

South Australia

Biodiversity Bill 2025

A BILL FOR

An Act to provide for the conservation, enhancement and restoration 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.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Interpretation
- 4 Interaction with other Acts
- 5 Act to bind Crown
- 6 Operation of Act

Part 2—Objects, principles and general duty

- 7 Objects
- 8 Principles
- 9 Regard to be had to State Biodiversity Plan
- 10 First Nations' knowledge
- 11 General duty

Part 3—Administration

Division 1—General

- 12 Delegation by Minister
- 13 Ministers not to administer Act

Division 2—Statutory bodies

Subdivision 1—Biodiversity Council

- 14 Establishment of Biodiversity Council
- 15 Composition of Council
- 16 Functions of Council

Subdivision 2—Native Plants Clearance Assessment Committee

- 17 Establishment of Native Plants Clearance Assessment Committee
- 18 Composition of NPCAC etc
- 19 Functions of NPCAC

Subdivision 3—First Nations Expert Biodiversity Committee

- 20 Establishment of First Nations Expert Biodiversity Committee
- 21 Composition of FNEBC etc
- 22 Functions of FNEBC

Subdivision 4—Scientific Committee

- 23 Establishment of Scientific Committee
- 24 Composition of Scientific Committee etc
- 25 Functions of Scientific Committee

Subdivision 5—Other committees, advisory bodies and trusts

- 26 Other committees and advisory bodies
- 27 Ability to establish trusts

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

- 28 Conditions of membership
- 29 Remuneration
- 30 Procedures
- 31 Application of Public Sector (Honesty and Accountability) Act
- 32 Staff
- 33 Annual reports
- 34 Delegation
- 35 Validity of acts of Council, committees, advisory bodies and trusts

Division 3—Funds**Subdivision 1—Biodiversity Restoration Fund**

- 36 Biodiversity Restoration Fund
- 37 Accounts and audit

Subdivision 2—Biodiversity Conservation Fund

- 38 Biodiversity Conservation Fund

Subdivision 3—Biodiversity Administration Fund

- 39 Biodiversity Administration Fund

Subdivision 4—General

- 40 Ability to establish other funds
- 41 Investment

Part 4—Native plants**Division 1—Preliminary**

- 42 Regulated acts or activities
- 43 Clearing and taking of plants by First Nations persons

Division 2—Offences

- 44 Offence to carry out or undertake regulated act or activity without authorisation
- 45 Contravention of condition of consent
- 46 Illegal possession of native plants

Division 3—Authorisation

- 47 Authorisation to carry out or undertake regulated act or activity
- 48 Application for consent
- 49 Matters NPCAC must have regard to when determining application
- 50 Circumstances in which consent may be given etc
- 51 Consultation
- 52 Conditions of consent
- 53 Other matters relating to consents
- 54 Consent of Minister required if biodiversity agreement applies
- 55 Application of Division if referral under Planning, Development and Infrastructure Act
- 56 Avoidance of duplication of procedures etc

Division 4—Credit, assignment and third party establishment of environmental benefits

- 57 Credit for environmental benefits
- 58 Assignment of credit
- 59 Achievement of environmental benefit by accredited third party provider

Division 5—Miscellaneous

- 60 Native plant management plans
- 61 Guidelines

Part 5—Protected animals

- 62 Regulated acts or activities
- 63 Taking of animals and eggs by First Nations persons
- 64 Offence to carry out or undertake regulated act or activity without permit
- 65 Illegal possession of protected animals etc
- 66 Management plan in relation to harvesting relevant protected animals
- 67 Declaration to take certain protected animals

Part 6—Threatened species, threatened ecological communities and listed ecological entities**Division 1—Designated lists**

- 68 Threatened species list
- 69 Threatened ecological communities list
- 70 Ecological entities list

Division 2—Eligibility

- 71 Eligibility criteria

Division 3—Processes

- 72 Establishing or revoking designated lists
- 73 Listing decision
- 74 Listing process
- 75 Expedited listing process
- 76 Provisional listing

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

- 77 Action plans
- 78 Declaration of key threatening process
- 79 Threat abatement plans
- 80 Extinction inquiry
- 81 Protection of threatened species of fish

Division 5—Protection of critical habitat

- 82 Declaration of critical habitat
- 83 Minister or Council may enter into agreement or arrange for action plan
- 84 Offence to destroy, damage or disturb critical habitat without authorisation
- 85 Authorisation to destroy, damage or disturb critical habitat features
- 86 Application for consent
- 87 Circumstances in which consent may be given etc
- 88 Conditions of consent
- 89 Other matters relating to consents

Part 7—Conserved areas

Division 1—Sanctuaries and other conserved areas

- 90 Establishment of sanctuaries
- 91 Other conserved areas

Division 2—Biodiversity agreements and conservation agreements

- 92 Biodiversity agreements
- 93 Effect of biodiversity agreement
- 94 Conservation agreements

Division 3—Approval by Council of proposal for revegetation

- 95 Application of Division
- 96 Declaration in relation to existing plants
- 97 Proposal for revegetation of land
- 98 Information required on application or submission
- 99 Decision by Council
- 100 Council must inform Registrar-General of declaration or approval under Division

Division 4—Financial and other assistance

- 101 Financial and other assistance

Part 8—Enforcement

Division 1—Authorised officers

- 102 Appointment of authorised officers
- 103 Identification of authorised officers
- 104 Powers of authorised officers
- 105 Issue of warrants
- 106 Provisions relating to seizure
- 107 Offence to hinder etc authorised officers

Division 2—Administrative remedies

- 108 Interpretation
- 109 Compliance orders
- 110 Reparation orders
- 111 Action on non-compliance with compliance or reparation order
- 112 Registration of orders by Registrar-General
- 113 Enforceable voluntary undertakings

Division 3—Enforcement proceedings**Subdivision 1—Civil enforcement**

- 114 Application to ERD Court for enforcement
- 115 Order where native plants have been cleared
- 116 No development orders
- 117 Interim order
- 118 Enforcement of ERD Court orders
- 119 Miscellaneous provisions
- 120 Commencement of proceedings
- 121 Making good clearance of plants orders
- 122 Recovery of civil penalty in respect of contravention

Subdivision 2—Criminal enforcement

- 123 Jurisdiction of ERD Court
- 124 Applications during criminal proceedings
- 125 Proceedings for offence
- 126 Offences by bodies corporate
- 127 Evidentiary provisions
- 128 Sentencing considerations

Subdivision 3—Defences

- 129 Application of defences
- 130 General defence
- 131 Acts authorised under legislation
- 132 Defences in relation to Part 5
- 133 Defence in relation to hunting

Subdivision 4—General provisions

- 134 Classification of offences
- 135 Culturally sensitive information
- 136 Interest
- 137 Sale of land for non-payment
- 138 Constitution of ERD Court
- 139 Assessment of costs and expenses
- 140 Vicarious liability
- 141 Recovery from related bodies corporate

Subdivision 5—Appeals

- 142 Appeal to ERD Court
- 143 Appeals to Supreme Court

Subdivision 6—Review by SACAT

- 144 Review by SACAT

Part 9—Permits

145	Prescribed matters
146	Permits
147	Permits for commercial purposes relating to native plants
148	Permits to take native plant that is critical habitat feature
149	Permits to carry out certain regulated acts or activities under Part 5
150	Permits to hunt
151	Royalty
152	False representation

