154—Permits—conditions

(1) Without limiting the conditions on which a permit relating to animals may be granted under this Act, those conditions may—

- (a) provide for marking, or otherwise identifying, animals to which the permit relates; and
- (b) require the holder of the permit to report the escape, illness or death of any animal to which the permit relates; and
- (c) require the holder of the permit to report to the Minister—
 - (i) the birth of any progeny to any animals to which the permit relates; or
 - (ii) any other matter related to the acts or activities conducted in accordance with the permit.

(2) If the applicant has, in accordance with section 159(1)(b), proposed to carry out or undertake, or cause to be carried out or undertaken, an act or activity to offset any residual negative impacts or hindrance caused by the taking of a native plant, the Minister must attach a condition to the permit requiring that the proposed act or activity be achieved.

(3) A condition of a permit may require compliance with a specified code of practice, standard or other document as in force at a specified time or as in force from time to time.

155—Permits—fees

(1) The fees prescribed in respect of permits granted under this Act may exceed the Minister's costs in granting the permits and administering this Act in relation to the permits.

(2) A fee payable in respect of the grant of a permit under this Act may be charged as an amount payable on application, or as an amount payable on application but with further amounts payable during the term of the permit (and the requirement to pay such further amounts will be taken to be a condition of the permit).

(3) If—

- (a) a permit is granted for a term of more than 12 months; and
- (b) the Minister allows the holder of the permit to surrender it to the Minister under section 153(7); and
- (c) the holder of the permit surrenders the permit 12 months or more before its specified term expires,

a proportionate part of the fee paid for the permit reflecting each complete year of the unexpired term is payable by the Minister to the former holder of the permit.

156—Permits—provision of information

- (1) The holder of a permit under this Act must provide the Minister with such information as is specified in the permit or required by regulation.
- (2) A person to whom a permit has been granted under this Act must, within the period specified in the permit or, if no period is specified, 28 days after the revocation or expiry of the permit, deliver to the Minister—
 - (a) such information as is specified in the permit; or
 - (b) a report in the form determined by the Minister on the matters specified in the permit.

Maximum penalty: \$2 500.

Expiation fee: \$250.

- (3) A person to whom a permit relating to taking animals has been granted must, within 14 days after the expiration or revocation of the permit, deliver to the Minister a report in the prescribed form stating the number of animals of each species taken in accordance with the permit.

Maximum penalty: \$2 500.

Expiation fee: \$250.

- (4) A person to whom a permit relating to taking eggs has been granted must, within 14 days after the expiration or revocation of the permit, deliver to the Minister a report in the prescribed form stating the number of eggs of each species of animal taken in accordance with the permit.

Maximum penalty: \$2 500.

Expiation fee: \$250.

- (5) The holder of a permit issued under this Act must, if any of their personal or contact details change during the term of the permit, give the Minister notice in writing of the new details within 14 days of the change.

Maximum penalty: \$2 500.

Expiation fee: \$250.

157—Permits—certain areas

- (1) If a permit granted under this Act relates to an act or activity that is to be, or may be, undertaken within a River Murray Protection Area, the permit must be consistent with the objects of the *River Murray Act 2003* and the *Objectives for a Healthy River Murray* under that Act.
- (2) If an application for a permit under this Act relates to an act or activity that is to be, or may be, undertaken within a River Murray Protection Area and is within a class of applications prescribed by the regulations for the purposes of this provision (which class may be prescribed so as to consist of applications for all such permits), the Minister must, before making a decision on the application—
 - (a) consult the Minister responsible for the administration of the *River Murray Act 2003*; and

- (b) comply with the Minister's directions (if any) in relation to the application (including a direction that the application not be granted, or that if it is to be granted, then the permit be subject to conditions specified by the Minister).
- (3) If a permit granted under this Act relates to an act or activity that is to be, or may be, undertaken within the Adelaide Dolphin Sanctuary, the permit must be consistent with the objects and objectives of the *Adelaide Dolphin Sanctuary Act 2005*.
- (4) If an application for a permit under this Act relates to an act or activity that is to be, or may be, undertaken within the Adelaide Dolphin Sanctuary and is within a class of applications prescribed by the regulations for the purposes of this provision (which class may be prescribed so as to consist of applications for all such permits), the Minister must, before making a decision on the application, consult with and have regard to the views of the Minister responsible for the administration of the *Adelaide Dolphin Sanctuary Act 2005*.

158—Permits for commercial purposes relating to native plants

- (1) The Minister may, by notice in the Gazette and on a website determined by the Minister—
 - (a) declare that this section applies to, and in relation to, a species of plant; and
 - (b) vary or revoke a declaration referred to in paragraph (a).
- (2) Before making a declaration under subsection (1), the Minister must prepare a draft management plan in relation to the following matters:
 - (a) the effect of taking individual plants for commercial purposes on the species and on the ecosystem of which the plants taken formed part;
 - (b) the need for research in relation to that species;
 - (c) the identification of plants and plant products;
 - (d) any other matters that should, in the opinion of the Minister, be addressed.
- (3) The Minister must, by notice published on a website determined by the Minister—
 - (a) state the website at which the draft plan is available; and
 - (b) invite interested persons to provide the Minister with written comments in relation to the draft plan.
- (4) A draft plan must be made available on a website specified in the notice under subsection (3) for public comment for at least 30 days before adoption by the Minister.
- (5) Before adopting the draft plan, the Minister must have regard to any comments received during the period referred to in subsection (4) and may, if the Minister thinks fit, vary the plan to take account of those comments.
- (6) The Minister must, by notice in the Gazette—
 - (a) state that a management plan has been adopted under this section; and
 - (b) state the website at which the plan is available.
- (7) A management plan may be replaced or varied by a further plan prepared and adopted by the Minister in accordance with this section.

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- (8) The taking and sale of plants of a species to which this section applies for commercial purposes in accordance with a permit under this Act is subject to restrictions or conditions imposed from time to time by regulation or by the Minister when granting the permit.
 - (9) Restrictions and conditions imposed by regulation must be consistent with the management plan adopted by the Minister under this section in relation to the commercial taking and sale of plants of the species concerned.
 - (10) If a permit granted for commercial purposes relates to plants of a species to which this section applies and a royalty is payable under this Act in respect of the taking of plants of that species, the Minister may require the applicant to pay in advance an amount equal to the total amount of royalty that would be payable if all the plants that could be taken in accordance with the permit were taken.

159—Permits to take native plant that is critical habitat feature

- (1) If the taking of a native plant that is the subject of the application for a permit under this Act relates to a plant that is a critical habitat feature of critical habitat and is, in the opinion of the Minister, likely to negatively impact on, or hinder the recovery of, the threatened species, threatened ecological community or listed ecological entity that was the basis for the habitat's eligibility to be declared as critical habitat, the Minister must not grant the permit unless satisfied that the negative impact or hindrance cannot be avoided or further mitigated and—
 - (a) that the applicant has carried out or undertaken, or caused to be carried out or undertaken, an act or activity that the Minister is satisfied has offset any residual negative impacts or hindrance to positively impact on the recovery of the threatened species, threatened ecological community or listed ecological entity (as the case may be); or
 - (b) that the applicant proposes to carry out or undertake, or cause to be carried out or undertaken, an act or activity that the Minister is satisfied will offset any residual negative impacts or hindrance to positively impact on the recovery of the threatened species, threatened ecological community or listed ecological entity (as the case may be).
- (2) For the purposes of subsection (1), the Minister may not consider payment into a fund as an act or activity which offsets any residual negative impacts or hindrance caused by taking the native plant.

160—Permits to carry out or undertake regulated acts or activities under Part 5

- (1) Subject to subsection (2), the Minister may only grant a permit to take a protected animal or a protected egg if—
 - (a) the Minister is satisfied that it is desirable to grant the permit—
 - (i) to facilitate scientific research; or
 - (ii) to enable the person to place bands, marks or tags on such animals and then to release them; or
 - (iii) to permit the destruction or removal of animals that are causing, or are likely to cause, a safety risk or hazard to humans; or

- (iv) to permit the destruction or removal of animals that are causing, or are likely to cause, damage to the environment or to crops, stock or other property; or
 - (v) to facilitate the translocation, or captive breeding, of a species to aid in the conservation of the species; or
 - (vi) to enable captive breeding for the purposes of selling, farming or exporting the progeny of that animal; or
 - (vii) to enable relocation of the animal or egg to ensure the animal's or egg's safety and welfare; or
 - (viii) for any other purpose (other than for sale) that the Minister considers proper and not inconsistent with the objects of this Act; or
 - (b) the grant of the permit is in accordance with a declaration made under section 69.
- (2) The Minister may only grant a permit to take a protected animal or a protected egg within a sanctuary if satisfied that it is in the interests of conserving protected animals to do so.
- (3) A permit granted by the Minister permitting a person to keep or deal with a protected animal or a protected egg does not apply in relation to a protected animal or protected egg illegally taken or acquired.
- (4) The Minister must not grant a permit to export or import a protected animal or a protected egg unless—
- (a) in the case of a permit granted in respect of export, the Minister is satisfied that the person to whom the permit is granted is lawfully in possession of the protected animal or protected egg; or
 - (b) in the case of a permit granted in respect of import, the Minister is satisfied that the protected animal or protected egg was lawfully acquired in the place of origin.
- (5) The Minister may only grant a permit to harvest a protected animal if—
- (a) a management plan has been adopted by the Minister under section 68 in relation to that species of animal and granting the permit is consistent with that plan; and
 - (b) the Minister is satisfied that the taking of animals of the species concerned in accordance with the permit and all other permits granted under this Act—
 - (i) will not adversely affect the ecosystems which animals of that species form part or the diversity of the species of animals and plants comprising those ecosystems; and
 - (ii) will not adversely affect the species as a renewable resource for harvesting in the future.
- (6) A permit granted by the Minister permitting a person to harvest a protected animal does not apply in a reserve unless culling of the protected animal in that reserve is permitted by a declaration of the Minister made under section 43BA of the *National Parks Act 1972* and the permit only authorises the harvesting of the animals in accordance with that declaration.

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- (7) Without limiting the conditions that may be imposed on a permit under this Act, a permit granted by the Minister permitting a person to harvest a protected animal is subject to a condition requiring the holder of the permit to use the methods and observe the procedures set out in the management plan for the killing, the capture and killing and the treatment after capture of animals of the species to which the permit relates.
 - (8) The Minister must, before determining an application for a permit that relates to, or is to apply in respect of, a fish that is a protected animal, consult with the Minister responsible for the administration of the *Fisheries Management Act 2007*.

161—Permits to hunt

A permit granted by the Minister permitting a person to hunt cannot authorise hunting within the Adelaide Dolphin Sanctuary.

162—Review by SACAT of certain permits

- (1) A person who has applied for a permit under this Act in respect of taking a protected animal or a protected egg may apply to SACAT under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for review of a decision of the Minister—
 - (a) to refuse to grant the permit; or
 - (b) to grant the permit subject to limitations, restrictions or conditions; or
 - (c) as to the term of the permit; or
 - (d) to revoke the permit.
- (2) SACAT is, by force of this section, conferred with jurisdiction to deal with matters consisting of the review of a decision referred to in subsection (1).
- (3) Subject to subsection (5), an application must be made within 2 months after the making of the decision that is being reviewed.
- (4) The Minister must, if required by the applicant for the review, state in writing the reasons for the decision.
- (5) If the reasons of the Minister are not given to the applicant for the review in writing at the time of making the decision and that person (within 2 months of the making of the decision) requires the Minister to state the reasons in writing, the time for making an application to SACAT runs from the time at which that person receives the written statement of those reasons.
- (6) For the purposes of proceedings before SACAT under this section, a panel of assessors must be established under section 22 of the *South Australian Civil and Administrative Tribunal Act 2013* that consists of persons that have extensive experience in the following:
 - (a) the conservation of animals, plants or other natural resources;
 - (b) the conservation of ecosystems;
 - (c) the management of natural resources;
 - (d) primary production;
 - (e) relevant fields of the biological sciences.

(7) In any proceedings under this section, SACAT may, if the President so determines, sit with 1 or more assessors selected by the President from the panel referred to in subsection (6).

(8) In this section—

President means the President of SACAT appointed under the *South Australian Civil and Administrative Tribunal Act 2013*.

163—Contravention of condition etc of permit

A person must not contravene a condition of, or requirement, restriction or limitation applying in respect of, a permit granted to the person.

Maximum penalty:

- (a) in the case of a body corporate (involving a trafficable quantity)—\$1 000 000;
- (b) in the case of an individual (involving a trafficable quantity)—\$500 000 or imprisonment for 10 years;
- (c) in the case of a body corporate (not involving a trafficable quantity)—\$500 000;
- (d) in the case of an individual (not involving a trafficable quantity)—\$250 000 or imprisonment for 5 years;

Expiation fee: \$1 500.

164—Royalty

- (1) A permit granted under this Act may require the permit holder to pay a royalty on the—
 - (a) taking, farming or harvesting of a protected animal, protected animal product or protected egg; or
 - (b) taking of any native plant (or any parts or seeds of a native plant).
- (2) The amount of a royalty is to be fixed by fee notice made in accordance with section 183(7) and may vary according to any factor or factors specified in the notice.
- (3) If a royalty is payable under this Act, the Minister may require the applicant to pay (when the permit is granted or at any later time) an amount equal to the total amount of royalty that would be payable if all of the things authorised to be taken, farmed or harvested by the permit were so taken, farmed or harvested.
- (4) If a person fails to comply with a requirement to pay a royalty in accordance with a permit, the Minister or an authorised officer may seize any protected animals, protected animal products, protected eggs or native plants (or any parts or seeds of a native plant) on which royalty is unpaid.
- (5) The Minister may sell any items seized under this section and must pay any proceeds into the Biodiversity Conservation Fund.
- (6) The Minister may, by action in any court of competent jurisdiction, recover, as a debt, from any person an amount of royalty for which that person is liable under this Act.
- (7) Subsection (6) does not derogate from any other remedy available to the Minister for the recovery of royalty.

165—False representation

A person must not falsely represent that they are the holder of a permit granted by the Minister under this Act.

Maximum penalty: \$5 000.

Expiation fee: \$500.

Part 10—Miscellaneous

166—Offence to hunt without permit

Subject to this Act, a person must not hunt unless the person holds a permit granted by the Minister under Part 9 authorising the person to hunt.

Maximum penalty: \$20 000.

Expiation fee: \$1 000.

167—Hunting by Aboriginal persons

Nothing in section 166 prevents an Aboriginal person from hunting for the purposes of using the hunted animal for a non-commercial cultural or spiritual practice (which may include using the animal as food in the course of that practice).

Note—

In hunting in accordance with this section, an Aboriginal person is subject to laws of general application.

168—Unlawful entry on land

- (1) A person must not be on any land for the following purposes, unless the owner of that land has given that person permission in writing to be on the land for that purpose:

- (a) taking a native plant;
- (b) taking a protected animal or a protected egg;
- (c) hunting.

Maximum penalty: \$5 000.

Expiation fee: \$500.