Part 10—Miscellaneous

153	Offence to hunt
154	Hunting by First Nations persons
155	Unlawful entry on land
156	Restriction on use of certain devices
157	Noting of conditions, agreements declarations and approvals against title to land
158	Minister may sell surrendered animal, animal product or egg
159	State biodiversity data
160	State Biodiversity Plan
161	Biodiversity policies
162	Biodiversity Register
163	False and misleading information
164	Service of notices etc
165	Concurrence under Planning, Development and Infrastructure Act
166	Regulations and fee notices
167	Review of Act

Schedule 1—Regulated clearance area

1	Regulated clearance area
---	--------------------------

Schedule 2—Native plants—regulated acts or activities exclusions**Part 1—Preliminary**

1	Interpretation
2	Operation of Schedule

Part 2—Clearance of native plants**Division 1—Intentionally sown or planted native plants**

3	Intentionally sown or planted native plants
---	---

Division 2—Maintaining existing developments and infrastructure

4	Native plants within 3 m of prescribed building
5	Maintenance of infrastructure
6	Maintenance of dam
7	Clearance under <i>Electricity Act 1996</i>
8	Roadside or rail corridor plant management

Division 3—New developments and infrastructure

9	Impact assessed development
---	-----------------------------

Division 4—Tracks and fences

- 10 Pedestrian tracks on private land
- 11 Vehicle tracks
- 12 Fences

Division 5—Mining and petroleum activities

- 13 Mining operations
- 14 Mining explorations

Division 6—Plant and animal control

- 15 Plant and animal control

Division 7—Safety and fire prevention

- 16 Clearance under *Emergency Management Act 2004*
- 17 Clearance for purposes of *Fire and Emergency Services Act 2005*
- 18 Safety of persons and property
- 19 Fire hazard reduction
- 20 Fire hazard reduction with Chief Officer approval

Division 8—Traditional cultural practices

- 21 Cultural burning

Division 9—Miscellaneous

- 22 Fungi and algae
- 23 Firewood
- 24 Regrowth
- 25 Conservation, management and restoration of biodiversity
- 26 Ongoing grazing practices
- 27 Maintenance of existing agriculture, forestry or farming
- 28 Cultana Training Area

Part 3—Taking or dealing with native plants

- 29 Maintenance pruning

Schedule 3—Principles of preservation of native plants**Schedule 4—Protected animals—regulated acts or activities exclusions****Schedule 5—Related amendments and repeals****Part 1—Amendment of *Adelaide Dolphin Sanctuary Act 2005***

- 1 Amendment of section 3—Interpretation
- 2 Amendment of section 5—Related operational Acts

Part 2—Amendment of *Arkaroola Protection Act 2012*

- 3 Amendment of section 5—Administration of Act

Part 3—Amendment of *Coast Protection Act 1972*

- 4 Amendment of section 14—General duties of Board

Part 4—Amendment of *Community Titles Act 1996*

- 5 Amendment of section 3—Interpretation

Part 5—Amendment of *Criminal Assets Confiscation Act 2005*

- 6 Amendment of section 3—Interpretation

Part 6—Amendment of *Criminal Investigation (Covert Operations) Act 2009*

- 7 Amendment of section 3—Interpretation

Part 7—Amendment of *Crown Land Management Act 2009*

- 8 Amendment of section 5—Principles of Crown land management
9 Amendment of section 55—Minister may make declaration in relation to land
10 Amendment of section 78—Liability of the Crown

Part 8—Amendment of *Dog and Cat Management Act 1995*

- 11 Amendment of section 59D—Power to destroy dogs
12 Amendment of section 63—Power to destroy cats
13 Amendment of section 64D—Notification to owner of dog or cat destroyed etc under Part

Part 9—Amendment of *Energy Resources Act 2000*

- 14 Amendment of section 6A—Interaction with other legislation

Part 10—Amendment of *Environment Protection Act 1993*

- 15 Amendment of section 112—State of environment reports

Part 11—Amendment of *Fire and Emergency Services Act 2005*

- 16 Amendment of section 42—Powers
17 Amendment of section 71—State Bushfire Coordination Committee
18 Amendment of section 91—Duty to report unattended fires
19 Amendment of section 97—Powers

Part 12—Amendment of *Firearms Act 2015*

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

Part 13—Amendment of *Fisheries Management Act 2007*

- 21 Amendment of section 3—Interpretation
22 Amendment of section 54—Application for licence, permit or registration
23 Amendment of section 78—Unauthorised activities relating to exotic organisms or noxious species prohibited
24 Amendment of section 115—Exemptions

Part 14—Amendment of *Harbors and Navigation Act 1993*

- 25 Amendment of section 15—Property of Crown

Part 15—Amendment of *Hydrogen and Renewable Energy Act 2023*

- 26 Amendment of section 4—Interpretation

Part 16—Amendment of *Landscape South Australia Act 2019*

- 27 Amendment of section 3—Interpretation
- 28 Amendment of section 7—Objects and principles
- 29 Amendment of section 9—Functions of Minister
- 30 Amendment of section 25—Functions of boards (general)
- 31 Amendment of section 33—Landscapes affecting activities control policies
- 32 Amendment of section 44—State Landscape Strategy
- 33 Amendment of section 61—Associated Ministerial consents
- 34 Amendment of section 97—Interpretation
- 35 Amendment of section 106—Activities not requiring a permit
- 36 Amendment of section 185—Preliminary
- 37 Amendment of section 201—Protection of certain vegetation and habitats
- 38 Amendment of Schedule 2—Activities control policies

Part 17—Amendment of *Land Tax Act 1936*

- 39 Amendment of section 4—Imposition of land tax

Part 18—Amendment of *Livestock Act 1997*

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

Part 19—Amendment of *Maralinga Tjarutja Land Rights Act 1984*

- 41 Amendment of section 3—Interpretation
- 42 Amendment of section 15A—Interpretation
- 43 Amendment of section 15B—Establishment of co-management board
- 44 Amendment of section 17—Rights of traditional owners with respect to lands

Part 20—Amendment of *Marine Parks Act 2007*

- 45 Amendment of section 3—Interpretation
- 46 Amendment of section 32—Appointment of authorised officers

Part 21—Amendment of *Mining Act 1971*

- 47 Amendment of section 10B—Interaction with other legislation

Part 22—Amendment of *National Parks and Wildlife Act 1972*

- 48 Amendment of long title
- 49 Amendment of section 1—Short title
- 50 Amendment of section 5—Interpretation
- 51 Amendment of section 10—Research and investigation
- 52 Repeal of section 11
- 53 Amendment of section 11A—Director of National Parks and Wildlife
- 54 Amendment of section 12—Delegation
- 55 Amendment of section 13—Information to be included in annual report
- 56 Amendment of section 14—Minister not to administer this Act
- 57 Amendment of section 19C—Functions of Council
- 58 Amendment of section 22—Powers of wardens
- 59 Amendment of section 23—Forfeiture
- 60 Amendment of section 37—Objectives of management
- 61 Amendment of section 38—Management plans
- 62 Amendment of section 42—Prohibited areas
- 63 Insertion of section 43BA
 - 43BA Culling of protected animals

64	Repeal of Part 3 Division 7
65	Amendment of section 45M—Establishment of Fund
66	Repeal of Parts 4 and 5
67	Substitution of heading to Part 5A
68	Repeal of Part 5A Division 1
69	Substitution of heading to Part 5A Division 2
70	Amendment of section 68D—Hunting and food gathering by Aboriginal persons
71	Repeal of section 68E
72	Repeal of sections 74 and 74A
73	Amendment of section 75—Evidentiary provisions
74	Amendment of section 75A—Defence
75	Amendment of section 80—Regulations
76	Repeal of Schedules 7 to 11

Part 23—Amendment of *Parliamentary Committees Act 1991*

77	Amendment of section 15L—Functions of Committee
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Part 24—Amendment of *Pastoral Land Management and Conservation Act 1989*

78	Amendment of section 3—Interpretation
79	Amendment of section 5—Duty of the Minister and the Board
80	Amendment of section 12—Establishment of Pastoral Board

Part 25—Amendment of *Planning, Development and Infrastructure Act 2016*

81	Amendment of section 11—Recognition of special legislative schemes
82	Amendment of section 68—Significant trees
83	Amendment of section 73—Preparation and amendment
84	Amendment of section 76—Minor or operational amendments
85	Amendment of section 137—Interaction of controls on trees with other legislation

Part 26—Amendment of *Real Property Act 1886*

86	Amendment of section 154B—Effect of priority notice
87	Amendment of section 223LA—Interpretation

Part 27—Amendment of *Recreational Greenways Act 2000*

88	Amendment of section 3—Interpretation
89	Amendment of section 9—Restriction on use of land subject to a greenway
90	Amendment of section 26—Other authorised officers
91	Amendment of section 27—Powers of authorised officers

Part 28—Amendment of *River Murray Act 2003*

92	Amendment of section 5—Interaction with other Acts
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Part 29—Amendment of *Strata Titles Act 1988*

93	Amendment of section 3—Interpretation
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Part 30—Amendment of *Unexplained Wealth (Commonwealth Powers) Act 2021*

94	Amendment of section 8—Relevant offences
----	--

Part 31—Amendment of *Wilderness Protection Act 1992*

- 95 Amendment of section 3—Interpretation
- 96 Amendment of section 17—Forfeiture
- 97 Insertion of section 25A
 - 25A Taking of plants and animals by Aboriginal persons
- 98 Amendment of section 38A—Entrance fees etc for wilderness protection areas or zones
- 99 Amendment of section 39—Financial provision

Part 32—Repeal of *Native Vegetation Act 1991*

- 100 Repeal of Act and regulations
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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—

accredited third party provider means a person or body accredited for the purposes of section 59 in accordance with the regulations;

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;

animal product means the whole or any part of—

- (a) the flesh or internal organs of the animal; or
- (b) the feathers, wool, hair, skin or hide of the animal; or
- (c) the bones, horns or hooves of the animal;

authorised officer—see section 102;

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 92; or
- (b) a heritage agreement entered into under a repealed Act;

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

biodiversity policy—see section 161;

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 and includes a contravention of a term of a biodiversity agreement or a conservation agreement;

building includes a structure that is fixed to land;

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

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

community land has the same meaning as in the *Local Government Act 1999*;

compliance order means an order under section 109;

conservation agreement means a conservation agreement under section 94;

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

Country includes the lands, waterways, seas and all living things to which First Nations persons are connected through language, knowledge, cultural practice and responsibility;

critical habitat means habitat declared to be critical habitat in accordance with section 82;

critical habitat features—see section 82(4)(a);

Crown land means—

- (a) unalienated land of the Crown; or
- (b) land held by a Minister, agent or instrumentality of the Crown on behalf of the Crown;

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

- (a) identified by the relevant First Nations persons as a Culturally Significant Biodiversity Entity in accordance with the biodiversity policy referred to in section 161(4)(b); and
- (b) recognised by the Minister as a Culturally Significant Biodiversity Entity in accordance with the biodiversity policy referred to in section 161(4)(b);

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

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

degradation, in relation to a stratum of native plants, includes—

- (a) a loss of native plant cover; and
- (b) a reduction in the diversity of native plant species; and
- (c) a reduction in the ability of the ecosystem of which it forms a part to be self-sustaining;

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

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 70;

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;

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;

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

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

export, in relation to a plant, animal or egg, includes to remove the plant, animal or 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; 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 includes any device from which any kind of shot, bullet or other missile can be discharged;

First Nations Expert Biodiversity Committee or **FNEBC** means the First Nations Expert Biodiversity Committee established under Part 3 Division 2 Subdivision 3;

First Nations person has the same meaning as in the *First Nations Voice Act 2023*;

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

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

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;

infrastructure means—

- (a) the infrastructure, equipment, structures, works and other facilities used in or in connection with the supply of water or electricity, gas or other forms of energy, the provision of telecommunications, or the drainage, removal or treatment of waste water 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;

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 78;

illegally taken or acquired—a native plant, protected animal, protected animal product or egg 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 Territory of the Commonwealth;

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

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;

land includes—

- (a) land submerged by water; and
- (b) an interest in land;

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 70;

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

mining Act means the *Energy Resources Act 2000*, the *Hydrogen and Renewable Energy Act 2023*, the *Mining Act 1971*, the *Offshore Minerals Act 2000*, the *Opal Mining Act 1995* or the *Petroleum (Submerged Lands) Act 1982*;

mitigation hierarchy—see subsection (3);

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, and lives in, 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—

- (c) a plant or part of a plant that is dead unless the plant, or part of the plant, is of a class prescribed by the regulations for the purposes of this paragraph; and

- (d) a plant of a class excluded from the ambit of this definition by the regulations;

native plant management plan—see section 60;

Native Plants Clearance Assessment Committee or **NPCAC** means the Native Plants Clearance Assessment Committee established under Part 3 Division 2 Subdivision 2;

native species means any native animal or native plant;

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 held from the Crown by lease or licence—the lessee or licensee, or a person who has entered into an agreement to acquire the interest of the lessee or licensee; 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) a person who holds native title in the land; or
- (f) a person who has arrogated to themselves (lawfully or unlawfully) the rights of an owner of the land,

and includes an occupier of the land and any other person of a prescribed class included within the ambit of this definition by the regulations;

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;

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 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 area means any of the following:

(a) a reserve;

(b) a wilderness protection area or wilderness protection zone;

(c) a marine park;

(d) a sanctuary or other conserved area under Part 7 Division 1;

(e) an area subject to a biodiversity agreement or conservation agreement;

(f) any other land prescribed by the regulations for the purposes of this definition;

protected egg means the fertile egg of a protected animal;

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) other Crown land;
- 5 (g) land reserved for or dedicated to public purposes;
- (h) community land;

public notice means notice published on a website determined by the Minister;

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

regulated act or activity—

- 10 (a) in relation to a native plant—see section 42; or
- (b) in relation to a protected animal—see section 62;

regulated clearance area means the area specified in Schedule 1;

relevant fund, in respect of expiation fees and penalties recovered in respect of offences, means—

- 15 (a) in the case of an offence under Part 4 or an offence under Part 8 Division 2 or Division 3 relating to an offence under Part 4—the Biodiversity Restoration Fund; or
- (b) in the case of an offence under Part 5, Part 6, Part 9 or Part 10 or an offence under Part 8 Division 2 or Division 3 relating to an offence under Part 5, Part 6, Part 9 or Part 10—the Biodiversity Conservation Fund; or
- 20 (c) in any other case—the Biodiversity Administration Fund;

reparation order means a reparation order under section 110;

repealed Act means—

- 25 (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*;

30 **sanctuary** means a sanctuary established under section 90;

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

SEB policy—see section 161(4)(c);

35 **SEB scheme** means the significant environmental benefit scheme set out in the SEB policy;

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
- 5 (g) dispose of to an agent for sale on consignment; and
- (h) sell for the purposes of resale;

significant environmental benefit means an environmental benefit that has been, or will be, achieved and which the NPCAC has determined to be of significant value in accordance with the SEB scheme, but does not include a payment into a fund in lieu of achieving an environmental benefit;

species includes subspecies, variety and population;