- (2) If the owner or occupier of land, or the agent of the owner of the land, suspects that a person is committing, has committed, or is about to commit an offence against this Act on the land, they may request the person—

- (a) to state their full name and usual place of residence; and
- (b) to leave the land.

- (3) A person of whom a request is made under subsection (2) must comply with it as soon as practicable.

Maximum penalty: \$5 000.

Expiation fee: \$500.

- (4) A person who has been requested to leave land under this section must not re-enter the land without the permission of the owner.

Maximum penalty: \$5 000.

Expiation fee: \$500.

169—Restriction on use of certain devices

- (1) The Governor may, by proclamation, restrict or prohibit the use of firearms, ammunition or taking devices of a specified class for the taking of specified species of animals or for the taking of animals generally.

- (2) A person must not contravene a restriction or prohibition imposed under subsection (1).

Maximum penalty: \$20 000.

Expiation fee: \$1 000.

170—Noting of conditions or agreements against title to land

- (1) If—

- (a) the CAC is required to inform the Registrar-General of conditions imposed under this Act; or
- (b) the Minister is required to inform the Registrar-General of an agreement, a variation or termination of an agreement or the expiration of a term of a agreement under this Act,

the CAC or Minister (as the case requires) must—

- (c) inform the Registrar-General of the information in writing; and
- (d) provide the Registrar-General with such further information as the Registrar-General requires to comply with subsection (2).

- (2) The Registrar-General must note the conditions or agreement (as the case may be) against the relevant instrument of title for the land or, in the case of land not under the *Real Property Act 1886*, against the land.

- (3) The Registrar-General must, on the application of the Minister or CAC—

- (a) in the case of a condition noted in accordance with subsection (2)—after the variation or revocation of the condition; or
- (b) in the case of an agreement noted in accordance with subsection (2)—after the variation or termination of the agreement, or the expiration of a term of the agreement,

vary or cancel the relevant note under subsection (2) (but must otherwise ensure that the note is not removed once made).

171—Minister may sell or dispose of surrendered animal, animal product or egg

The Minister may sell, or dispose of as the Minister thinks fit, any protected animal, protected animal product or egg of a protected animal surrendered to the Minister, or an entity prescribed by the regulations for the purposes of Schedule 4 clause 1(a), and must pay any proceeds into the Biodiversity Conservation Fund.

172—State biodiversity data

- (1) The Minister is responsible for compiling, maintaining and updating State biodiversity data and for providing access to such data in accordance with this section.
- (2) Public sector agencies must co-operate in furnishing to the Minister any information or materials determined by the Minister to be State biodiversity data.
- (3) The Minister must ensure that public sector agencies and members of the public have appropriate access to State biodiversity data in accordance with any requirements prescribed by the regulations.
- (4) Without limiting section 183, the regulations—
 - (a) may prescribe the kinds of data that will or will not be considered to be State biodiversity data; and
 - (b) may require persons or bodies referred to in the regulations to provide the Minister with State biodiversity data that is in their possession; and
 - (c) may specify the kind or kinds of State biodiversity data to which subsection (2) applies; and
 - (d) may prescribe requirements relating to access to State biodiversity data for the purposes of subsection (3); and
 - (e) must prescribe purposes for which State biodiversity data may be restricted from access (the *prescribed purposes*); and
 - (f) may prescribe payment of a prescribed fee for access to State biodiversity data where fair and reasonable cost recovery is warranted; and
 - (g) may set standards and requirements relating to how State biodiversity data is managed, used and shared; and
 - (h) may prescribe the form in which the Minister can accept State biodiversity data.
- (5) If a person or body has been required to provide data in accordance with a regulation under subsection (4)(b), the person or body may request that the Minister not make the data publicly available and must, in the request, identify the prescribed purpose that they are relying on as the basis for their request.
- (6) If a person or body has made a request under subsection (5), the Minister may, if the Minister considers that there is good reason to do so after considering the request and the prescribed purposes—
 - (a) not make the data publicly available; or
 - (b) not disclose the data to another person.
- (7) In this section—

data has the same meaning as in the *Public Sector (Data Sharing) Act 2016*;

State biodiversity data means data relating to biodiversity in the State including specimens and observation records (whether collected or made before or after the commencement of this Act).

173—State Biodiversity Plan

- (1) The Minister must prepare, publish and maintain a State Biodiversity Plan.
- (2) The first State Biodiversity Plan must be prepared and published within 2 years of the day on which section 2 of this Act comes into operation.
- (3) The Minister must ensure that the State Biodiversity Plan is reviewed and updated at least once every 5 years and that a report on the review is published.
- (4) The State Biodiversity Plan must—
 - (a) set out principles, policies and strategic directions for achieving the objects of this Act; and
 - (b) identify priorities for the conservation, restoration, enhancement and recovery of biodiversity having regard for future climate scenarios; and
 - (c) as far as practicable, represent the priorities referred to in paragraph (b) spatially; and
 - (d) set measurable targets and set expectations for monitoring and evaluating the state and condition of biodiversity in the State; and
 - (e) identify State-wide biodiversity indicators; and
 - (f) include or address any other matter required by this Act, prescribed by the regulations or determined by the Minister.
- (5) In preparing or reviewing the State Biodiversity Plan, the Minister must—
 - (a) have regard to any threatened species, threatened ecological communities, listed ecological entities, Culturally Significant Biodiversity Entities, critical habitat and key threatening processes; and
 - (b) seek the advice of the Council, CAC, ABC and Scientific Committee in the manner determined by the Minister; and
 - (c) undertake public consultation in the manner the Minister considers appropriate and such other consultation as may be prescribed by the regulations for the purposes of this paragraph; and
 - (d) comply with any other requirement of this Act or prescribed by the regulations.
- (6) The Minister must prepare and publish regular reports on the implementation of the State Biodiversity Plan, including an evaluation of progress towards targets set by the Plan.
- (7) Public sector agencies must co-operate in furnishing to the Minister any information required by the Minister for the purposes of this section.
- (8) Material required to be published under this section may be published on the Biodiversity Register.
- (9) Without limiting section 183, the regulations may prescribe the following:
 - (a) requirements for the preparation, review and amendment of the State Biodiversity Plan;
 - (b) any additional matters to be addressed by the State Biodiversity Plan;

- (c) requirements for consultation in respect of preparing, reviewing or amending the State Biodiversity Plan;
- (d) requirements relating to reporting and evaluation for the purposes of subsection (6).

174—Council guidelines

- (1) The Council may prepare and adopt guidelines in relation to the following:
 - (a) the clearance or taking of native plants;
 - (b) damaging, destroying or disturbing critical habitat features of critical habitat;
 - (c) any other matter required by this Act or the regulations.
- (2) Without limiting subsection (1), the Council must prepare and adopt guidelines in relation to the following:
 - (a) applications for consent to clear native plants;
 - (b) decision-making in relation to consent to clear native plants;
 - (c) the application of the mitigation hierarchy;
 - (d) clearance of native plants that is seriously at variance with the principles of preservation of native plants;
 - (e) assessing the potential cumulative impact that is reasonably likely to result from a proposed clearance for the purposes of section 50(1)(c);
 - (f) categorising levels of clearance;
 - (g) financial and other assistance provided by the Council under section 99;
 - (h) any guidelines required under Schedule 2;
 - (i) any other matter required by this Act or the regulations.
- (3) Guidelines prepared and adopted under this section may relate to 1 or more matters referred to in subsection (2).
- (4) Guidelines prepared and adopted under this section may refer to, apply or incorporate, wholly or partially and with or without modification, a code, standard, policy or other document prepared or published by an entity referred to in the guidelines.
- (5) Guidelines may apply generally or in relation to a specified entity or sector.
- (6) Subject to subsection (7), in preparing and adopting guidelines for the purposes of this section, the Council must—
 - (a) prepare draft guidelines; and
 - (b) undertake consultation on the draft guidelines for a period of at least 30 days that includes—
 - (i) public consultation on the draft guidelines in the manner the Minister considers appropriate; and
 - (ii) notifying and inviting comment on the draft guidelines from the following entities:
 - (A) the Minister;

- (B) Primary Producers SA Incorporated;
 - (C) the Conservation Council of South Australia Incorporated;
 - (D) the Local Government Association of South Australia;
 - (E) if the draft guidelines relate to pastoral land, the Pastoral Board;
 - (F) if the draft guidelines relate to land within the Murray-Darling Basin, the Minister responsible for the administration of the *River Murray Act 2003*;
 - (G) if the draft guidelines relate to mineral exploration, the Minister responsible for the administration of the *Mining Act 1971*;
 - (H) any other entity prescribed by the regulations for the purposes of this subparagraph; and
- (c) have regard to any submissions received during consultation; and
 - (d) if, following the period of consultation, the Council considers that the guidelines should be adopted (with or without amendment) the Council must adopt the guidelines (with any amendments incorporated).
- (7) In preparing and adopting guidelines that refer to, apply or incorporate, wholly or partially and with or without modification, a code, standard, policy or other document prepared or published by an entity referred to in the guidelines (the *relevant entity*), the Council—
- (a) must consult with the relevant entity, the Minister and any other entity that the Council considers appropriate; and
 - (b) need not undertake the consultation set out in subsection (6)(b).
- (8) Following adoption of the guidelines, the Council must cause the guidelines to be published on the Biodiversity Register.
- (9) Subject to subsection (10), the Council may, by following the procedures required by this section for the preparation and adoption of guidelines, vary guidelines adopted under this section as if the variation to guidelines is a new set of guidelines.
- (10) The Council need not follow the procedures required by this section to vary guidelines adopted under this section if the variations to the guidelines constitute minor amendments.
- (11) Guidelines prepared and adopted under this section that have substantially the same subject matter as guidelines previously adopted under this section may revoke those previous guidelines.
- (12) In this section—
- minor amendment*, in relation to varying guidelines adopted under this section, means an amendment that does not alter the general meaning, scope, purpose or intent of the guidelines.

175—Biodiversity policies

- (1) The Minister may make biodiversity policies for the purposes of this Act (other than policies relating to the matters referred to in subsection (5)).
- (2) A designated entity may only make a biodiversity policy if satisfied that the provisions of the policy are consistent with the objects and principles of this Act.
- (3) Without limiting the matters that may be set out in a biodiversity policy, a biodiversity policy may—
 - (a) set out matters to be taken into account in determining matters under this Act, including in relation to measures that may be reasonable and practicable measures for the purposes of the general duty, or what constitutes harm to biodiversity; or
 - (b) set out requirements, standards, goals or guidelines.
- (4) Without limiting the generality of subsection (1), the Minister must make a biodiversity policy relating to each of the following:
 - (a) the consideration and application of Aboriginal knowledges;
 - (b) the identification, approval and management of Culturally Significant Biodiversity Entities;
 - (c) determining the eligibility of habitat to be critical habitat;
 - (d) biodiversity agreements;
 - (e) the calculation of civil penalties;
 - (f) the approach to be taken to compliance and enforcement;
 - (g) cultural burning of native plants undertaken by Aboriginal persons.
- (5) The Council must make a biodiversity policy relating to each of the following:
 - (a) significant environmental benefits (the *SEB policy*);
 - (b) environmental benefit credits.
- (6) Without limiting the content of the SEB policy, that policy must—
 - (a) provide that a significant environmental benefit may be achieved by—
 - (i) measures, actions or requirements taken, undertaken or complied with, or to be taken, undertaken or complied with, by a person; or
 - (ii) application of the value of an environmental benefit credit granted to a person under section 59 or assigned to a person under section 60; and
 - (b) set out additional requirements in respect of significant environmental benefits that apply in relation to clearance of native plants that is seriously at variance with the principles of preservation of native plants; and
 - (c) set out how the part of the Biodiversity Restoration Fund that constitutes payments made in lieu of a requirement to achieve a significant environmental benefit will be applied.

- (7) A biodiversity policy may apply, adopt or incorporate, with or without modification, any code, standard or other document prepared, published or approved by a body or authority referred to in the policy as in force from time to time or as in force at a specified time.
- (8) Before making a biodiversity policy referred to in subsection (4)(a), (b) or (g), the Minister must seek advice on the policy from the ABC and comply with any requirements prescribed by the regulations.
- (9) Before making the SEB policy, the Council must refer the proposed policy to the Minister and take into account any advice provided by the Minister.
- (10) The process for making a biodiversity policy is as follows:
- (a) the designated entity must prepare a proposed biodiversity policy;
 - (b) the designated entity must undertake consultation on the proposed biodiversity policy for a period of at least 30 days that includes—
 - (i) public consultation on the proposed biodiversity policy in the manner the designated entity considers appropriate; and
 - (ii) consultation on the proposed biodiversity policy with any prescribed entities in the manner the designated entity considers appropriate;
 - (c) the designated entity must have regard to any submissions received during the consultation period;
 - (d) if, following consultation, the designated entity considers that the biodiversity policy (whether as proposed or incorporating changes arising from consultation) should be made, the designated entity must make the biodiversity policy by publishing it, or causing it to be published, on the Biodiversity Register.
- (11) Subject to subsection (12), a designated entity may, by following the process set out in subsection (10), vary a policy made by the designated entity under this section as if the variation to the policy is a new policy.
- (12) A designated entity need not follow the process set out in subsection (10) to vary a policy made under this section if the variations to the policy constitute minor amendments.
- (13) The regulations may prescribe additional matters relating to the making or varying of a biodiversity policy.
- (14) A designated entity may revoke a biodiversity policy made by the designated entity in accordance with any processes prescribed by the regulations.
- (15) In this section—
- designated entity* means—
 - (a) in relation to a policy referred to in subsection (5)—the Council; or
 - (b) in any other case—the Minister;

minor amendment, in relation to varying a policy made under this section, means an amendment that does not alter the general meaning, scope, purpose or intent of the policy.