State includes any part of the sea—

- (a) that is within the limits of the State; or
- 15 (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 159;

State Biodiversity Plan means the Plan maintained under section 160;

stratum of native plants means a layer of plants that comprises native plants 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;
- 25 (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
- 30 (g) negatively affect the plant's general health; or
- (h) prevent its continued natural pattern of growth;

substantially intact, in relation to native plants—see subsection (2);

take—

- 35 (a) with reference to an animal, includes any act of catching, restraining, killing or injuring; or

- (b) with reference to a plant means any interference with a plant that does not result in substantial damage to, or death of, the plant and includes (but is not limited to) removing roots, limbs, stems, flowers, seeds or any other part of the plant;

threatened ecological communities list—see section 69;

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 68;

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;

traditional owner has the same meaning as in the *First Nations Voice Act 2023*;

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) any plant or equipment designed to be moved or operated by a driver;

waters of the sea includes any water that is subject to the ebb and flow of the tide;

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 stratum of native plants will be considered to be substantially intact if, in the opinion of the NPCAC—

- (a) it constitutes, or forms part of, a contiguous area of native plants; and

- (b) —

- (i) the stratum has not been seriously degraded by human activity within the immediately preceding period of 20 years; or

- (ii) the only serious degradation of the stratum by human activity within the immediately preceding period of 20 years was caused by fire.

- (3) 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;

- 5 (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.

4—Interaction with other Acts

- 10 (1) Except where the contrary intention is expressed in this or any other Act, this Act is in addition to and does not limit or derogate from the provisions of any other Act.
- (2) 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.

15 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

- 20 (1) Subject to this section, this Act applies to the whole of the State.
- (2) To the extent that this Act applies to clearance of native plants that do not comprise or constitute critical habitat, it applies only to any land (whether public land or otherwise) within the regulated clearance area specified in Schedule 1 and to any public land outside the regulated clearance area.
- 25 (3) This Act extends to an act, activity or circumstance carried out, undertaken or existing outside the State that may affect the biodiversity of the State.
- (4) 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.
- 30 (5) The Governor may, by proclamation, declare that this Act, or a provision of this Act specified in the proclamation, will not apply—
- (a) within a part of the State specified in the proclamation; or
- (b) at any time or during periods specified in the proclamation; or
- 35 (c) to a specified species of plant or animal (whether generally or in a specified part of the State) or to any other specified circumstance or thing,
- and the operation of this Act will be modified accordingly.
- (6) Subsection (5) does not apply in relation to a provision of this Act in so far as it relates to the clearance of native plants.

Part 2—Objects, principles and general duty

7—Objects

The objects of this Act are—

- (a) to promote biodiversity conservation and restoration as a responsibility equally shared by all of society across all sectors and supported by individual accountability; and
- (b) 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
- (c) to identify and prioritise biodiversity assets for conservation and restoration across the State to inform land use planning and decision-making frameworks; and
- (d) to recognise and respect that First Nations persons 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
- (e) 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.

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, economy and wellbeing of today's generation and future generations;
- (b) that the community has a right to know about and participate in environmental decision-making;
- (c) that First Nations people, as traditional owners 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, First Nations' knowledge and local knowledge, and be made having regard to the potential long-term, medium-term and short-term impacts of climate change.

9—Regard to be had to State Biodiversity Plan

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

10—First Nations' knowledge

A person or body engaged in the administration of this Act must, as far as is practicable, seek, consider and apply First Nations' knowledge (where it is available and endorsed by the knowledge holders), in the following:

- (a) the identification and management of Culturally Significant Biodiversity Entities;
- (b) preparing and reviewing the State Biodiversity Plan;
- (c) preparing and implementing plans and responses to the listing of threatened species, threatened ecological communities and ecological entities, and the declaration of critical habitat, in accordance with Part 6;
- (d) preparing guidelines or biodiversity policies under this Act;
- (e) in the case of the Scientific Committee—carrying out an extinction inquiry under section 80.

11—General duty

- (1) An entity must not undertake an activity that harms or has the potential to harm biodiversity unless the entity takes all reasonable and practicable measures to prevent or minimise any resulting harm.
- (2) In determining what measures are required to be taken under 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 activity, taking account of factors including 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 entity 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) if a statutory authorisation has been granted in respect of the activity—any assessment made about potential impacts of the activity on biodiversity and the extent to which any harm was intended to be prevented or minimised through conditions attached to the authorisation;
- (g) any matters prescribed by regulations or a biodiversity policy in accordance with subsection (3).

- (3) Regulations or a biodiversity policy may specify—

- (a) activities that will, or will not, be taken to harm biodiversity; and
- (b) matters to be taken into account in determining what measures are required to be taken under this section; and

Biodiversity Bill 2025

Part 2—Objects, principles and general duty

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- (c) measures that will, or will not, be taken to constitute reasonable measures for the purposes of compliance with the duty.
- (4) An entity will be taken not to be in breach of the duty under this section if they are acting—
- 5 (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.
- 10 (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
- 15 (b) an order may be issued, or an order may be made by the ERD Court under Part 8 Division 3 Subdivision 1 in respect of non-compliance with the duty.
- (6) For the purposes of this section—
- activity* includes any act or omission;
- harm* to biodiversity is taken to be a direct or indirect adverse impact on biodiversity that is not trivial, having regard to matters including—
- 20 (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**

- 25 (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—
- 30 (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
- 35 (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.

- 5 (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
- 10 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

- 25 (1) The Council will consist of at least 7 members and not more than 12 members appointed by the Minister of whom—
- (a) 1 must be a member of the NPCAC; and
 - (b) 2 must be members of the FNEBC (being persons of different genders); and
 - (c) 1 must be a member of the Scientific Committee.
- 30 (2) The Minister will appoint persons to the Council with a view to—
- (a) achieving a balance of expertise that is relevant to addressing the conservation, restoration and enhancement of biodiversity; and
 - (b) selecting a reasonable range of persons who collectively have skills, knowledge and experience in the following areas:
- 35 (i) terrestrial biodiversity conservation and restoration;
 - (ii) aquatic biodiversity conservation and restoration;
 - (iii) local government;

- (iv) energy and resources;
- (v) scientific research;
- (vi) primary production or pastoralism;
- (vii) land use, urban or regional planning;
- (viii) climate change adaptation.

(3) The Minister must consult with, and take into account the views of—

- (a) the Conservation Council of South Australia before making an appointment for the purposes of subsection (2)(b)(i) and (ii); and
- (b) the Local Government Association of South Australia before making an appointment for the purposes of subsection (2)(b)(iii); and
- (c) Primary Producers South Australia before making an appointment for the purposes of subsection (2)(b)(vi); and
- (d) the Premier's Climate Change Council established by the *Climate Change and Greenhouse Emissions Reduction Act 2007* before making an appointment for the purposes of subsection (2)(b)(viii),

and may consult with any other entity the Minister thinks fit.

(4) The Minister may only appoint a member of the FNEBC as a member of the Council on the nomination of the FNEBC.

(5) The Minister will designate a member of the Council to chair meetings of the Council.

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 any reviews of the Plan;
- (c) to prepare and adopt guidelines for the purposes of the native plant clearance provisions and make other policies in relation to those provisions (if required);
- (d) to provide, at the request of the Minister, advice in relation to biodiversity policies;
- (e) to manage the Biodiversity Restoration Fund;
- (f) to keep under review the principles of preservation of native plants and the SEB scheme and their operation and advising the Minister of any changes it considers are necessary or desirable;
- (g) to keep under review the operation of the mitigation hierarchy and advising the Minister of any changes it considers are necessary or desirable;
- (h) to enter into conservation agreements and advising the Minister in relation to biodiversity agreements;
- (i) to engage the community in relation to the importance of biodiversity conservation;

- (j) such other functions assigned to it by or under this Act, or by the Minister.

Subdivision 2—Native Plants Clearance Assessment Committee

17—Establishment of Native Plants Clearance Assessment Committee

The *Native Plants Clearance Assessment Committee* is established.

18—Composition of NPCAC etc

- (1) The NPCAC will consist of the prescribed number of members.
- (2) Members of the NPCAC 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 NPCAC 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 NPCAC must be a First Nations person who may, but need not, be a member of the FNEBC.
- (5) The chair of the NPCAC may not be a member of the Public Service.
- (6) The regulations will—
- (a) set out requirements as to the requisite skills and expertise of the members of the NPCAC; and
 - (b) prescribe requirements in respect of the appointment of members of the NPCAC.

19—Functions of NPCAC

The NPCAC has the following functions:

- (a) to make assessments and decisions regarding clearance of native plants (including applications referred under the *Planning, Development and Infrastructure Act 2016* and determination of applications for consent to clear native plants);
- (b) to make assessments and decisions regarding destruction, damage and disturbance of critical habitat under Part 6;
- (c) to administer the SEB scheme;
- (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 undertake 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—First Nations Expert Biodiversity Committee

20—Establishment of First Nations Expert Biodiversity Committee

The *First Nations Expert Biodiversity Committee* is established.

21—Composition of FNEBC etc

- (1) The FNEBC will consist of the prescribed number of members.
- (2) Members of the FNEBC will be appointed by the Minister on the basis of their 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 FNEBC must be First Nations persons.
- (5) The chair of the FNEBC may be a member of the Public Service.
- (6) The regulations will—
 - (a) set out requirements as to the requisite skills and expertise of the members of the FNEBC; and
 - (b) prescribe requirements in respect of the appointment of members of the FNEBC.

22—Functions of FNEBC

The FNEBC has the following functions:

- (a) to provide advice to the Minister in relation to the management of biodiversity from First Nations' perspectives;
- (b) to provide advice to the Minister in relation to bringing First Nations perspectives on any matters included in this Act that are relevant to First Nations persons, including the State Biodiversity Plan;
- (c) to provide advice to the Minister in relation to the application of First Nations' knowledge in the management of biodiversity;
- (d) to co-develop with the Minister relevant biodiversity policies and guidelines, including the following:
 - (i) a framework to guide how First Nations values, knowledge and expertise is delivered within the operation of this Act;
 - (ii) a framework for recognising Culturally Significant Biodiversity Entities;
- (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 a First Nations person who may, but need not, be a member of the FNEBC.
- (5) The chair of the Scientific Committee may not be a member of the Public Service.
- (6) 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 advise the Minister in relation to the assessment, listing and recovery of threatened species, ecological communities and ecological entities.
- (2) 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 threatened species, threatened 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, assessments and listing decisions under Part 6;
 - (d) to provide advice in relation to the adequacy of the eligibility criteria prescribed for the purposes of section 71;
 - (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 an extinction inquiry in accordance with section 80;
 - (h) to provide advice in relation to the adequacy of the lists of threatened species, threatened ecological communities and ecological entities and the effectiveness of the listing processes;

- (i) to provide advice in relation to the State Biodiversity Plan and other relevant plans or policies developed under this Act;
- (j) to report annually on the operation of Part 6, including on the maintenance of lists required to be maintained under that Part;
- (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 a First Nations person who may, but need not, be a member of the FNEBC.
- (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 NPCAC, FNEBC, Scientific Committee or a committee or advisory body established by the Minister—the Minister; or
- (c) in the case 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 or advisory body established by or under this Act as if the Council, committee or advisory body 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 must, on or before 31 October in each year, prepare and present to the Minister a report on the work of the Council in carrying out its functions and achieving the objects of this Act during the financial year ending on the preceding 30 June.
- (2) The NPCAC, FNEBC 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 NPCAC, FNEBC 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.

- (3) 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.
- (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) 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.
- (6) 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.
- (7) It is a defence to a charge of an offence against subsection (6) 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) all moneys that were, 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) The Council may apply any part of the Biodiversity Restoration Fund—
- (a) in re-establishing, enhancing, preserving, managing and researching native plants and otherwise in accordance with any requirements of this Act; or
 - (b) towards any other purpose for which the fund may be applied under this Act.

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*.
- 5 (2) The Biodiversity Conservation Fund is subject to the management and control of the Minister.
- (3) The Biodiversity Conservation Fund will consist of—
 - 10 (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
 - 15 (e) expiation fees and penalties recovered in respect of offences under this Act or the regulations relating to protected animals, protected animal products or protected eggs; and
 - (f) expiation fees and penalties recovered in respect of offences under this Act or the regulations relating to hunting; and
 - 20 (g) expiation fees and penalties recovered in respect of offences under Part 6; and
 - (h) royalty paid under this Act in respect of protected animals and protected eggs; and
 - 25 (i) 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
 - (j) payments by order of the ERD Court in relation to protected animals, protected animal products or protected eggs, or an administrative order made under this Act in relation to protected animals, protected animal products or protected eggs; and
 - 30 (k) 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
 - (l) money required or authorised by or under this or any other Act to be paid to the Fund; and
 - 35 (m) money the Minister determines should be held and applied by the Fund; and
 - (n) 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—
 - 40 (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) money appropriated by Parliament for the purposes of the Fund; and
 - (b) income from investment of the Fund; and
 - (c) subject to subsection (4)—fees (other than expiation fees) paid under this Act; and
 - (d) all other money that is required or authorised by or under this Act or any other law to be paid into the Fund; and
 - (e) 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 Council, the prescribed fee paid by the applicant under this Act (excluding the fee prescribed for the report referred to in section 48(4)(a)) 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 on any land (whether public land or otherwise) within the regulated clearance area specified in Schedule 1 or on any public land outside the regulated clearance area;
- (b) taking a native plant from any public land;
- (c) taking a native plant of a prescribed species from private land;
- (d) dealing with a native plant of a prescribed species;
- (e) an act or activity prescribed by the regulations for the purposes of this subsection;
- (f) attempting, or assisting in, an act or activity referred to in a preceding paragraph.

- (2) Despite subsection (1), for the purposes of this Part, the 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 unless the act or activity is carried out or undertaken in respect of a native plant that comprises or constitutes critical habitat.

43—Clearing and taking of plants by First Nations 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 a First Nations person from clearing or taking a native plant for the purposes of satisfying their non-commercial personal, domestic or communal needs through use of the plant as food or for a cultural or spiritual activity.

Note—

In taking a plant in accordance with this section, a First Nations person is subject to laws of general application.

Division 2—Offences**44—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 authorised to do so in accordance with Division 3.

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.

45—Contravention of condition of consent

A person must not contravene a condition attached to a consent given under Division 3.

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—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

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

For the purposes of this Part, a person is authorised to carry out or undertake a regulated act or activity if—

- (a) in the case of clearance of native plants—subject to section 54, the person has been given consent by the NPCAC in accordance with this Division to carry out or undertake the act or activity; 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,

and the regulated act or activity is carried out or undertaken in accordance with the consent, permit or other authorisation.