176—Biodiversity management plans

- (1) A biodiversity management plan required for the purposes of this Act must be prepared in a manner and form approved by the CAC and may contain such provisions as the CAC thinks fit, including (without limiting the generality of this subsection) provisions relating to—
 - (a) the planting and nurturing of specified native plants, or native plants of a specified class, on specified land; and
 - (b) proposed acts or activities to manage, minimise or avoid negative impacts on biodiversity; and
 - (c) the management, control and destruction of introduced animal species and plants that are not native plants; and
 - (d) the management and control of native animal and native plant species; and
 - (e) erecting, improving and maintaining fences or other barriers; and
 - (f) the exclusion of livestock and other animals from access to native plants; and
 - (g) the monitoring and auditing of native plants and biodiversity; and
 - (h) the reporting or provision of specified information; and
 - (i) the review or variation of the plan,and may specify the period for or within which specified measures, actions or requirements are to be taken, undertaken or complied with.
- (2) A biodiversity management plan required for the purposes of this Act must be approved by the CAC.
- (3) The CAC may, in considering whether to approve a biodiversity management plan for the purposes of Schedule 2 clause 28, 29(2) or 30(1), seek and consider the advice of the regional landscape board for the landscape management region in which the relevant land is situated.
- (4) If, in considering whether to approve a biodiversity management plan for the purposes of Schedule 2 clause 28, 29(2) or 30(1), the CAC is of the opinion that the clearance or taking would be likely to result in residual significant adverse impacts despite the application of the Council guidelines or biodiversity management plan (or both), the plan must not be approved.
- (5) In approving a biodiversity management plan, the CAC may take into account any relevant matters, including the following:
 - (a) in relation to a biodiversity management plan required as a condition of a consent for clearance—whether the provisions of the plan are considered satisfactory to achieve or facilitate the achievement of the required condition;
 - (b) in relation to a biodiversity management plan required in relation to achieving a significant environmental benefit—whether the provisions of the plan are considered satisfactory to achieve or facilitate the achievement of the significant environmental benefit in accordance with the SEB policy;

- (c) in relation to a biodiversity management plan required in relation to an environmental benefit credit—whether the provisions of the plan are considered satisfactory to achieve or facilitate the achievement of the environmental benefit;
- (d) in relation to a biodiversity management plan required by a biodiversity agreement—whether the provisions of the plan are considered satisfactory to achieve or facilitate the achievement of the desired outcome of the biodiversity agreement;
- (e) in relation to an act or activity specified in Schedule 2 clause 28 for the conservation, restoration or enhancement of biodiversity—whether the provisions of the biodiversity management plan are considered satisfactory to achieve the proposed conservation, restoration or enhancement objectives;
- (f) in relation to an act or activity specified in Schedule 2 clause 29 relating to grazing practices—whether the provisions of the biodiversity management plan are considered satisfactory to ensure there will not be permanent degradation of the land;
- (g) in relation to an act or activity specified in Schedule 2 clause 30 for the maintenance of existing agriculture, forestry or farming—whether the provisions of the biodiversity management plan are considered satisfactory to ensure there will not be permanent degradation or loss of native plants.

177—Biodiversity Register

- (1) The Minister must establish and maintain a website for the purposes of this Act (the *Biodiversity Register*).
- (2) The Biodiversity Register will include the following:
 - (a) the following information in respect of applications received by the CAC for consent to clear native plants under Part 4 and for consent to destroy, damage or disturb critical habitat features of critical habitat under Part 6:
 - (i) the date on which the application was received by the CAC;
 - (ii) a description of the application;
 - (iii) the location and a description of the land to which the application relates;
 - (iv) when it is made, the decision made by the CAC in relation to the application;
 - (v) any other information required by the regulations;
 - (b) prescribed information in relation to clearances in respect of which the CAC must be notified under Schedule 2;
 - (c) the following matters relating to environmental benefit credits under Part 4 Division 4:
 - (i) each credit under section 59;
 - (ii) each assignment of credit under section 60;
 - (d) biodiversity agreements;

- (e) each prescribed area of land;
- (f) each Culturally Significant Biodiversity Entity;
- (g) any management plans adopted under section 68;
- (h) the threatened species list;
- (i) the threatened ecological communities list;
- (j) an ecological entities list established and maintained under section 72;
- (k) an action plan made under section 79;
- (l) a threat abatement plan made under section 81;
- (m) habitat declared to be critical habitat under section 84;
- (n) records of compliance orders and reparation orders issued under this Act;
- (o) records of proceedings under this Act in respect of enforcement and any decision, order or determination of a court in such proceedings;
- (p) enforceable voluntary undertakings accepted by the Minister under section 115;
- (q) any management plans adopted under section 158;
- (r) a record of any notice in the Gazette required by or under this Act;
- (s) Council guidelines;
- (t) biodiversity policies;
- (u) any other document or matter required by this Act to be published on the register or prescribed by the regulations,

in such form and containing such information as the Minister thinks fit or as prescribed by the regulations.

- (3) The Minister is not required to make available to the public any part of the register that, in the opinion of the Minister, should be kept confidential for cultural, safety or security reasons.
- (4) The Minister may also establish or authorise arrangements that restrict or prohibit access to the register (or a part of the register) to protect information that, in the opinion of the Minister, is commercially sensitive or should be protected for some other reasonable cause.
- (5) No fee may be imposed for access to the register but the Minister may fix fees for the supply of copies of the register or for extracts from the register.
- (6) Information on the register may be made available on conditions determined or approved by the Minister.
- (7) The regulations may prescribe the person responsible for providing information to be included in the register and the form in, and time within, which information is to be provided.
- (8) The Biodiversity Register is to maintain (insofar as is reasonably practicable) historical as well as current versions of documents, instruments or materials required to be published on the Biodiversity Register.

(9) In this section—

prescribed area of land means any of the following:

- (a) a sanctuary or other conservation area under Part 7 Division 1;
- (b) land that is subject to a biodiversity agreement;
- (c) a reserve;
- (d) a wilderness protection area;
- (e) a wilderness protection zone;
- (f) a marine park;
- (g) the Arkaroola Protection Area under the *Arkaroola Protection Act 2012*;
- (h) land subject to a management agreement under the *Landscape South Australia Act 2019*;
- (i) an aquatic reserve under the *Fisheries Management Act 2007*;
- (j) a native forest reserve under the *Forestry Act 1950*;
- (k) any other land prescribed by the regulations for the purposes of this definition.

178—False and misleading information

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information furnished under this Act.

Maximum penalty: \$20 000.

Expiation fee: \$1 000.

179—Service of notices etc

A notice or other document required or authorised by this Act to be given to a person may be served—

- (a) by personal service on the person or an agent of the person; or
- (b) by leaving it for the person at their place of residence or business with someone apparently over the age of 16 years; or
- (c) by sending it by post to the person or an agent of the person to the person's or agent's last known address; or
- (d) by email to the person's email address (in which case the document will be taken to have been given or served at the time of transmission); or
- (e) if the whereabouts of the person is unknown—by affixing it in a prominent position on the land to which it relates or publishing a copy of it on a website determined by the Minister; or
- (f) in any other manner prescribed by the regulations.

180—Concurrence under Planning, Development and Infrastructure Act

- (1) If a request is made for the Minister's concurrence under section 73 of the *Planning, Development and Infrastructure Act 2016*, the Minister must, in determining whether to grant concurrence (whether subject to conditions or otherwise), have regard to, and seek to further, the objects and principles of this Act and act consistently with the State Biodiversity Plan.
- (2) The Minister must determine whether to grant concurrence under section 73 of the *Planning, Development and Infrastructure Act 2016* within the prescribed period.

181—Reports of public sector agencies

- (1) An annual report that is required to be prepared by a public sector agency must, to the extent that it is relevant to the operations or activities of the agency, include a report on the manner in which the agency is addressing matters relating to biodiversity conservation, restoration and enhancement.
- (2) In preparing a report under this section, a public sector agency must have regard to any prescribed matter and any biodiversity policy made for the purposes of this section.

182—Waiver etc of fees

The Minister may waive, reduce or remit a fee imposed under this Act if the Minister considers it appropriate to do so.

183—Regulations and fee notices

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may, for example—
 - (a) provide for the exemption (whether conditional or unconditional) of any class of person, animal, plant, thing, location or circumstance, from the operation of a specified provision or provisions of this Act; and
 - (b) make provision in respect of regulated acts or activities under Part 4 and Part 5; and
 - (c) prescribe requirements in relation to the process for making listing decisions under Part 6, including setting timeframes in respect of the process; and
 - (d) regulate hunting; and
 - (e) make any other provision that may, in the opinion of the Governor, provide for the conservation, restoration and enhancement of biodiversity; and
 - (f) fix fines, not exceeding \$50 000, for offences against the regulations; and
 - (g) fix expiation fees, not exceeding \$1 500, for offences against this Act or the regulations; and
 - (h) include evidentiary provisions to facilitate proof of breaches of this Act or the regulations for the purposes of proceedings under this Act.
- (3) The regulations may—
 - (a) be of general or limited application; and

- (b) make different provision according to the matters or circumstances to which they are expressed to apply; and
 - (c) make provisions of a saving or transitional nature consequent on the enactment of this Act or on the commencement of specified provisions of this Act or on the making of regulations under this Act; and
 - (d) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of a specified entity; and
 - (e) apply or incorporate, wholly or partially and with or without modification, a code, standard, policy or other document prepared or published by the Minister or another specified entity.
- (4) A provision of a regulation made under subsection (3)(c) may, if the regulation so provides, take effect from the commencement of this subsection or from a later day.
- (5) To the extent to which a provision takes effect under subsection (4) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—
- (a) decreasing the person's rights; or
 - (b) imposing liabilities on the person.
- (6) The regulations may amend Schedule 2 to Schedule 4 (inclusive).
- (7) The Minister may prescribe fees for the purposes of this Act by fee notice under the *Legislation (Fees) Act 2019*.
- (8) A fee notice may prescribe a fee by specifying an amount or by setting out the manner in which the fee amount is to be calculated.
- (9) If a code, standard or other document is referred to or incorporated in the regulations—
- (a) a copy of the code, standard or other document must be published on a website determined by the Minister; and
 - (b) evidence of the contents of the code, standard or other document may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code, standard or other document.

184—Review of Act

- (1) The Minister must—
- (a) as soon as practicable after the expiry of 5 years from the commencement of this section; and
 - (b) at further times required by the Minister (provided that a review is commenced within 10 years after the Minister receives the report on the last review),

appoint an independent person who has, in the opinion of the Minister, extensive knowledge, skills and experience in relation to the management of biodiversity, to conduct a review of the operation and effectiveness of this Act since that commencement or since the last review (as the case requires).

- (2) A report on a review under this section must be submitted to the Minister within 6 months of the commencement of the review.
- (3) The Minister must, within 6 sitting days after receiving a report under this section, cause a copy of the report to be laid before both Houses of Parliament and publish the report on a website determined by the Minister.

Schedule 1—Regulated clearance area

1—Regulated clearance area

- (1) The regulated clearance area will be defined in a plan or plans deposited in the GRO and identified by the Minister by notice in the Gazette.
- (2) The plan or plans deposited under subclause (1) must define the regulated clearance area so that it constitutes the area to which the *Native Vegetation Act 1991* applies at the time the plan is, or plans are, deposited.
- (3) Plans deposited under subclause (1) will be known as the *Regulated Clearance Area Plan*.
- (4) The Minister must ensure that a copy of the Regulated Clearance Area Plan is published on the Biodiversity Register.
- (5) The Minister may, by instrument deposited in the GRO and notice in the Gazette, vary the Regulated Clearance Area Plan.
- (6) Before varying the Regulated Clearance Area Plan, the Minister must undertake public consultation on the proposed variation in the manner the Minister considers appropriate for a period of at least 30 days.
- (7) An instrument referred to in subclause (5) only has effect in accordance with the notice in the Gazette referred to in that subclause.
- (8) A notice referred to in subclause (5) must operate so that the instrument referred to in that subclause takes effect at least 4 months after the notice is made.
- (9) Sections 10 (other than subsection (1)) and 10A of the *Legislative Instruments Act 1978* apply in relation to a notice referred to in subclause (5) (and a reference in those provisions to a regulation will be taken to be a reference to such a notice).
- (10) If the Minister deposits an instrument in the GRO under subclause (5), the Minister must give notice of that fact on a website determined by the Minister within a reasonable time after the instrument is deposited.

Schedule 2—Native plants—regulated acts or activities exclusions

Part 1—Preliminary

1—Interpretation

In this Schedule—

approved form means a form approved by the CAC;

bushfire management plan means—

- (a) a plan prepared by a bushfire management committee for its bushfire management area as required under sections 73 and 73A of the *Fire and Emergency Services Act 2005*; or
- (b) a plan for reducing the risk of bushfires approved by the CAC or developed in accordance with Council guidelines;

commercial forest means a forest plantation where the forest vegetation is grown or maintained so that it can be harvested or used for commercial purposes;

Cultana Training Area means the area declared to be the Cultana Training Area from time to time under the *Defence Regulation 2016* of the Commonwealth;

designated Act means—

- (a) the *Energy Resources Act 2000*; or
- (b) the *Mining Act 1971*; or
- (c) the *Offshore Minerals Act 2000*; or
- (d) the *Opal Mining Act 1995*; or
- (e) the *Roxby Downs (Indenture Ratification) Act 1982*;

dwelling means a prescribed building or part of a prescribed building used as a self-contained residence;

farm forest means an area of private land on which the cultivation and management of native plants (whether for commercial or non-commercial purposes) is integrated with other activities and includes timber plantations, planted timber belts (including planted windbreaks), planted woodlots and wide-spaced tree plantings;

fence means a fence consisting of posts and wire fixed permanently to land and designed for the purposes of controlling access by people or the movement of animals;

fire access track means a track constructed for use by vehicles undertaking firefighting activities;

firefighting has the same meaning as in the *Fire and Emergency Services Act 2005*;

forest vegetation means trees and other forms of forest vegetation including—

- (a) roots or other parts of the trees or other forest vegetation that lie beneath the soil; and
- (b) leaves, branches or other parts or products of trees or other forest vegetation;

infrastructure includes social infrastructure;

plant health expert means a person holding a prescribed qualification;

private mine means land declared under the *Mining Act 1971* to be a private mine;

relevant Chief Officer means—

- (a) if the relevant land is in a fire district established for the purposes of SAMFS—the Chief Officer of SAMFS; or
- (b) in any other case—the Chief Officer of SACFS;

repealed regulations means the *Native Vegetation Regulations 2003* or the *Native Vegetation Regulations 2017*;

River Murray Floodplain Area means the River Murray Protection Area so designated under regulation 4 of the *River Murray Regulations 2017*;

rural council has the same meaning as in the *Fire and Emergency Services Act 2005*;

SACFS means the South Australian Country Fire Service;

SAMFS means the South Australian Metropolitan Fire Service;

SASES means the South Australian State Emergency Service;

social infrastructure means buildings or areas that facilitate the delivery of social services;

social services include health services, disability services, aged care, childcare, education, justice and emergency services, arts and culture, sport and recreation, social housing and any other service provided for community benefit.

2—Operation of Schedule

- (1) The acts and activities set out in Part 2 to Part 4 of this Schedule are specified as not being regulated acts or activities for the purposes of section 42(2).
- (2) A person carrying out or undertaking, or intending to carry out or undertake, an act or activity set out in this Schedule must comply with any applicable Council guidelines.
- (3) A person clearing, or intending to clear, native plants in circumstances set out in this Schedule must—
 - (a) have applied the mitigation hierarchy in accordance with Council guidelines adopted for that purpose; and
 - (b) if the CAC must be notified of the proposed clearance—include in the notification an explanation of how the person has applied the mitigation hierarchy.
- (4) The operation of this Schedule extends to native plants that—
 - (a) are growing or situated on land that is subject to a biodiversity agreement unless a clause in this Schedule specifies that it does not apply to such plants; or
 - (b) are growing or situated on land within a conservation area established under section 97 unless a clause in this Schedule specifies that it does not apply to such plants.