48—Application for consent

- (1) Subject to subsection (2), an application for consent to clear native plants may be made by any person.
- (2) If the land is held from the Crown under a lease that is not granted in perpetuity, an application for consent to clear native plants may only be made by the Minister responsible for the administration of the *Crown Land Management Act 2009*.
- (3) An application for consent to clear native plants must be made in the manner and form approved by the NPCAC.
- (4) An application for consent to clear native plants must be accompanied by—
 - (a) a report relating to the proposed clearance prepared by a person, and in a form, approved by the NPCAC; and
 - (b) information about how the applicant has applied the mitigation hierarchy in accordance with guidelines adopted by the Council under section 61; and
 - (c) such information as may be required by the NPCAC that establishes that—
 - (i) a significant environmental benefit has been, or will be, achieved in accordance with the requirements of SEB scheme; or
 - (ii) it is not possible for the applicant to achieve a significant environmental benefit in accordance with the requirements of the SEB scheme; and
 - (d) such other information as the NPCAC reasonably requires; and
 - (e) the prescribed fee (including the fee prescribed (if any) for the report referred to in paragraph (a)).

- (5) If an applicant provides information referred to in subsection (4)(c)(ii), the applicant must propose that they make a payment into the Biodiversity Restoration Fund as an alternative to providing a significant environmental benefit in relation to the proposed clearance.
- 5 (6) On receipt of the fee prescribed for the report referred to in subsection (4)(a), the NPCAC (or a local council or other person or body acting under delegation from the NPCAC) must pay the amount of the fee into the Biodiversity Administration Fund.
- 10 (7) The NPCAC must ensure that a copy of the report referred to in subsection (4)(a), and a copy of any assessment report prepared by the Department in response to the making of an application under this section, is published on the Biodiversity Register.
- (8) The NPCAC may, following receipt of an application under this section, request the applicant to provide such additional documents or information as the NPCAC may reasonably require to assess the application.
- 15 (9) 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.

49—Matters NPCAC 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 NPCAC must—
- 20 (a) be satisfied that the mitigation hierarchy has been applied in respect of the proposed clearance in accordance with guidelines adopted by the Council under section 61; and
- (b) have regard to the principles of preservation of native plants in so far as they are relevant to that decision; and
- 25 (c) consider the potential cumulative impact, both direct and indirect, that is reasonably likely to result from the proposed clearance.
- (2) When determining an application to clear native plants in order to facilitate the management of other native plants, the NPCAC must, in exercising its limited discretion under subsection (1), have regard to the applicant's desire to facilitate the management of the other plants.
- 30 (3) 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 NPCAC must, in exercising its limited discretion under subsection (1), have regard to the applicant's desire to operate the business as efficiently as possible.

50—Circumstances in which consent may be given etc

- (1) Subject to subsection (2), the NPCAC 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.
- 40 (2) The NPCAC 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) If the applicant proposes that they make a payment into the Biodiversity Restoration Fund as contemplated by section 48(5), the NPCAC cannot give its consent to the clearance of native plants unless the NPCAC is satisfied that it is not possible for the applicant to achieve a significant environmental benefit in accordance with the requirements of the SEB scheme.
- (4) Subject to subsection (6), in deciding whether to consent to an application to clear native plants, the NPCAC must not make a decision that is seriously at variance with the principles of preservation of native plants.
- (5) For the purposes of subsection (4), whether a decision is seriously at variance with the principles of preservation of native plants is to be determined in accordance with guidelines adopted by the Council under section 61 for the purposes of this subsection.
- (6) The NPCAC may give its consent to the clearance of native plants in contravention of subsection (4) if the particular circumstances justify the giving of consent and—
- (a) the NPCAC is satisfied that a significant environmental benefit, which outweighs any adverse impacts that are reasonably likely to result from the proposed clearance, has been, or is to be, achieved in a manner referred to in, and in accordance with the requirements of, the SEB scheme; or
 - (b) if the clearance is in specified circumstances and the NPCAC is satisfied that it is not possible for the applicant to achieve a significant environmental benefit in accordance with the requirements of the SEB scheme—the NPCAC attaches to the consent a condition in accordance with section 52(1)(c).
- (7) The NPCAC may give its consent to clearance of native plants under this section only if—
- (a) the NPCAC is satisfied that a significant environmental benefit, which outweighs any adverse impacts that are reasonably likely to result from the proposed clearance, has been, or is to be, achieved in a manner referred to in, and in accordance with the requirements of, the SEB scheme; or
 - (b) if the NPCAC is satisfied that it is not possible for the applicant to achieve a significant environmental benefit in accordance with the requirements of the SEB scheme—the NPCAC attaches to the consent a condition in accordance with section 52(1)(c).
- (8) If the application under this Division relates to a native plant that is a critical habitat feature of critical habitat, the NPCAC must not give consent unless satisfied that the proposed clearance will not cause or contribute to an increase in the risk of extinction or collapse 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.
- (9) For the purposes of subsection (8), in determining whether the clearance of native plants will cause or contribute to an increase in the risk of extinction or collapse of the threatened species, threatened ecological community or listed ecological entity, the NPCAC may have regard to—
- (a) any act or activity that the applicant has carried out or undertaken, or caused to be carried out or undertaken, that the NPCAC is satisfied has offset the impacts of the clearance on the risk of extinction or collapse; or

- (b) any act or activity that the applicant proposes to carry out or undertake, or cause to be carried out or undertaken, that the NPCAC is satisfied will offset the impacts of the clearance on the risk of extinction or collapse.
- 5 (10) For the purposes of subsection (9), the NPCAC may not consider payment into a fund as an act or activity which offsets the impacts of the clearance on the risk of extinction or collapse.
- (11) The NPCAC must account for the application of any credited environmental benefit to a consent under this Division in accordance with the scheme prescribed by the regulations.
- 10 (12) 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;
 - 15 (b) 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, but not in relation to the clearance of native plants in connection with subdivision of the land on which the plants are growing or situated;
 - 20 (c) clearance of native plants required in connection with the provision of infrastructure provided that any development authorisation required by or under the *Planning, Development and Infrastructure Act 2016* has been obtained;
 - 25 (d) clearance of native plants in connection with the division of land for use for residential purposes (including clearance for the construction of infrastructure), provided that any development authorisation for the division of the land and for the use of the land for residential purposes required by or under the *Planning, Development and Infrastructure Act 2016* has been obtained;
 - 30 (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;
 - 35 (g) clearance of native plants incidental to the lawful construction or expansion of a dam situated on pastoral land.

51—Consultation

The NPCAC must, before giving its consent under this Division—

- 40 (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 within 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 the directions of the Minister; or
 - (ii) in any other case—have regard to the views of the Minister.