Part 2—Clearance or taking of native plants

Division 1—Intentionally sown or planted native plants

3—Intentionally sown or planted native plants

Clearance or taking of a native plant that was intentionally sown or planted by a person unless the plant—

- (a) was sown or planted—

- (i) in compliance with a condition imposed by the CAC under this Act or by the Native Vegetation Council or the Native Vegetation Authority under a repealed Act, or with the order of a court under this Act or a repealed Act; or
 - (ii) in accordance with a proposal approved by the Native Vegetation Council under Part 4 Division 2 of the repealed *Native Vegetation Act 1991*; or
 - (iii) on land that is subject to a biodiversity agreement; or
 - (iv) in circumstances involving the use of money paid into the Biodiversity Restoration Fund in relation to a requirement to achieve a significant environmental benefit; or
 - (v) in compliance with a condition imposed by a Minister, statutory authority or prescribed person or body under—
 - (A) the *River Murray Act 2003*; or
 - (B) the *Water Resources Act 1997*; or
 - (C) the *Natural Resources Management Act 2004*; or
 - (D) the *Landscape South Australia Act 2019*; or
 - (E) any other Act prescribed by the regulations for the purposes of this paragraph; or
- (b) is more than 20 years old and is not—
- (i) growing in a commercial forest, farm forest or domestic garden; or
 - (ii) growing for the purposes of commercial floriculture; or
- (c) is growing or situated on public land.

Division 2—Maintaining existing developments and infrastructure

4—Native plants within 3 m of prescribed building

- (1) Clearance or taking of native plants that are growing or situated within 3 m of an existing prescribed building that is on the same land as the land on which the native plants are growing or situated.
- (2) Subclause (1) does not apply to—
 - (a) native plants that are growing or situated on land within the River Murray Floodplain Area unless the clearance or taking—
 - (i) involves the limb of a plant that is overhanging a prescribed building; and
 - (ii) is confined to removing the limb (or a part of the limb to any point up to the trunk of the plant); or
 - (b) clearance or taking of native plants undertaken in connection with subdivision of the land on which the plants are growing or situated.

5—Maintenance of infrastructure

Clearance or taking of native plants if the clearance or taking is incidental to the repair or maintenance of infrastructure and—

- (a) the native plants to be cleared or taken—
 - (i) are located in the vicinity of the infrastructure that is being repaired or maintained—
 - (A) in the case of clearance—in an area in which native plants were previously lawfully cleared in connection with the construction, repair or maintenance of the infrastructure; or
 - (B) in the case of taking—in an area in which native plants were previously lawfully cleared or taken in connection with the construction, repair or maintenance of the infrastructure; and
 - (ii) consist only of native plants or parts of native plants that have grown or regrown since that earlier clearance or taking; or
- (b) the clearance or taking is undertaken in accordance with Council guidelines relating to clearance or taking of that kind.

6—Maintenance of dam

- (1) Clearance or taking of native plants if—
 - (a) the clearance or taking is incidental to the repair or maintenance of an existing dam; and
 - (b) the native plants to be cleared or taken—
 - (i) are located in the vicinity of the dam—
 - (A) in the case of clearance—in an area in which native plants were previously lawfully cleared in connection with the construction, repair or maintenance of the dam; or
 - (B) in the case of taking—in an area in which native plants were previously lawfully cleared or taken in connection with the construction, repair or maintenance of the dam; and
 - (ii) consist only of native plants or parts of native plants that have grown or regrown since that earlier clearance or taking.
- (2) Subclause (1) does not apply to native plants that are growing or situated on land that is subject to a biodiversity agreement.

7—Clearance or taking under *Electricity Act 1996*

Clearance or taking of native plants—

- (a) undertaken as part of a duty under Part 5 of the *Electricity Act 1996*; or
- (b) incidental to any repair or maintenance work undertaken by an electricity entity within the meaning of the *Electricity Act 1996*.

8—Roadside or rail corridor plant management

- (1) Clearance or taking of native plants growing or situated on land comprising a road reserve, rail corridor, rail reserve or railway crossing undertaken by or on behalf of the person with the control and management of the land for the purposes of—
 - (a) ensuring the safety of persons entering or passing the land or of property on the land; or
 - (b) controlling pests on the land,if the clearance or taking is undertaken in accordance with Council guidelines relating to clearance or taking of that kind.
- (2) Subclause (1) does not apply to native plants that are growing or situated on land that is subject to a biodiversity agreement.

Division 3—New developments and infrastructure

9—Impact assessed development

- (1) Clearance or taking of native plants that is incidental to a proposed development to which Part 7 Division 2 Subdivision 4 of the *Planning, Development and Infrastructure Act 2016* applies if—
 - (a) an EIS and an Assessment Report relating to the development have been prepared under the *Planning, Development and Infrastructure Act 2016*; and
 - (b) the Planning Minister referred the EIS to the CAC for comment and report and—
 - (i) the CAC provided comments that were included (wholly or substantially) in the relevant Assessment Report; or
 - (ii) the CAC failed to provide comments within 8 weeks after receiving the Minister's invitation for comment and report; and
 - (c) the Planning Minister has consented to the proposed development under section 115 of the *Planning, Development and Infrastructure Act 2016*; and
 - (d) the clearance or taking is undertaken in accordance with the consent granted for the proposed development; and
 - (e) in the case of clearance of native plants—the clearance is undertaken in accordance with a biodiversity management plan that proposes that a significant environmental benefit be achieved in accordance with the requirements of the SEB policy.
- (2) Subclause (1)(e) does not apply if the owner of the land (or a person acting on the owner's behalf) has made a payment into the Biodiversity Restoration Fund of an amount considered by the CAC to be sufficient to achieve the significant environmental benefit that would otherwise be required by the SEB policy.
- (3) Subclause (1) does not apply to native plants that are growing or situated on land that is subject to a biodiversity agreement.

10—Infrastructure

- (1) Clearance or taking of native plants required in connection with the provision of infrastructure (including, to avoid doubt, renewable energy infrastructure within the meaning of the *Hydrogen and Renewable Energy Act 2023*) if—
 - (a) any development authorisation required by or under the *Planning, Development and Infrastructure Act 2016* has been obtained; and
 - (b) the clearance or taking is undertaken in accordance with Council guidelines relating to clearance or taking of that kind; and
 - (c) in the case of clearance of native plants in the regulated clearance area—the clearance is undertaken in accordance with a biodiversity management plan that proposes that a significant environmental benefit be achieved in accordance with the requirements of the SEB policy.
- (2) Subclause (1)(c) does not apply if the person undertaking the clearance (or a person acting on the person's behalf) has made a payment into the Biodiversity Restoration Fund of an amount considered by the CAC to be sufficient to achieve the significant environmental benefit that would otherwise be required by the SEB policy.
- (3) Subclause (1) does not apply to native plants that are growing or situated on land that is subject to a biodiversity agreement.

11—Works on behalf of Commissioner of Highways

- (1) Clearance or taking of native plants if—
 - (a) the clearance or taking is incidental to work being undertaken by or on behalf of the Commissioner of Highways (other than repair or maintenance work of a kind referred to in clause 5); and
 - (b) the clearance or taking is undertaken in accordance with Council guidelines relating to clearance or taking of that kind; and
 - (c) in the case of clearance of native plants in the regulated clearance area—the clearance is undertaken in accordance with a biodiversity management plan that proposes that a significant environmental benefit be achieved in accordance with the requirements of the SEB policy.
- (2) Subclause (1)(c) does not apply if the person undertaking the clearance (or a person acting on the person's behalf) has made a payment into the Biodiversity Restoration Fund of an amount considered by the CAC to be sufficient to achieve the significant environmental benefit that would otherwise be required by the SEB policy.
- (3) Subclause (1) does not apply to native plants that are growing or situated on land that is subject to a biodiversity agreement.

Division 4—Tracks and fences

12—Pedestrian tracks on private land

- (1) Clearance or taking of native plants on private land for the purposes of establishing or maintaining a track of not more than 0.5 m in width that—
 - (a) is used, or is genuinely expected to be used, only by pedestrians; and
 - (b) is on private land; and

- (c) is not, or is not intended to be, available for use by members of the public.
- (2) Subclause (1) does not apply to—
 - (a) clearance or taking of native plants established as a condition of a consent for clearance of native plants under this Act or a consent for clearance of native vegetation under a repealed Act; or
 - (b) clearance or taking of native plants that would be contrary to—
 - (i) a condition of a consent for clearance of native plants under this Act or a consent for clearance of native vegetation under a repealed Act; or
 - (ii) a condition imposed in connection with an approval granted in relation to clearance of native vegetation under the repealed regulations.

13—Vehicle tracks

- (1) Clearance or taking of native plants for the purposes of establishing a new track, or maintaining an existing track, that is not more than 5 m in width, for use by vehicles having at least 4 wheels, provided that—
 - (a) the track is reasonably required to provide access; and
 - (b) the clearance or taking is limited to the extent reasonably required to achieve the relevant purpose; and
 - (c) there is no other practicable alternative (including, in the case of a new track, to the position of the track) that would involve—
 - (i) no clearance or taking; or
 - (ii) the clearance or taking of fewer native plants; or
 - (iii) the clearance or taking of native plants that are less significant; or
 - (iv) the clearance or taking of native plants that have been degraded to a greater extent than the plants proposed to be cleared or taken (if relevant).
- (2) If clearance or taking is for the purposes of establishing a new track—
 - (a) subclause (1) does not apply to native plants that are growing or situated on land that is subject to a biodiversity agreement; and
 - (b) in the case of clearance—the CAC must be notified of the proposed clearance in the approved form.
- (3) Subclause (1) does not apply to—
 - (a) clearance or taking of native plants on a road reserve to establish or maintain a track that runs along the road reserve (that is, a track that does not run from the road to the opposite side of the reserve); or
 - (b) clearance or taking of native plants established as a condition of a consent for clearance of native plants under this Act or a consent for clearance of native vegetation under a repealed Act; or
 - (c) clearance or taking that would be contrary to—

- (i) a condition of a consent for clearance of native plants under this Act or a consent for clearance of native vegetation under a repealed Act; or
- (ii) a condition imposed in connection with an approval granted in relation to clearance of native vegetation under the repealed regulations; or
- (d) clearance or taking of native plants undertaken in connection with subdivision of the land on which the native plants are growing or situated.

14—Fences

- (1) Clearance or taking of native plants for the purposes of—
 - (a) providing a strip of cleared land on either side or both sides of an existing fence for the purposes of maintaining the fence; or
 - (b) providing a strip of cleared land on either side or both sides of a fence in the course of construction to provide access for the purposes of establishing the fence,if—
 - (c) the fence is reasonably required to control access by people or the movement of animals; and
 - (d) in the case of clearance for the purposes of establishing a new fence—the CAC has been notified of the proposed clearance in the approved form; and
 - (e) —
 - (i) in the case of a fence on the boundary of a person's land—
 - (A) the width of the strip on the person's land does not exceed 5 m; and
 - (B) in the case of a fence on the boundary of a road reserve—the width of the strip on the road reserve does not exceed 1 m; or
 - (ii) in the case of a fence that is not on the boundary of a person's land—the total width of the strip on either side of the fence does not exceed 5 m.
- (2) Subclause (1) does not apply to—
 - (a) subject to subclause (1)(e)(i)(B), clearance or taking of native plants on a road reserve; or
 - (b) clearance or taking of native plants established as a condition of a consent for clearance of native plants under this Act or a consent for clearance of native vegetation under a repealed Act; or
 - (c) clearance or taking that would be contrary to—
 - (i) a condition of a consent for clearance of native plants under this Act or a consent for clearance of native vegetation under a repealed Act; or

- (ii) a condition imposed in connection with an approval granted in relation to clearance of native vegetation under the repealed regulations; or
- (d) clearance or taking of native plants undertaken in connection with subdivision of the land on which the native plants are growing or situated.

Division 5—Mining and petroleum operations

15—Mining operations

- (1) Clearance or taking of native plants incidental to—
 - (a) operations authorised under a designated Act; or
 - (b) operations authorised before 25 August 2003 under a designated Act if—
 - (i) the clearance or taking is envisaged or authorised by or under a program or approval under the designated Act; or
 - (ii) the clearance or taking would reasonably be expected to have been required under the authorisation under the designated Act taking into account the circumstances that existed immediately before 25 August 2003; or
 - (c) mining operations at a private mine at which mining operations have not been discontinued for a period exceeding 12 months at any time after 21 November 1984.
- (2) Clearance or taking of native plants for the purposes of mining operations of a kind specified in subclause (1)(a) is permitted only if it is undertaken in accordance with—
 - (a) in the case of clearance of native plants—a biodiversity management plan that proposes that a significant environmental benefit be achieved in accordance with the requirements of the SEB policy; and
 - (b) in all cases—
 - (i) in the case of operations authorised under the *Mining Act 1971*—a program under Part 10A of that Act; or
 - (ii) in the case of operations authorised under the *Energy Resources Act 2000*—a statement of environmental objectives under that Act.
- (3) Subclause (2)(a) does not apply if the person undertaking the operations (or a person acting on the person's behalf) has made a payment into the Biodiversity Restoration Fund of an amount considered by the CAC to be sufficient to achieve the significant environmental benefit that would otherwise be required by the SEB policy.
- (4) Subclause (1)(b) does not apply to native plants that are growing or situated on land that is subject to a biodiversity agreement.

16—Mineral exploration operations

- (1) Clearance or taking of native plants incidental to exploratory operations authorised under a designated Act if undertaken in accordance with Council guidelines adopted for the purposes of this clause.

- (2) Council guidelines adopted for the purposes of this clause must be directed towards ensuring that exploratory operations will have a minimal impact on biodiversity and be conducted in a manner that will allow for regrowth of native plants.
- (3) However, in the case of clearance of native plants, if it is not possible for the applicant to undertake the exploratory operations in accordance with the Council guidelines adopted for the purposes of this clause, the clearance is permitted if—
 - (a) the clearance is undertaken in accordance with a biodiversity management plan that proposes that a significant environmental benefit be achieved in accordance with the requirements of the SEB policy; or
 - (b) the person undertaking the exploratory operations makes a payment into the Biodiversity Restoration Fund of an amount considered by the CAC to be sufficient to achieve the significant environmental benefit that would otherwise be required by the SEB policy.

Division 6—Plant and animal control

17—Plant and animal control

Clearance or taking of native plants in any of the following circumstances:

- (a) where undertaken in compliance with an obligation under the *Landscape South Australia Act 2019* to destroy or control plants or animals if—
 - (i) it is not possible to comply with the obligation without at the same time clearing or taking the native plants; and
 - (ii) Council guidelines relating to clearance or taking of that kind have been adopted and the clearance or taking is undertaken in accordance with those guidelines; and
 - (iii) in the case of clearance of native plants—the CAC has been notified of the proposed clearance in the approved form;
- (b) where the plants are having a detrimental effect on the management of natural resources if—
 - (i) the native plants are of a species and in a location specified in Council guidelines adopted for the purposes of this paragraph and the clearance or taking is undertaken in accordance with those guidelines; and
 - (ii) in the case of clearance of native plants—the CAC has been notified of the proposed clearance in the approved form.

Division 7—Safety and fire prevention

18—Clearance or taking under *Emergency Management Act 2004*

Clearance or taking of native plants by the State Co-ordinator or an authorised officer acting under section 25 of the *Emergency Management Act 2004*.

19—Clearance or taking for purposes of *Fire and Emergency Services Act 2005*

Clearance or taking of native plants undertaken by or in accordance with a direction or determination of—

- (a) an officer of SAMFS exercising a power conferred under section 42 of the *Fire and Emergency Services Act 2005*; or
- (b) an officer of SACFS exercising a power conferred under section 82 or 97 of the *Fire and Emergency Services Act 2005*; or
- (c) an officer of SASES exercising a power conferred under section 118 of the *Fire and Emergency Services Act 2005*.

20—Safety of persons and property

Clearance or taking of a native plant exceeding 2 m in height if—

- (a) there is a danger that the plant will fall over or a limb or some other part of the plant will fall from it because of disease, wind damage or any other cause; and
- (b) there is a real risk of personal injury or damage to property if that occurs; and
- (c) it is not reasonably practicable to avoid the risk by avoiding the vicinity in which the plant is growing or situated; and
- (d) the state of the plant has been assessed by a plant health expert or by any person acting in an emergency situation or in any other situation that gives rise to an immediate risk of personal injury or damage to property; and
- (e) if the state of the plant is assessed under paragraph (d) by a plant health expert (other than in an emergency situation or a situation that gives rise to an immediate risk of personal injury or damage to property)—a report on the state of the plant prepared by the plant health expert who made the assessment has been provided to the CAC and the CAC is satisfied that the report establishes that the circumstances in paragraphs (a) to (c) (inclusive) exist in respect of the plant; and
- (f) the clearance or taking is confined to removing only the parts of the plant causing the danger and only extends to destroying the plant if that is necessary to remove the existing danger.

21—Fuel hazard reduction

Clearance or taking of native plants in any of the following circumstances:

- (a) where the native plants are growing or situated within 20 m of an existing dwelling or 10 m of an existing building that is not a dwelling and clearance or taking is for the purposes of reducing the risk that bushfire poses to life or property (other than where the native plant consists of a regulated tree);
- (b) where the native plants are growing or situated along an existing fence-line for the purposes of establishing or maintaining a fuel break to reduce the risk that bushfire poses to life or property where the total width of the fuel break does not exceed 5 m;

- (c) where reasonably required for the purposes of reducing the risk that a bushfire poses to life or property on public land if the clearance or taking is carried out in accordance with Council guidelines relating to clearance or taking of that kind;
- (d) where the clearance or taking of native plants is otherwise authorised by, and carried out in accordance with, a bushfire management plan applying to the area in which the native plants are growing or situated.

22—Fuel hazard reduction with Chief Officer approval

- (1) Clearance or taking of native plants in any of the following circumstances:
 - (a) where the native plant consists of a regulated tree that is growing or situated within 20 m of an existing dwelling or 10 m of an existing building that is not a dwelling and the clearance or taking is for the purposes of reducing the risk that bushfire poses to life or property;
 - (b) where reasonably required for the purposes of reducing the risk that a bushfire poses to life or property (other than in circumstances that fall within the ambit of another clause of this Part);
 - (c) subject to paragraph (d), where reasonably required to provide a fuel break for the purposes of reducing the risk that a bushfire poses to life or property not exceeding 20 m in width on a property that is in the area of a rural council and is used principally for primary production (other than in circumstances that fall within the ambit of another clause of this Part);
 - (d) to provide a fuel break that does not fall within the ambit of paragraph (c) if any point of the proposed fuel break would be within 200 m of land—
 - (i) that is sufficiently clear of native plants providing comparable protection to the proposed fuel break (other than a fuel break that runs approximately at right-angles to the proposed fuel break); and
 - (ii) that provides comparable protection to the proposed fuel break;
 - (e) for the purposes of establishing or maintaining a fire access track not exceeding 15 m in width.
- (2) Subclause (1) only applies if—
 - (a) clearance or taking of the native plants is undertaken in accordance with the written approval of the relevant Chief Officer and any applicable bushfire management plan; and
 - (b) in the case of clearance of native plants—the CAC has been notified of the proposed clearance in the approved form.
- (3) The relevant Chief Officer must not grant an approval under this clause unless the Chief Officer is satisfied that the proposed clearance or taking of native plants is reasonably required or appropriate for the purposes of fire prevention or control.
- (4) In considering whether to grant an approval under this clause, the relevant Chief Officer must have regard to—
 - (a) any applicable bushfire management plan; and
 - (b) any applicable Council guidelines.

- (5) A relevant Chief Officer may delegate a function under this clause to a Deputy Chief Officer or Assistant Chief Officer of the relevant service.
- (6) Subclause (1)(a) does not apply to native plants that are growing or situated on land that is subject to a biodiversity agreement.

Division 8—Traditional cultural practices

23—Cultural burning

Clearance or taking of native plants by means of cultural burning of the plants undertaken by Aboriginal persons in accordance with the biodiversity policy relating to such cultural burning.

Division 9—Miscellaneous

24—Land subject to biodiversity agreement

Clearance or taking of native plants on land that is subject to a biodiversity agreement provided that the clearance or taking is undertaken in accordance with any conditions of that agreement and any biodiversity management plan that relates to the clearance or taking.

25—Fungi and algae

Clearance or taking of fungi or algae, other than fungi or algae of a prescribed species.

26—Firewood

- (1) Clearance or taking of native plants that is solely for the purposes of providing firewood for use by the owner of the land on which the native plants are growing or situated for the purposes of domestic heating or cooking if—
 - (a) the quantity of firewood provided by the clearance or taking when aggregated with the quantity of firewood (if any) previously provided by clearance or taking under this clause (or a corresponding provision of the repealed regulations) and not yet burnt does not exceed 6 m³ when calculated over the immediately preceding period of 2 years; and
 - (b) the plants have—
 - (i) in the case of a plant with a trunk—a trunk circumference of 600 mm or less at 300 mm from the base of the plant; or
 - (ii) in any other case—a stem circumference of 200 mm or less at 300 mm from the base of the plant; and
 - (c) in the case of living native plants—the clearance or taking does not kill the plants, does not prevent regrowth and is undertaken at least 300 mm above the base of the plant.
- (2) Subclause (1) does not apply to—
 - (a) native plants that are growing or situated on land that is subject to a biodiversity agreement; or

- (b) clearance or taking of native plants established as a condition of a consent for clearance of native plants under this Act or a consent for clearance of native vegetation under a repealed Act; or
- (c) clearance or taking that would be contrary to—
 - (i) a condition of a consent for clearance of native plants under this Act or a consent for clearance of native vegetation under a repealed Act; or
 - (ii) a condition imposed in connection with an approval granted in relation to clearance of native vegetation under the repealed regulations.

27—Regrowth

- (1) Clearance or taking of native plants if—
 - (a) the land on which the native plants are growing or situated has been lawfully cleared within 5 years immediately before the proposed clearance occurs; and
 - (b) the clearance or taking is necessary to maintain the land so that it can continue to be used for the purpose for which, and to the extent to which, it had been used within the immediately preceding 5 years; and
 - (c) the native plants to be cleared or taken consist only of plants or parts of plants that have grown or have regrown in the immediately preceding 5 years.
- (2) Subclause (1) does not apply to native plants that are growing or situated on land that is subject to a biodiversity agreement.

28—Conservation, restoration and enhancement of biodiversity

Clearance or taking of native plants for the purposes of conserving, restoring or enhancing biodiversity if it is undertaken in accordance with—

- (a) Council guidelines relating to clearance or taking of that kind; and
- (b) if the guidelines referred to in paragraph (a) specify that a biodiversity management plan must be made in relation to clearance or taking of that kind—a biodiversity management plan that relates to the clearance or taking.

29—Grazing practices

- (1) Clearance or taking of native plants by grazing domestic stock on land in a manner and at a rate that will not cause permanent degradation of the land, provided that the manner and rate of grazing is consistent with the manner in which, and the rate at which, the land has previously been grazed by domestic stock during the previous 10 years.
- (2) Clearance or taking of native plants by grazing domestic stock on land in a manner and at a rate that will not cause permanent degradation of the land where the manner and rate of grazing is not consistent with the manner in which, and the rate at which, the land has previously been grazed by domestic stock during the previous 10 years if the clearance or taking is undertaken in accordance with—
 - (a) Council guidelines relating to clearance or taking of that kind; and

- (b) if the guidelines referred to in paragraph (a) specify that a biodiversity management plan must be made in relation to clearance or taking of that kind—a biodiversity management plan that relates to the clearance or taking.
- (3) In this clause—
degradation of land has the same meaning as in the *Pastoral Land Management and Conservation Act 1989*.

30—Maintenance of existing agriculture, forestry or farming

- (1) Clearance or taking of native plants that are growing or situated on land that has been consistently used for agricultural, forestry or primary production purposes (other than grazing) as part of a commercial enterprise in the immediately preceding 10 years if—
 - (a) the clearance or taking is undertaken for the purposes of maintaining the existing use of the land and will not cause permanent degradation or loss of native plants; and
 - (b) the clearance or taking is undertaken in accordance with—
 - (i) Council guidelines relating to clearance or taking of that kind; and
 - (ii) if the guidelines referred to in subparagraph (i) specify that a biodiversity management plan must be made in relation to clearance or taking of that kind—a biodiversity management plan that relates to the clearance or taking.
- (2) Subclause (1) does not apply to native plants that are growing or situated on land that is subject to a biodiversity agreement.

31—Licence under Aquaculture Act

Clearance or taking of native plants consistent with a licence under the *Aquaculture Act 2001*.

32—Cultana Training Area

- (1) Clearance or taking of native plants that are growing or situated in the Cultana Training Area if the clearance or taking is carried out by or on behalf of, or with the authority or permission of, the Commonwealth Department of Defence or an arm of the Australian Defence Force.
- (2) Subclause (1) does not apply to native plants that are growing or situated on land that is subject to a biodiversity agreement.

33—Maintenance pruning

Taking a native plant from public land or local government land (within the meaning of the *Local Government Act 1999*) provided that it is taken by the owner or person with the care, control or management of that land for the purposes of maintaining those plants in accordance with Council guidelines relating to taking of that kind.

34—Dead plants

Clearance or taking of a dead native plant, or part of a plant that is dead, unless the plant is of a class prescribed by the regulations for the purposes of this clause.

Part 3—Dealing with native plants

35—Commercial floriculture

Dealing with a native plant in the course of commercial floriculture that was intentionally sown or planted by a person for that purpose.

Part 4—Assisting in regulated act or activity

36—Assisting in regulated act or activity

An act or activity referred to in section 42(1) carried out or undertaken by a person (an *assistant*) assisting a person (the *authorised person*) who is taken to hold an authorisation to carry out or undertake the act or activity if the act or activity carried out or undertaken by the assistant is carried out or undertaken in accordance with any condition of, or requirement, restriction or limitation applying in respect of, the authorisation taken to be held by the authorised person.

Schedule 3—Principles of preservation of native plants

1—Principles of preservation of native plants

Native plants are considered to be of particular value and should be preserved if, in the opinion of the CAC—

- (a) they comprise a high level of diversity of plant species; or
- (b) they have significance as habitat for protected animals or native plants; or
- (c) they include plants of a threatened species; or
- (d) they comprise the whole, or a part, of a threatened ecological community or listed ecological entity; or
- (e) they are significant as remnant plants in an area which has been extensively cleared; or
- (f) they are growing in, or in association with, a wetland environment; or
- (g) they contribute significantly to the amenity of the area in which they are growing or situated; or
- (h) their clearance is likely to contribute to continued or further soil erosion or salinity in an area in which appreciable erosion or salinisation has already occurred or, where such erosion or salinisation has not yet occurred, their clearance is likely to cause appreciable soil erosion or salinity; or
- (i) their clearance is likely to cause deterioration in the quality of surface or underground water; or
- (j) their clearance is likely to cause, or exacerbate, the incidence or intensity of flooding; or
- (k) their clearance would cause significant harm to the River Murray within the meaning of the *River Murray Act 2003*; or
- (l) their clearance would cause significant harm to the Adelaide Dolphin Sanctuary.

Schedule 4—Protected animals—regulated acts or activities exclusions

1—Protected animals—regulated acts or activities exclusions

The following acts or activities are specified as not being regulated acts or activities for the purposes of section 64(2):

- (a) surrendering a protected animal, protected animal product or protected egg to the Minister or an entity prescribed by the regulations for the purposes of this paragraph;
- (b) taking a dingo—
 - (i) if the person is complying with an obligation under the *Landscape South Australia Act 2019* or the *Dog Fence Act 1946*; or
 - (ii) if the dingo is causing, or is likely to cause, damage to stock; or
 - (iii) if otherwise permitted under this Act;
- (c) keeping a dingo in accordance with the *Landscape South Australia Act 2019*;
- (d) destroying, damaging or disturbing protected habitat if—
 - (i) the protected habitat is outside a protected habitat protection zone; and
 - (ii) the person is—
 - (A) the owner of the land where the protected habitat is located; or
 - (B) authorised to destroy, damage or disturb (as the case requires) the protected habitat by the owner of the land where the habitat is located or by or under another Act or law; and
 - (iii) the protected habitat is causing, or is likely to cause, damage to crops, stock, machinery or infrastructure (including tracks and built structures) or may constitute a safety risk or hazard to people;
- (e) destroying, damaging or disturbing protected habitat if—
 - (i) that destruction, damage or disturbance constitutes a regulated act or activity under Part 4 that is authorised in accordance with section 48; or
 - (ii) that destruction, damage or disturbance constitutes destroying, damaging or disturbing critical habitat features of critical habitat that is authorised in accordance with section 88;
- (f) an act or activity referred to in section 64(1) carried out or undertaken in respect of an animal that is the subject of a licence under the *Aquaculture Act 2001*;

- (g) an act or activity referred to in section 64(1) carried out or undertaken by a person (an *assistant*) assisting a person (the *permit holder*) who holds a permit granted by the Minister under Part 9 authorising the permit holder to carry out or undertake the act or activity if the act or activity carried out or undertaken by the assistant is carried out or undertaken in accordance with any condition of, or requirement, restriction or limitation applying in respect of, the permit held by the permit holder;
- (h) a prescribed act or activity carried out or undertaken in respect of a prescribed species of animal or in prescribed circumstances.