52—Conditions of consent

- (1) A consent under this Division to the clearance of native plants is subject to such conditions as the NPCAC thinks fit to impose or as may be imposed by or under another provision of this Act and—
 - (a) if the NPCAC determines the requirement for a significant environmental benefit is to be achieved in accordance with the requirements of the SEB scheme—
 - (i) such conditions as the NPCAC thinks fit to ensure that a significant environmental benefit will be achieved in a manner referred to in, and in accordance with the requirements of, the SEB scheme; and
 - (ii) a condition that any measures, actions or requirements undertaken to achieve the significant environmental benefit are undertaken in accordance with a native plant management plan in accordance with section 60; and
 - (iii) a condition requiring that the land on, or in relation to, which a significant environmental benefit will be achieved—
 - (A) is subject to a biodiversity agreement or a conservation agreement (as determined by the NPCAC), on such terms as the NPCAC thinks fit; or
 - (B) will be subject to a biodiversity agreement or a conservation agreement (as determined by the NPCAC), on such terms as the NPCAC thinks fit, within a period required by the NPCAC, not being more than 2 years from the day on which consent for the clearance of the native plants is given; or
 - (b) if the NPCAC determines that a requirement to achieve a significant environmental benefit is to be achieved by application of a credit under section 57, if the land on, or in relation to, which the environmental benefit credited to the person has been achieved is not subject to a biodiversity agreement or conservation agreement—a condition requiring the person to enter into such an agreement (as determined by the NPCAC), on terms to the satisfaction of the NPCAC within a period required by the NPCAC, not being more than 2 years from the day on which consent for the clearance of the native plants is given; or

- 5 (c) if the NPCAC is satisfied that it is not possible for the applicant to achieve a significant environmental benefit in accordance with the requirements of the SEB scheme—a condition requiring the applicant to make a payment into the Biodiversity Restoration Fund of an amount considered by the NPCAC to be sufficient to achieve the significant environmental benefit that would otherwise be required by the SEB scheme.
- (2) Without limiting subsection (1), consent may be subject to 1 or more of the following conditions:
- 10 (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—
- 15 (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 NPCAC 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;
- 20 (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;
- 25 (f) if the applicant is the owner of the land, a condition that the applicant enter into a biodiversity agreement with the Minister, or a conservation agreement with the Council, in the terms specified by the NPCAC, for the management of specified native plants;
- (g) a condition requiring the applicant to pay into the Biodiversity Administration Fund an amount determined by the NPCAC 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.
- 30
- (3) If the applicant has proposed to carry out or undertake, or cause to be carried out or undertaken, an act or activity to offset the impacts of an act or activity under section 50(9), the NPCAC must attach a condition to the consent requiring that the proposed act or activity be achieved.
- 35
- (4) Conditions imposed on consent to clear native plants are binding on, and enforceable against—
- (a) the applicant for the consent; and
- 40 (b) all owners and subsequent owners 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 NPCAC 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 157.

53—Other matters relating to consents

- (1) Consent to undertake clearance under this Division remains in force for 2 years or for such longer period as the NPCAC may fix at the time of giving consent or subsequently on application by a person who has the benefit of the consent.
- (2) The NPCAC must observe the rules of natural justice when considering and determining an application for consent under this Division.
- (3) The NPCAC must provide the applicant with a written statement of the reasons for its decision under this Division.
- (4) The NPCAC must publish its decision and reasons under this Division on the Biodiversity Register.
- (5) The NPCAC must allow any person who desires to do so to make representations in writing to the NPCAC, within the period prescribed by the regulations, in relation to the giving or refusal of consent to an application to clear native plants.
- (6) The NPCAC may, as it thinks fit, allow a person to appear personally or by representative before it to be heard on whether the NPCAC should or should not consent to an application to clear native plants.

54—Consent of Minister required if biodiversity agreement applies

- (1) 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.
- (2) If the Minister attaches conditions to their consent under subsection (1), the NPCAC's consent to the clearance will be taken to be subject to the same conditions, in addition to any other conditions imposed by the NPCAC.

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

- (1) Sections 49 and 50(6) and (7) also apply to circumstances where the NPCAC is considering a development application referred to it under the *Planning, Development and Infrastructure Act 2016* as if the NPCAC were considering an application for consent under this Act, subject to such modifications, additions or exclusions as the NPCAC considers may be necessary for the purpose.
- (2) Subsection (1) does not limit the matters that the NPCAC may take into account in considering such an application.

56—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 NPCAC may—
- (a) accept a Commonwealth Act document as an application for consent under section 48 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 native plant 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 NPCAC 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 NPCAC—
- (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—Credit, assignment and third party establishment of environmental benefits**57—Credit for environmental benefits**

(1) If—

(a) a person—

(i) has achieved an environmental benefit (not being a benefit required in relation to a consent to clear native plants or under any other requirement under this Act); or

(ii) has, in accordance with a consent to clear native plants, achieved an environmental benefit that exceeds the value of the minimum benefit needed to offset the loss of the cleared plants; and

(b) the NPCAC is satisfied that the benefit or excess benefit (as the case requires) is of a significant value,

the NPCAC may, for the purposes of this Act—

(c) credit the person with having achieved an environmental benefit of a value determined by the NPCAC (whether monetary or otherwise); and

(d) take into account and apply the value of the credit (adjusted to reflect the value, in the NPCAC's opinion, of the native plants the subject of the credit at the time it is so applied) to—

(i) an amount of environmental benefit the person must achieve; or

(ii) an amount proposed to be paid into the Biodiversity Restoration Fund under a condition imposed under section 52(1)(c); or

(iii) an amount to be paid into the Biodiversity Restoration Fund under any other provision of this Act as an alternative to achieving an environmental benefit.

(2) In determining the value of an excess benefit contemplated by subsection (1)(a)(ii), the NPCAC must have regard to the approximate difference between the value of the environmental benefit achieved by the person and the value of the environmental benefit that would, in the NPCAC's opinion, have been the minimum the person would have been required to achieve in the circumstances.

(3) The NPCAC must not grant a credit under this section unless the NPCAC is satisfied that the land on which the native plants that are the subject of the credit are growing or situated is, or will be within the period specified by the NPCAC, subject to a biodiversity agreement or a conservation agreement.

(4) The NPCAC may grant a credit to a person under this section subject to such conditions as it thinks fit including (without limitation)—

(a) a requirement that the person enter into a biodiversity agreement or conservation agreement within a period specified by the NPCAC; or

(b) requiring the execution of an agreement varying a biodiversity agreement or conservation agreement,

in respect of the land on which the native plants that are the subject of the credit are growing or situated.

- (5) A condition of the grant of a credit under this section is binding on, and enforceable against—

- (a) the person credited with the credit; and
(b) all owners and occupiers, and subsequent owners and occupiers, of the land on which the native plants that are the subject of the credit are growing or situated.

- (6) The NPCAC may, by notice in writing, vary or revoke a condition of the grant of a credit.

- (7) The NPCAC must inform the Registrar-General of all conditions imposed under this section that relate to land in accordance with section 157.

58—Assignment of credit

- (1) Subject to this section, a person credited under section 57 with having achieved an environmental benefit (the *assignor*) may, with the written approval of the NPCAC, assign the whole or part of the credit to another person or body (the *assignee*).

- (2) An application for approval under subsection (1)—

- (a) must be made in a manner and form determined by the NPCAC; and
(b) must be accompanied by such information as the NPCAC may reasonably require; and
(c) must be accompanied by the prescribed fee.

- (3) The NPCAC must not give its approval under subsection (1) unless the NPCAC is satisfied that the land on which the native plants that are the subject of the credit to be assigned are growing or situated is, or will be within the period specified by the NPCAC, subject to a biodiversity agreement or a conservation agreement.

- (4) The NPCAC may grant an approval under this section subject to such conditions as it thinks fit including (without limitation), the execution of an agreement varying a biodiversity agreement or conservation agreement that relates to the land on which the native plants that are the subject of the credit to be assigned are growing or situated.

- (5) Before giving its approval under subsection (1), the NPCAC must have regard to the State Biodiversity Plan.

- (6) A condition of an approval is binding on, and enforceable against—

- (a) the assignor; and
(b) all owners and occupiers, and subsequent owners and occupiers, of the land on which the native plants that are the subject of the assigned credit are growing or situated.