Schedule 5—Related amendments and repeals

Part 1—Amendment of *Adelaide Dolphin Sanctuary Act 2005*

1—Amendment of section 3—Interpretation

Section 3(1), definition of *Parks and Wilderness Council*—delete "*and Wildlife*"

2—Amendment of section 5—Related operational Acts

- (1) Section 5—after paragraph (a) insert:
 - (ab) *Biodiversity Act 2025*;
- (2) Section 5(i)—delete "*and Wildlife*"
- (3) Section 5(j)—delete paragraph (j)

Part 2—Amendment of *Arkaroola Protection Act 2012*

3—Amendment of section 5—Administration of Act

Section 5—delete "*and Wildlife*"

Part 3—Amendment of *Biosecurity Act 2025*

4—Amendment of section 171—Consultation requirements

- (1) Section 171(2)—delete "*National Parks and Wildlife Act 1972*" and substitute:
 - Biodiversity Act 2025*
- (2) Section 171(3)—delete subsection (3)

5—Amendment of section 182—Emergency order prevails

- (1) Section 182(1), definition of *designated Act*—after paragraph (c) insert:
 - (ca) the *Biodiversity Act 2025*;
- (2) Section 182(1), definition of *designated Act*, (l)—delete "*and Wildlife*"
- (3) Section 182(1), definition of *designated Act*, (m)—delete paragraph (m)

6—Amendment of section 195—Consultation requirements

- (1) Section 195(1)—delete "*National Parks and Wildlife Act 1972*" and substitute:
 - Biodiversity Act 2025*

(2) Section 195(2)—delete "native vegetation" and substitute:
native plant

(3) Section 195(2)—delete "*Native Vegetation Act 1991*" and substitute:
Biodiversity Act 2025

7—Amendment of section 209—Interaction with other Acts

(1) Section 209(1)(b)—delete "*National Parks and Wildlife Act 1972*" and substitute:
Biodiversity Act 2025

(2) Section 209(1)(c)—delete "native vegetation" and substitute:
native plant

(3) Section 209(1)(c)—delete "*Native Vegetation Act 1991*" and substitute:
Biodiversity Act 2025

8—Amendment of section 245—Interaction with other Acts

(1) Section 245(1)(b)—delete "*National Parks and Wildlife Act 1972*" and substitute:
Biodiversity Act 2025

(2) Section 245(1)(c)—delete "native vegetation" and substitute:
native plant

(3) Section 245(1)(c)—delete "*Native Vegetation Act 1991*" and substitute:
Biodiversity Act 2025

Part 4—Amendment of *Coast Protection Act 1972*

9—Amendment of section 14—General duties of Board

Section 14—after subsection (3) insert:

- (4) The Board must, if taking any action under this or any other Act that is likely to have an impact on biodiversity (including when making comments to any authority in relation to a matter under another Act) take into account, and seek to further, the objects and objectives of the *Biodiversity Act 2025*.

Part 5—Amendment of *Community Titles Act 1996*

10—Amendment of section 3—Interpretation

Section 3(1), definition of *statutory encumbrance*, (e)—delete paragraph (e) and substitute:

- (e) a biodiversity agreement under the *Biodiversity Act 2025*;

Part 6—Amendment of *Criminal Assets Confiscation Act 2005*

11—Amendment of section 3—Interpretation

Section 3(1), definition of *serious offence*, (c)(v)—delete subparagraph (v)

Part 7—Amendment of *Criminal Investigation (Covert Operations) Act 2009*

12—Amendment of section 3—Interpretation

Section 3(1), definition of *serious criminal behaviour*, (e)—delete paragraph (e)

Part 8—Amendment of *Crown Land Management Act 2009*

13—Amendment of section 5—Principles of Crown land management

Section 5(1)(b)—after "objectives of" insert:

the *Biodiversity Act 2025* and

14—Amendment of section 55—Minister may make declaration in relation to land

Section 55—delete "*and Wildlife*" wherever occurring

15—Amendment of section 78—Liability of the Crown

Section 78(3)(e)(ii)—delete "*and Wildlife*"

Part 9—Amendment of *Dog and Cat Management Act 1995*

16—Amendment of section 59D—Power to destroy dogs

Section 59D(1)(c)—delete "*and Wildlife*"

17—Amendment of section 63—Power to destroy cats

Section 63(1)(a)—delete paragraph (a) and substitute:

- (a) if the person is a warden under the *National Parks Act 1972* and the cat is in a reserve (within the meaning of that Act);
- (ab) if the person is a warden under the *Wilderness Protection Act 1992* and the cat is in a wilderness protection area or wilderness protection zone (both within the meaning of that Act);
- (ac) if the person is an authorised officer under the *Biodiversity Act 2025* and the cat is in a sanctuary (within the meaning of that Act);

18—Amendment of section 64D—Notification to owner of dog or cat destroyed etc under Part

- (1) Section 64D(3), definition of *prescribed person*, (b)—delete "*and Wildlife*"
- (2) Section 64D(3), definition of *prescribed person*—after paragraph (b) insert:
 - (ba) an authorised officer under the *Biodiversity Act 2025*; or

Part 10—Amendment of *Energy Resources Act 2000*

19—Amendment of section 6A—Interaction with other legislation

- (1) Section 6A—delete "they may be relevant" and substitute:

the Minister considers appropriate

(2) Section 6A—after paragraph (d) insert:

(e) the objects of the *Biodiversity Act 2025*.

Part 11—Amendment of *Environment Protection Act 1993*

20—Amendment of section 112—State of environment reports

Section 112(3)—after paragraph (a) insert:

(aa) include an assessment of biodiversity in the State which has regard to the State-wide biodiversity indicators set out in the State Biodiversity Plan under the *Biodiversity Act 2025*; and

Part 12—Amendment of *Fire and Emergency Services Act 2005*

21—Amendment of section 42—Powers

Section 42(6a), definition of *government reserve*, (b)—delete "*and Wildlife*"

22—Amendment of section 71—State Bushfire Coordination Committee

(1) Section 71(2)(b)(v)—delete "*and Wildlife*"

(2) Section 71(2)(b)(xiv)—delete "Native Vegetation Council" and substitute:

Biodiversity Council (within the meaning of the *Biodiversity Act 2025*)

23—Amendment of section 91—Duty to report unattended fires

Section 91(2), definition of *government officer*, (a)—delete "*and Wildlife*"

24—Amendment of section 97—Powers

Section 97(12), definition of *government reserve*, (b)—delete "*and Wildlife*"

Part 13—Amendment of *Firearms Act 2015*

25—Amendment of section 56—Power of police officer or warden to require production of licence etc

Section 56(1) and (3)—delete "*and Wildlife*" wherever occurring

Part 14—Amendment of *Fisheries Management Act 2007*

26—Amendment of section 3—Interpretation

(1) Section 3(1), definition of *relevant Minister*—after paragraph (c) insert:

or

(d) in relation to a threatened fish—the Minister to whom the administration of the *Biodiversity Act 2025* is committed;

(2) Section 3(1)—after the definition of *take* insert:

threatened fish means a fish of a threatened species under the *Biodiversity Act 2025*;

27—Amendment of section 54—Application for licence, permit or registration

Section 54(8)—after "specially protected area" insert:

or a threatened fish

28—Amendment of section 78—Unauthorised activities relating to exotic organisms or noxious species prohibited

Section 78(3)—after "specially protected area" insert:

or a threatened fish

29—Amendment of section 115—Exemptions

Section 115(2)—after "specially protected area" insert:

or a threatened fish

Part 15—Amendment of *Harbors and Navigation Act 1993*

30—Amendment of section 15—Property of Crown

Section 15(3)(b)—delete "*and Wildlife*"

Part 16—Amendment of *Hydrogen and Renewable Energy Act 2023*

31—Amendment of section 4—Interpretation

Section 4(1), definition of *designated land*, (f)—delete "*and Wildlife*"

Part 17—Amendment of *Landscape South Australia Act 2019*

32—Amendment of section 3—Interpretation

- (1) Section 3(1), definition of *biological diversity*—delete the definition and substitute:

biodiversity or *biological diversity* has the same meaning as in the *Biodiversity Act 2025*;

- (2) Section 3(1), definition of *native animal*—delete the definition

- (3) Section 3(1), definition of *native vegetation*—delete the definition and substitute:

native plant has the same meaning as in the *Biodiversity Act 2025*;

- (4) Section 3(1), definition *natural resources*, (d)—delete "native vegetation, native animals" and substitute:

native plants, protected animals

- (5) Section 3(1)—after the definition of *private land* insert:

protected animal has the same meaning as in the *Biodiversity Act 2025*;

- (6) Section 3(8)—delete "native vegetation is" and substitute:

native plants are

- (7) Section 3(8)—delete "the native vegetation" and substitute:

the native plants

- (8) Section 3(8)—delete "*Native Vegetation Act 1991*" and substitute:

Biodiversity Act 2025

33—Amendment of section 7—Objects and principles

- Section 7(1)(g)—delete "native" and substitute:

protected

34—Amendment of section 9—Functions of Minister

- Section 9(1)(f)—after "seas" insert:

(not being State biodiversity data within the meaning of section 172 of the *Biodiversity Act 2025*)

35—Amendment of section 25—Functions of boards (general)

- (1) Section 25(1)(f)—delete "*Native Vegetation Act 1991* and promote the conservation of wildlife as envisaged under the *National Parks and Wildlife Act 1972*" and substitute:

Biodiversity Act 2025 and promote the protection and restoration of biodiversity in the State as envisaged under that Act

- (2) Section 25(1)(i)—delete "native" wherever occurring and substitute in each case:

protected

36—Amendment of section 33—Landscapes affecting activities control policies

- Section 33(2)(d)—delete "native" and substitute:

protected

37—Amendment of section 44—State Landscape Strategy

- Section 44(4)—after paragraph (c) insert:

and

- (d) the strategies and priorities set out in the State Biodiversity Plan under the *Biodiversity Act 2025*.

38—Amendment of section 61—Associated Ministerial consents

- (1) Section 61(2) and (3)—delete subsections (2) and (3) and substitute:

- (2) Subject to subsection (4), if in the opinion of the Minister the implementation of a plan—

- (a) would adversely affect any protected animal or native plant that is subject to any form of control under the *Biodiversity Act 2025*; or

- (b) would result in the clearance of any native plants,

the Minister must not approve the plan without the consent of the Minister for the time being administering the *Biodiversity Act 2025*.

- (2) Section 61(4)—delete ", (2) or (3)" and substitute:

or (2)

39—Amendment of section 97—Interpretation

Section 97, definition of *degradation*—delete "native vegetation" and substitute:
native plants

40—Amendment of section 106—Activities not requiring a permit

Section 106(1)(c)—delete "*Native Vegetation Act 1991*" and substitute:
Biodiversity Act 2025

41—Amendment of section 185—Preliminary

- (1) Section 185(3)—after "subsection (1)" insert:
or (2)
- (2) Section 185(3)—delete "native animals" and substitute:
protected animals or native plants without the concurrence of the Minister responsible for the administration of the *Biodiversity Act 2025*
- (3) Section 185(4)—delete subsection (4)

42—Amendment of section 201—Protection of certain vegetation and habitats

- (1) Section 201(1)(a)—delete paragraph (a) and substitute:
 - (a) that native plants are not cleared except in accordance with guidelines adopted by the Biodiversity Council under section 174 of the *Biodiversity Act 2025*; and
- (2) Section 201(2)—delete "native" wherever occurring and substitute in each case:
protected

Part 18—Amendment of *Land Tax Act 1936*

43—Amendment of section 4—Imposition of land tax

- (1) Section 4(1)(ba)—delete "heritage agreement under the *Native Vegetation Act 1991*" and substitute:
biodiversity agreement under the *Biodiversity Act 2025*
- (2) Section 4(1)(ba)—delete "23B(3)" and substitute:
170(2)

Part 19—Amendment of *Livestock Act 1997*

44—Amendment of section 42—Exercising powers in relation to native or feral animals

Section 42(4)—delete "*National Parks and Wildlife Act 1972*" and substitute:
Biodiversity Act 2025

Part 20—Amendment of *Maralinga Tjarutja Land Rights Act 1984*

45—Amendment of section 3—Interpretation

Section 3, definition of *co-management agreement*—delete "*and Wildlife*"

46—Amendment of section 15A—Interpretation

Section 15A, definition of *Minister*—delete "*and Wildlife*"

47—Amendment of section 15B—Establishment of co-management board

Section 15B(1) and (2)(1)—delete "*and Wildlife*" wherever occurring

48—Amendment of section 17—Rights of traditional owners with respect to lands

Section 17(2)—delete "*and Wildlife*"

Part 21—Amendment of *Marine Parks Act 2007*

49—Amendment of section 3—Interpretation

Section 3(1), definition of *Council*—delete "*and Wildlife*"

50—Amendment of section 32—Appointment of authorised officers

Section 32(1)(b)—delete "*and Wildlife*"

Part 22—Amendment of *Mining Act 1971*

51—Amendment of section 10B—Interaction with other legislation

- (1) Section 10B—delete "they may be relevant" and substitute:
the Minister considers appropriate
- (2) Section 10B—after paragraph (e) insert:
 - (f) the objects of the *Biodiversity Act 2025*.

Part 23—Amendment of *National Parks and Wildlife Act 1972*

52—Amendment of long title

Long title—delete "public benefit and enjoyment; to provide for the conservation of wildlife in a natural environment;" and substitute:

the conservation of wildlife and for public benefit and enjoyment,

53—Amendment of section 1—Short title

Section 1—delete "*and Wildlife*"

54—Amendment of section 5—Interpretation

- (1) Section 5, definition of *Aboriginal person*—delete the definition and substitute:
Aboriginal person has the same meaning as in the *Biodiversity Act 2025*;
- (2) Section 5, definition of *aircraft*—delete the definition

- (3) Section 5, definition of *carcass*—delete the definition
- (4) Section 5—after the definition of *co-management board* insert:
conservation of wildlife includes the restoration and recovery of wildlife and ecosystems;
- (5) Section 5, definition of *controlled species*—delete the definition
- (6) Section 5—after the definition of *Council* insert:
craft includes—
(a) a glider or balloon capable of carrying a person; and
(b) a drone;
- (7) Section 5, definition of *Director*—delete "and Wildlife"
- (8) Section 5, definition of *endangered species*—delete the definition
- (9) Section 5, definition of *firearm*—delete the definition and substitute:
ERD Court means the Environment, Resources and Development Court established under the *Environment, Resources and Development Court Act 1993*;
firearm has the same meaning as in the *Firearms Act 2015*;
- (10) Section 5, definition of *forest reserve*—delete the definition
- (11) Section 5—after the definition of *game reserve* insert:
information discovery order means an information discovery order issued under Part 2 Division 3 Subdivision 2;
- (12) Section 5, definition of *marine mammal*—delete the definition
- (13) Section 5, definition of *Murray-Darling Basin*—delete "1993" and substitute:
2008
- (14) Section 5, definition of *native plant*—delete the definition and substitute:
native plant has the same meaning as in the *Biodiversity Act 2025*;
- (15) Section 5, definition of *plant*—delete the definition and substitute:
plant has the same meaning as in the *Biodiversity Act 2025*;
- (16) Section 5, definitions of *prohibited species* and *protected animal*—delete the definitions and substitute:
protected animal has the same meaning as in the *Biodiversity Act 2025*;
- (17) Section 5, definition of *rare species*—delete the definition
- (18) Section 5, definitions of *sell*, *take* and *to hunt*—delete the definitions and substitute:
take has the same meaning as in the *Biodiversity Act 2025* and, in relation to a plant, includes clearance within the meaning of that Act;
- (19) Section 5, definition of *vehicle*—delete the definition and substitute:
vehicle includes—
(a) any vessel or craft; and

- (b) a caravan or trailer; and
 - (c) any plant or equipment designed to be moved or operated by a driver;
- (20) Section 5, definition of *vulnerable species*—delete the definition
- (21) Section 5, definition of *wildlife*—delete the definition and substitute:

wildlife means protected animals and native plants.

55—Amendment of section 10—Research and investigation

- (1) Section 10(1)—delete subsection (1) and substitute:
- (1) The Minister may cause an investigation to be made into the possibility of establishing further reserves or adding to existing reserves.
- (2) Section 10(2)—delete "research or"

56—Repeal of section 11

Section 11—delete the section

57—Amendment of section 11A—Director of National Parks and Wildlife

- (1) Section 11A, heading—delete "and Wildlife"
- (2) Section 11A(1)—delete "and Wildlife"

58—Amendment of section 12—Delegation

- (1) Section 12(2)—delete subsection (2)
- (2) Section 12(3)—delete ", including, with the consent of the person who has delegated the power, a power delegated to the Director under this section"
- (3) Section 12(5)—after paragraph (b) insert:
- (ba) if the instrument of delegation so provides, may be further delegated by the delegate; and

59—Amendment of section 13—Information to be included in annual report

Section 13(2)—delete subsection (2)

60—Amendment of section 14—Minister not to administer this Act

- (1) Section 14, heading—delete "Minister not to administer this" and substitute:
- Administration of
- (2) Section 14—after its present contents (now to be designated as subsection (1)) insert:
- (2) This Act must be administered by the same Minister that administers the *Biodiversity Act 2025*.

61—Amendment of section 19C—Functions of Council

Section 19C(2)(f)—delete paragraph (f)

62—Insertion of Subdivision heading

Before section 20 insert:

Subdivision 1—Wardens

63—Substitution of sections 21 to 26

Sections 21 to 26 (inclusive)—delete the sections and substitute:

21—Powers of wardens

- (1) A warden may, as may reasonably be required in connection with the administration, operation or enforcement of this Act, at any reasonable time—
 - (a) enter and inspect any place; and
 - (b) enter and inspect any vehicle and for that purpose require a vehicle to stop, or to be presented for inspection at a place and time specified by the warden, and board any vessel or craft; and
 - (c) inspect (including open) any thing that is in or on any place or vehicle, including a package in the postal system; and
 - (d) use reasonable force to break into or open any part of, or anything in or on, any place or vehicle, but only if the warden—
 - (i) is exercising the power on the authority of a warrant issued by the Magistrates Court or a justice; or
 - (ii) is acting with the permission of the owner of the relevant land or the person apparently in charge of the vehicle (as the case requires); or
 - (iii) reasonably believes that immediate action is required in the circumstances (including in order to prevent the destruction of, or otherwise preserve, evidence of a contravention of this Act); and
 - (e) give directions with respect to the stopping, securing or movement of a vehicle, plant, equipment or other thing; and
 - (f) with the authority of a warrant issued by the Magistrates Court or a justice, stop and search a person who is reasonably suspected of having, on or about their person, any thing that constitutes evidence of the commission of an offence against this Act; and
 - (g) take measurements or place any markers, pegs, buoys or other items or equipment at any place; and
 - (h) take samples of any substance or thing from any place (including under any land) or vehicle; and
 - (i) dig up any land by the use of hand-held equipment for the purpose of taking samples; and

- (j) with the authority of a warrant issued by the Magistrates Court or a justice, to the extent to which it is reasonably required, take mechanical equipment on to any land and dig up the land, or any part of it, for the purposes of taking samples that the warden reasonably suspects may constitute evidence of a contravention of this Act; and
- (k) require any person to produce any documents, including a written record that reproduces in an understandable form information stored by computer, microfilm or other process, as reasonably required in connection with the administration or enforcement of this Act; and
- (l) examine, copy or take extracts from any documents or information so produced or require a person to provide a copy of any such document or information; and
- (m) take photographs, films, audio, video or other recordings; and
- (n) examine or test any vehicle, plant, equipment, fitting or other thing, or cause or require it to be so examined or tested, or seize it or require its production for such examination or testing; and
- (o) seize and retain anything that the warden reasonably suspects has been used in, or may constitute evidence of, a contravention of this Act, or require a person to surrender, either immediately or within a specified period and at a specified place, anything held or maintained in contravention of this Act; and
- (p) without limiting the operation of paragraph (o), if the warden finds any animals or plants that are being held or maintained contrary to any requirement or provision of the *Biodiversity Act 2025*, or that are prohibited from being in the State under any other Act or law, seize and remove the animals or plants or take measures for their destruction or control; and
- (q) require a person who the warden reasonably suspects has committed, is committing or is about to commit, a contravention of this Act to state the person's full name and usual place of residence and to produce evidence of the person's identity; and
- (r) require a person who the warden reasonably suspects has knowledge of matters in respect of which information is required for the administration or enforcement of this Act—
 - (i) to answer questions in relation to those matters; or
 - (ii) to attend at a specified place at a specified time and answer questions in relation to those matters; and

- (s) give directions reasonably required in connection with the exercise of a power conferred by any of the above paragraphs or otherwise in connection with the administration, operation or enforcement of this Act; and
 - (t) request a person holding or required to hold a consent, permit or other authority under this Act, or acting in reliance of a consent, permit or other authority under this Act, to produce the consent, permit or authority for inspection; and
 - (u) give expiation notices under the *Expiation of Offences Act 1996* for alleged offences against this Act; and
 - (v) if a person who the warden reasonably suspects has committed, is committing or is about to commit, a contravention of this Act is on a reserve—order that person off the reserve for a stated period (not exceeding 24 hours); and
 - (w) exercise any power prescribed by the regulations.
- (2) A warden, in exercising powers under this section, may be accompanied by such assistants as are reasonably required in the circumstances.
- (3) Where a warden is a police officer, the powers under this section apply in addition to any powers that the police officer has under any other Act or law.

22—Issue of warrants

- (1) The Magistrates Court or a justice must not issue a warrant for the purposes of this Part unless—
- (a) satisfied that the warrant is reasonably required in the circumstances; and
 - (b) in the case of a warrant authorising a warden to take action under section 21(1)(j)—satisfied that there are reasonable grounds to believe that a person may have committed a contravention of this Act.
- (2) An application for the issue of a warrant may be made either personally or by telephone.
- (3) The grounds of an application for a warrant must be verified by affidavit.
- (4) An application for the issue of a warrant may not be made by telephone unless in the opinion of the applicant a warrant is urgently required and there is insufficient time to make the application personally.

- (5) If an application for the issue of a warrant is made by telephone, the following provisions apply:
- (a) the applicant must inform the Magistrates Court or justice of their name and identify themselves as a warden, and the Magistrates Court or justice, on receiving that information, is entitled to assume, without further inquiry, that the applicant is a warden;
 - (b) the applicant must inform the Magistrates Court or justice of the grounds on which the applicant seeks the issue of the warrant;
 - (c) if it appears to the Magistrates Court or justice from the information furnished by the applicant that there are proper grounds for the issue of a warrant, the Magistrates Court or justice must inform the applicant of the facts on which the Magistrates Court or justice relies as grounds for the issue of the warrant, and must not proceed to issue the warrant unless the applicant undertakes to make an affidavit verifying those facts;
 - (d) if the applicant gives such an undertaking, the Magistrates Court or justice may then make out and sign a warrant, noting on the warrant the facts on which the Magistrates Court or justice relies as grounds for the issue of the warrant;
 - (e) the warrant will be taken to have been issued, and will come into force, when signed by the Magistrates Court or justice;
 - (f) the Magistrates Court or justice must inform the applicant of the terms of the warrant;
 - (g) the applicant must, as soon as practicable after the issue of the warrant, forward to the Magistrates Court or justice an affidavit verifying the facts referred to in paragraph (c).
- (6) A warden who executes a warrant must, as soon as practicable after execution of the warrant—
- (a) prepare a notice in the prescribed form containing—
 - (i) the warden's own name and a statement that they are a warden under this Act; and
 - (ii) the name of the person who issued the warrant and the date and time of its issue; and
 - (iii) a description of the authority conferred by the warrant; and
 - (b) give the notice to the person affected by the warrant.
- (7) A warrant, if not executed at the expiration of 1 month from the date of its issue, then expires.

23—Provisions relating to seizure

- (1) If a thing has been seized under this Subdivision, the following provisions apply:
 - (a) the thing must be held pending proceedings under this Act related to the thing seized, unless the Minister, on the Minister's own motion or on application, authorises its release to the person from whom it was seized, or to any person who had legal title to it at the time of its seizure, subject to such conditions as the Minister thinks fit (including conditions as to the giving of security for satisfaction of an order under paragraph (b)(ii));
 - (b) if proceedings under this Act relating to the thing are instituted within the prescribed period after its seizure and a person is, as a result of the proceedings, convicted or found guilty of an offence or is otherwise found to have contravened this Act, the court may—
 - (i) order that it be forfeited to the Minister; or
 - (ii) if it has been released in accordance with paragraph (a)—
 - (A) if the thing is an animal, animal product, egg or plant—order that it be forfeited to the Minister; or
 - (B) in any other case—order that the person to whom it was released, or the person who is, as a result of the proceedings, convicted or found guilty of an offence or is otherwise found to have contravened this Act, pay to the Minister an amount equal to its market value at the time of its seizure;
 - (c) if proceedings under this Act relating to the thing are instituted within the prescribed period after its seizure and a person is, as a result of the proceedings, convicted or found guilty of an offence or is otherwise found to have contravened this Act, the Minister may recover from the person the costs of having retained the thing;
 - (d) if—
 - (i) proceedings are not instituted under this Act relating to the thing within the prescribed period after its seizure; or
 - (ii) proceedings have been so instituted but—
 - (A) no person is, as a result of the proceedings, convicted or found guilty of an offence or otherwise found to have contravened this Act; or

- (B) a person is, as a result of the proceedings, convicted or found guilty of an offence or is otherwise found to have contravened this Act but no order for forfeiture is made under paragraph (b); or
- (C) the thing is no longer required to furnish evidence for the purposes of the proceedings,

then the person from whom the thing was seized, or any person with legal title to it, is entitled to recover from the Minister (if necessary, by action in a court of competent jurisdiction) the thing itself, or if it has been damaged, destroyed, released or otherwise disposed of, compensation of an amount equal to its market value at the time of its seizure;

- (e) if the Minister is unable, after reasonable inquiry, to ascertain the whereabouts of a person to whom a thing is to be returned, the thing may be sold or disposed of as the Minister thinks fit and, if sold, the proceeds of sale must be paid into the General Reserves Fund;
- (f) if, in the opinion of the Minister, an animal, animal product, egg or plant seized under this Act will suffer a loss in its value before the question of its forfeiture under this section can be determined, the thing may be sold or disposed of as the Minister thinks fit (unless it is required for evidentiary purposes) and, if sold, the proceeds of the sale will be dealt with under this section as if they were the thing;
- (g) if a living animal is seized under this section, the Minister may make arrangements for—
 - (i) the animal's care; or
 - (ii) if, in the opinion of the Minister—
 - (A) it is in the best interests of the welfare of the animal to be released into the wild—its release into the wild; or
 - (B) it is necessary for the welfare of the animal to be destroyed—its destruction.

(2) In this section—

animal product has the same meaning as in the *Biodiversity Act 2025*;

owner in relation to an object seized under this section means either or both of the following persons:

- (a) a person who has legal title to the object;
- (b) a person who was, immediately before seizure of the object, legally in possession or control of the object;

prescribed period means 12 months or such longer period as the ERD Court may, on application by the Minister, allow;

thing includes—

- (a) an animal, animal product or egg; and
- (b) a plant; and
- (c) a vehicle; and
- (d) a cage or container; and
- (e) a firearm or taking device (within the meaning of the *Biodiversity Act 2025*); and
- (f) a poison or other substance; and
- (g) a document or record.

24—Offence to hinder etc wardens

- (1) A person who—
 - (a) hinders or obstructs a warden, or a person assisting a warden, in the exercise of powers conferred by this Act; or
 - (b) uses abusive, threatening or insulting language to a warden, or a person assisting a warden; or
 - (c) refuses or fails to comply with a requirement or direction of a warden under this Act; or
 - (d) when required by a warden under this Act to answer a question, refuses or fails to answer the question to the best of the person's knowledge, information and belief; or
 - (e) falsely represents, by words or conduct, that they are a warden,

is guilty of an offence.

Maximum penalty: \$15 000.

- (2) A person who assaults a warden, or a person assisting a warden in the exercise of powers under this Act, is guilty of an offence.

Maximum penalty: \$15 000 or 2 years imprisonment.

25—Self-incrimination

- (1) It is not a reasonable excuse for a person to fail to answer a question or to produce, or provide a copy of, a document or information as required under this Act on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.

- (2) If compliance by an individual with a requirement under this Act might tend to incriminate the person or make the person liable to a penalty, then—
 - (a) in the case of a person who is required to produce, or provide a copy of, a document or information—the fact of production, or provision of a copy of, the document or the information (as distinct from the contents of the document or the information); or
 - (b) in any other case—the answer given in compliance with the requirement,

is not admissible in evidence against the person in proceedings for an offence or for the imposition of a penalty (other than proceedings in respect of the making of a false or misleading statement).

64—Insertion of Part 2 Division 3 Subdivision 2

Before Part 3 insert:

Subdivision 2—Power to require or obtain information

26—Information discovery orders

- (1) A warden may issue an information discovery order under this Subdivision for the purpose of obtaining information reasonably required for the administration, operation or enforcement of this Act.
- (2) An information discovery order may be issued to any person who the warden reasonably suspects has knowledge of matters, or has possession or control of a document dealing with matters, in respect of which information is required.
- (3) An information discovery order—
 - (a) must be in the form of a written notice served on the person to whom it is issued; and
 - (b) must specify the person to whom it is issued (whether by name or a description sufficient to identify the person); and
 - (c) may require information, as specified in the order, to be furnished to the warden in such manner and within such period as is specified in the order; and
 - (d) must state the purpose for which the information is required; and
 - (e) must state that the person may, within 14 days, appeal to the ERD Court against the order.
- (4) If an information discovery order has been issued to a person by a warden, the warden may, by written notice served on the person, vary or revoke the order.

- (5) A person to whom an information discovery order is issued must comply with the order.

Maximum penalty: \$8 000.

26A—Obtaining of information on non-compliance with order

- (1) If a person—
- (a) fails to furnish information as required by an information discovery order; or
 - (b) being required by such an order to furnish information, furnishes information that is inaccurate or incomplete,
- the warden who issued the order may take such action as is reasonably required to obtain the information.
- (2) The reasonable costs and expenses incurred by a warden in taking action under this section may be recovered by the warden as a debt from the person whose failure gave rise to the action.

26B—Appeal to ERD Court

- (1) A person to whom an information discovery order has been issued may appeal to the ERD Court against the order or any variation of the order.
- (2) An appeal must be made in a manner and form determined by the Court, setting out the grounds of the appeal.
- (3) Subject to this section, an appeal under this section must be made within 14 days after the order is issued or the variation is made.
- (4) The ERD Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that an appeal be made within the period fixed by this section.
- (5) An appeal must be referred in the first instance to a conference under section 16 of the *Environment, Resources and Development Court Act 1993* (and the provisions of that Act will then apply in relation to the appeal).

65—Amendment of heading to Part 3

Heading to Part 3—delete "and sanctuaries"

66—Amendment of section 37—Objectives of management

- (1) Section 37(1)(a)—delete "preservation" and substitute:
conservation
- (2) Section 37(1)—after paragraph (1) insert:
and
- (m) the promotion of the objects of the *Biodiversity Act 2025*.

67—Amendment of section 38—Management plans

Section 38(10a)—delete subsection (10a)

68—Amendment of section 42—Prohibited areas

- (1) Section 42(3)—delete "unless authorised to enter the area by a permit issued by the Minister under this section" and substitute:

except with the written permission of the Minister
- (2) Section 42(4)—delete ", on appropriate terms and conditions, issue to any person a permit to be within a prohibited area" and substitute:

grant a written permission to a person for the purposes of subsection (3) on such terms and conditions as the Minister thinks fit

69—Insertion of section 43BA

After section 43B insert:

43BA—Culling of protected animals

- (1) The Minister may make a declaration under this section if the Minister is satisfied that—
 - (a) in order to meet the objectives of management under section 37 in respect of a reserve, it is necessary to control the population of a species of protected animal in the reserve or any part of the reserve; and
 - (b) culling of the animals is the only practicable option for achieving that population control.
- (2) The Minister may, by notice in the Gazette, declare that culling of a specified species of protected animal will be permitted in a specified reserve (or a specified part of a reserve) subject to any conditions specified in the notice.

Note—

The notice may, for example, impose conditions relating to the number of the protected animals to be culled or the period during which culling can occur.

- (3) In this section—

culling includes harvesting within the meaning of the *Biodiversity Act 2025*.

70—Repeal of Part 3 Division 7

Part 3 Division 7—delete Division 7

71—Amendment of section 45M—Establishment of Fund

Section 45M(3)—after paragraph (g) insert:

and

- (h) any penalty or expiation fee payable in respect of an offence or alleged offence under this Act.

72—Repeal of Parts 4 and 5

Parts 4 and 5—delete the Parts

73—Substitution of Part 5A

Part 5A—delete the Part and substitute:

Part 5A—Taking of plants and animals by Aboriginal persons

68D—Taking of plants and animals by Aboriginal persons

- (1) This section does not apply to the taking of—
 - (a) a plant of a species prescribed for the purposes of section 43(1)(a) of the *Biodiversity Act 2025*; or
 - (b) a plant by a means or in circumstances prescribed for the purposes of section 43(1)(b) of the *Biodiversity Act 2025*; or
 - (c) an animal, or an egg of an animal, of a species prescribed for the purposes of section 66(1)(a) of the *Biodiversity Act 2025*; or
 - (d) an animal, or an egg of an animal, by a means or in circumstances prescribed for the purposes of section 66(1)(b) of the *Biodiversity Act 2025*.
- (2) Despite any other provision of this Act or any other Act or law, it is not illegal for an Aboriginal person to take a native plant from a reserve (other than a co-managed park) in accordance with this section if the native plant is taken in accordance with a proclamation permitting the taking of the plant from the reserve.
- (3) Despite any other provision of this Act or any other Act or law, it is not illegal for an Aboriginal person to take a protected animal, or the eggs of a protected animal, from a reserve (other than a co-managed park) in accordance with this section if the animal or eggs are taken in accordance with a proclamation permitting the taking of the animal or eggs from the reserve.
- (4) The Governor may, by proclamation, amend or repeal a proclamation referred to in subsection (2) or (3).
- (5) Despite any other provision of this Act or any other Act or law, it is not illegal for an Aboriginal person who is a member of the relevant Aboriginal group to take a native plant, protected animal or the eggs of a protected animal in accordance with this section from a co-managed park if the native plant, protected animal or eggs are taken—
 - (a) if there is a co-management board for the park—in accordance with a permission granted by the board (which may be general or specific and conditional or unconditional); or
 - (b) in accordance with the provisions of the co-management agreement for the park.

- (6) A plant, animal or egg is taken in accordance with this section if it is taken for the purposes of using the plant, animal or egg for a non-commercial cultural or spiritual practice (which may include using the plant, animal or egg as food in the course of that practice).
- (7) Nothing in this section prevents a native title holder from taking a plant, animal or egg in the exercise of their native title rights and interests.
- (8) In this section—
native title holder has the same meaning as in the *Native Title (South Australia) Act 1994*.

74—Amendment of section 69—Permits

Section 69(7)—delete subsection (7)

75—Repeal of sections 74 and 74A

Sections 74 and 74A—delete the sections

76—Amendment of section 75—Evidentiary provisions

- (1) Section 75(2)—delete "or sanctuary"
- (2) Section 75(2)—delete "sanctuary,"
- (3) Section 75(5) and (6)—delete subsections (5) and (6)

77—Amendment of section 75A—Defence

Section 75A(a)—delete "*Native Vegetation Act 1991*" and substitute:
Biodiversity Act 2025

78—Amendment of section 80—Regulations

- (1) Section 80(2)(k)—delete "or sanctuary"
- (2) Section 80(2)(wa)—delete paragraph (wa)
- (3) Section 80(2a)—delete subsection (2a)

79—Repeal of Schedules 7 to 11

Schedules 7 to 11 (inclusive)—delete the Schedules

Part 24—Amendment of *Parliamentary Committees Act 1991*

80—Amendment of section 15L—Functions of Committee

- (1) Section 15L(2)—before the definition of *natural resources* insert:
native plant has the same meaning as in the *Biodiversity Act 2025*;
- (2) Section 15L(2), definition of *natural resources*, (d)—delete "native vegetation, native animals" and substitute:
native plants, protected animals

- (3) Section 15L(2)—after the definition of *natural resources* insert:

protected animal has the same meaning as in the *Biodiversity Act 2025*.

Part 25—Amendment of *Pastoral Land Management and Conservation Act 1989*

81—Amendment of section 3—Interpretation

- (1) Section 3(1), definition of *conservation purposes*—delete "native vegetation" and substitute:

native plants

- (2) Section 3(1), definition of *conservation purposes*—delete "heritage agreements" and substitute:

biodiversity agreements

- (3) Section 3(1), definition of *conservation purposes*—delete "*Native Vegetation Act 1991*" and substitute:

Biodiversity Act 2025

- (4) Section 3(1), definition of *Crown land*—delete "*and Wildlife*"

82—Amendment of section 5—Duty of the Minister and the Board

Section 5—after paragraph (a) insert:

- (ab) must have regard to the objects of the *Biodiversity Act 2025*; and

83—Amendment of section 12—Establishment of Pastoral Board

Section 12(2)(b)—delete "*Native Vegetation Act 1991*" and substitute:

Biodiversity Act 2025

Part 26—Amendment of *Planning, Development and Infrastructure Act 2016*

84—Amendment of section 11—Recognition of special legislative schemes

Section 11(b)—after subparagraph (iv) insert:

- (v) the *Biodiversity Act 2025*; or

85—Amendment of section 68—Significant trees

- (1) Section 68(1)(a)(ii)—delete "rare or endangered species taking into account any criteria prescribed by the regulations," and substitute:

threatened species

- (2) Section 68(1)—delete "vegetation" wherever occurring and substitute in each case:

plants

- (3) Section 68(1)—delete "native fauna" wherever occurring and substitute in each case:

protected animals

- (4) Section 68(1)(b)(ii)—delete "rare or endangered species taking into account any criteria prescribed by the regulations," and substitute:

threatened species

- (5) Section 68—after subsection (3) insert:

- (4) In subsection (1), the terms *native plant*, *protected animal* and *threatened species* all have the same meaning as in the *Biodiversity Act 2025*.

86—Amendment of section 73—Preparation and amendment

Section 73(6)—after paragraph (d) insert:

- (da) in the case of a proposed amendment to the Planning and Design Code that impacts on a zone or overlay (including by altering or removing the boundary of the zone or overlay or, in the case of an overlay, changing a zone within the overlay) that is prescribed by the regulations as a zone or overlay of importance to biodiversity—must seek the concurrence of the Minister responsible for the administration of the *Biodiversity Act 2025*; and

87—Amendment of section 76—Minor or operational amendments

Section 76(3)—after paragraph (a) insert:

- (ab) in order to include information relating to critical habitat (within the meaning of the *Biodiversity Act 2025*); or

88—Amendment of section 137—Interaction of controls on trees with other legislation

Section 137(1)—delete "*Native Vegetation Act 1991*" and substitute:

Biodiversity Act 2025

Part 27—Amendment of *Real Property Act 1886*

89—Amendment of section 154B—Effect of priority notices

- (1) Section 154B(2)(l)—delete "or the *Native Vegetation Act 1991*"
(2) Section 154B(2)—after paragraph (l) insert:

- (la) a biodiversity agreement, or the variation or termination of a biodiversity agreement, under the *Biodiversity Act 2025*;

90—Amendment of section 223LA—Interpretation

Section 223LA(1), definition of *statutory encumbrance*, (f)—delete paragraph (f) and substitute:

- (f) a biodiversity agreement under the *Biodiversity Act 2025*;

Part 28—Amendment of *Recreational Greenways Act 2000*

91—Amendment of section 3—Interpretation

Section 3(1), definition of *authorised officer*, (c)—delete "*and Wildlife*"

92—Amendment of section 9—Restriction on use of land subject to a greenway

Section 9(3)(b)—delete "*and Wildlife*"

93—Amendment of section 26—Other authorised officers

Section 26(2)—delete "*and Wildlife*" wherever occurring

94—Amendment of section 27—Powers of authorised officers

Section 27(4)(a)—delete "*and Wildlife*"

Part 29—Amendment of *River Murray Act 2003*

95—Amendment of section 5—Interaction with other Acts

(1) Section 5(2)—after paragraph (b) insert:

(ba) *Biodiversity Act 2025*;

(2) Section 5(2)(m)—delete "*and Wildlife*"

(3) Section 5(2)(n)—delete paragraph (n)

Part 30—Amendment of *State Development Coordination and Facilitation Act 2025*

96—Amendment of section 19—Interpretation

(1) Section 19(1), definition of *protected area*, (e)—delete "*and Wildlife*"

(2) Section 19(1), definition of *protected area*, (f)—delete "heritage agreement under section 23 of the *Native Vegetation Act 1991*" and substitute:

biodiversity agreement under the *Biodiversity Act 2025*

97—Amendment of Schedule 1—Designated Acts

(1) Schedule 1—after the item relating to the *Aquaculture Act 2001* insert:

Biodiversity Act 2025;

(2) Schedule 1—delete the item relating to the *Native Vegetation Act 1991*

Part 31—Amendment of *Strata Titles Act 1988*

98—Amendment of section 3—Interpretation

Section 3(1), definition of *statutory encumbrance*, (da)—delete paragraph (da) and substitute:

(da) a biodiversity agreement under the *Biodiversity Act 2025*;

Part 32—Amendment of *Unexplained Wealth (Commonwealth Powers) Act 2021*

99—Amendment of section 8—Relevant offences

Section 8(b)(v)—delete subparagraph (v)

Part 33—Amendment of *Wilderness Protection Act 1992*

100—Amendment of section 3—Interpretation

- (1) Section 3(1), definition of *the Director*—delete "and Wildlife"
- (2) Section 3(1)—after the definition of *the Environment, Resources and Development Committee* insert:

General Reserves Fund means the General Reserves Fund continued in existence under the National Parks Act;
- (3) Section 3(1), definition of *the National Parks Act*—delete "and Wildlife"
- (4) Section 3(1), definition of *native plant*—delete "National Parks Act" and substitute:

Biodiversity Act 2025
- (5) Section 3(1)—after the definition of *public notice* insert:

relevant Aboriginal group has the same meaning as in the National Parks Act;
- (6) Section 3(1)—after the definition of *reserve* insert:

take has the same meaning as in the *Biodiversity Act 2025* and, in relation to a plant, includes clearance within the meaning of that Act;
- (7) Section 3(1), definition of *vehicle*—delete the definition and substitute:

vehicle includes—

 - (a) any vessel or craft; and
 - (b) a caravan or trailer; and
 - (c) any plant or equipment designed to be moved or operated by a driver;
- (8) Section 3(1), definition of *wildlife*—delete the definition and substitute:

wildlife has the same meaning as in the National Parks Act.
- (9) Section 3(1), definition of *Wildlife Conservation Fund*—delete the definition

101—Amendment of section 17—Forfeiture

- (1) Section 17(4)(d)—delete "Wildlife Conservation" and substitute:

General Reserves
- (2) Section 17(5)—delete "Wildlife Conservation" and substitute:

General Reserves

102—Insertion of section 25A

After section 25 insert:

25A—Taking of plants and animals by Aboriginal persons

- (1) This section does not apply to the taking of—
 - (a) a plant of a species prescribed for the purposes of section 43(1)(a) of the *Biodiversity Act 2025*; or

- (b) a plant by a means or in circumstances prescribed for the purposes of section 43(1)(b) of the *Biodiversity Act 2025*; or
 - (c) an animal, or an egg of an animal, of a species prescribed for the purposes of section 66(1)(a) of the *Biodiversity Act 2025*; or
 - (d) an animal, or an egg of an animal, by a means or in circumstances prescribed for the purposes of section 66(1)(b) of the *Biodiversity Act 2025*.
- (2) Despite any other provision of this Act or any other Act or law, it is not illegal for an Aboriginal person to take a native plant from a wilderness protection area or a wilderness protection zone in accordance with this section if the native plant is taken in accordance with a proclamation permitting the taking of the plant from the wilderness protection area or wilderness protection zone.
- (3) Despite any other provision of this Act or any other Act or law, it is not illegal for an Aboriginal person to take a protected animal, or the eggs of a protected animal, from a wilderness protection area or a wilderness protection zone in accordance with this section if the animal or eggs are taken in accordance with a proclamation permitting the taking of the animal or eggs from the wilderness protection area or wilderness protection zone.
- (4) The Governor may, by proclamation, amend or repeal a proclamation referred to in subsection (2) or (3).
- (5) Despite any other provision of this Act or any other Act or law, it is not illegal for an Aboriginal person who is a member of the relevant Aboriginal group to take a native plant, protected animal or the eggs of a protected animal in accordance with this section from a co-managed wilderness protection area or zone if the native plant, protected animal or eggs are taken—
- (a) if there is a co-management board for the area or zone—in accordance with a permission granted by the board (which may be general or specific and conditional or unconditional); or
 - (b) in accordance with the provisions of the co-management agreement for the area or zone.
- (6) A plant, animal or egg is taken in accordance with this section if it is taken for the purposes of using the plant, animal or egg for a non-commercial cultural or spiritual practice (which may include using the plant, animal or egg as food in the course of that practice).
- (7) Nothing in this section prevents a native title holder from taking a plant, animal or egg in the exercise of their native title rights and interests.
- (8) In this section—

Aboriginal person has the same meaning as in the *Biodiversity Act 2025*;

native title holder has the same meaning as in the *Native Title (South Australia) Act 1994*.

103—Amendment of section 38A—Entrance fees etc for wilderness protection areas or zones

Section 38A(3)—delete subsection (3) and substitute:

- (3) A fee payable under subsection (1) must be paid into the General Reserves Fund.

104—Amendment of section 39—Financial provision

Section 39(2)—delete "Wildlife Conservation" and substitute:

General Reserves

Part 34—Repeal of *Native Vegetation Act 1991*

105—Repeal of Act and regulations

The *Native Vegetation Act 1991*, and all regulations made under that Act, are repealed.

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal Act

Year	No	Title	Assent	Commencement
2025	29	<i>Biodiversity Act 2025</i>	26.6.2025	uncommenced