- (7) The NPCAC may, by notice in writing, vary or revoke a condition of an approval.

- (8) An approval remains in force for the period specified by the NPCAC in the approval, or for such longer period as the NPCAC may fix on application by the assignor or assignee.

Biodiversity Bill 2025

Part 4—Native plants

Division 4—Credit, assignment and third party establishment of environmental benefits

- (9) The NPCAC must inform the Registrar-General of all conditions imposed under this section that relate to land in accordance with section 157.
- (10) For the purposes of this Act—
- (a) credit assigned under this section will be taken to be credit of the assignee; and
 - (b) an assignment of credit that contravenes this section is, unless the NPCAC determines otherwise, void and of no effect.

59—Achievement of environmental benefit by accredited third party provider

- (1) Subject to this section, a requirement under this Act that an environmental benefit be achieved by a person (the *proponent*) may, with the written approval of the NPCAC, be satisfied by means of the achievement of the environmental benefit by an accredited third party provider.
- (2) An application for approval under subsection (1)—
- (a) must be made in a manner and form determined by the NPCAC; and
 - (b) must be accompanied by such information as the NPCAC may reasonably require; and
 - (c) must be accompanied by the prescribed fee.
- (3) The NPCAC must not give its approval under subsection (1) unless the accredited third party provider has complied with any requirements prescribed by the regulations for the purposes of this section.
- (4) Before giving its approval under subsection (1), the NPCAC must have regard to the State Biodiversity Plan.
- (5) An approval under this section is subject to—
- (a) a condition that the accredited third party provider must, within the period specified by the NPCAC, enter into a biodiversity agreement or a conservation agreement in respect of the native plants comprising the environmental benefit; and
 - (b) any other conditions that the NPCAC thinks fit, including (without limiting the generality of this paragraph), a condition providing for the payment of an amount from the Biodiversity Restoration Fund (which may be by instalments) to the accredited third party that has been paid into the Biodiversity Restoration Fund by an applicant for consent to clear native plants in accordance with a condition imposed on the consent under section 52(1)(c), on the achievement of, or for the purposes of achieving, specified measures, actions or requirements as set out in, and in accordance with, a relevant biodiversity agreement, conservation agreement or native plant management plan.
- (6) A condition of an approval is binding on, and enforceable against—
- (a) the accredited third party provider; and
 - (b) all owners and occupiers, and subsequent owners and occupiers, of the land on which the native plants comprising the environmental benefit are growing or situated.

- (7) The NPCAC may, by notice in writing, vary or revoke a condition of an approval.
- (8) An approval remains in force for the period specified by the NPCAC in the approval, or for such longer period as the NPCAC may fix on application by the proponent or provider.
- 5 (9) The NPCAC must inform the Registrar-General of all conditions imposed under this section that relate to land in accordance with section 157.

Division 5—Miscellaneous

60—Native plant management plans

10 A native plant management plan required for the purposes of this Act must be prepared in the manner and form determined by the Council and may contain such provisions as the Council 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
- 15 (b) the management, control and destruction of introduced animal species and plants that are not native plants; and
- (c) the management and control of native animal species; and
- (d) erecting, improving and maintaining fences or other barriers; and
- (e) the exclusion of livestock and other animals from access to native plants; and
- 20 (f) the monitoring and auditing of native plants; and
- (g) the reporting or provision of specified information; and
- (h) the review or variation of the plan,

and may specify the period for or within which specified measures, actions or requirements are to be carried out or undertaken.

25 61—Guidelines

- (1) The Council must prepare and adopt guidelines in relation to—
- (a) the management of native plants; and
- (b) the application of the mitigation hierarchy; and
- (c) the application of financial and other assistance provided by the Council
- 30 under section 101; and
- (d) any other matter required by this Act or the regulations.
- (2) Guidelines prepared and adopted under this section may refer to 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.
- 35 (3) In preparing guidelines for the purposes of this section, the Council must—
- (a) prepare draft guidelines; and

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- (b) by public advertisement, invite members of the public to make representations to the Council (within a period of not less than 2 months following publication of the advertisement) as to matters that should be addressed by the guidelines; and
- 5 (c) submit the draft guidelines to the Minister for comment; and
- (d) submit the draft guidelines for comment by the regional landscape board for the landscape management region to which the guidelines relate; and
- (e) where the draft guidelines relate to pastoral land, submit the guidelines to the Pastoral Board for comment; and
- 10 (f) where the draft guidelines relate to land within the area of a local council, submit the guidelines to the Local Government Association of South Australia for comment; and
- (g) submit the draft guidelines to Primary Producers SA Incorporated and to the Conservation Council of South Australia Incorporated for comment; and
- 15 (h) where the draft guidelines relate to land within the Murray-Darling Basin, submit the guidelines to the Minister to whom the administration of the *River Murray Act 2003* is committed for comment.
- (4) The public advertisement referred to in subsection (3)(b) must—
- (a) specify on which website the draft guidelines may be accessed;
- 20 (b) specify the manner in which representations in connection with the draft guidelines may be made.
- (5) If the guidelines relate to land within the Murray-Darling Basin, the guidelines must seek to further the objects of the *River Murray Act 2003* and the *Objectives for a Healthy River Murray* under the *River Murray Act 2003* (insofar as they may be relevant).
- 25 (6) If the guidelines relate to land within the Adelaide Dolphin Sanctuary, the guidelines must seek to further the objects and objectives of the *Adelaide Dolphin Sanctuary Act 2005* (insofar as they may be relevant).
- (7) The Council may adopt the draft guidelines with, or without, amendment but must, before adopting them, consider all representations made by members of the public and comments made in accordance with subsection (3).
- 30 (8) The Council must, by public advertisement, specify on which website the guidelines adopted by the Council may be accessed.
- (9) The Council may, by following the procedures required by this section for the preparation and adoption of the initial guidelines, prepare and adopt guidelines varying or replacing guidelines previously adopted under this section.
- 35 (10) Where the Council thinks it is desirable to take the time to consult on proposed guidelines in more detail than is required by this section, it may prepare and adopt guidelines under this section as an interim measure with the intention of varying or replacing them if necessary after it has had time for further consultation.
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(11) For the purposes of this section, draft guidelines in relation to the application of financial and other assistance will only be taken to relate to a landscape management region, pastoral land, the Murray-Darling Basin or the Adelaide Dolphin Sanctuary if the guidelines explicitly state that they do.

(12) In this section—

public advertisement means by notice—

- (a) in the Gazette; and
- (b) published on a website determined by the Minister; and
- (c) published in any other manner as may be determined by the Council.

Part 5—Protected animals

62—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 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 a protected 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;
- (k) attempting, or assisting in, 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.

63—Taking of animals and eggs by First Nations 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 a First Nations person from taking a protected animal or protected egg for the purposes of satisfying their non-commercial personal, domestic or communal needs through use of the animal or egg as food or for a cultural or spiritual activity.

Note—

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

64—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 authorised to do so by permit granted by the Minister under Part 9.

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.

65—Illegal possession of protected animals etc

- (1) 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—\$500 000;
- (b) in the case of an individual—\$250 000 or imprisonment for 5 years.

Expiation fee: \$1 500.

- (2) In this section—

egg includes any part of an egg or egg shell.

66—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

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- (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
- 5 (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
- 10 (f) address any other matters that should, in the opinion of the Minister, be addressed.
- (3) The Minister must provide the Minister administering the *Livestock Act 1997* with a copy of the draft management plan for comment.
- (4) The Minister must, by public notice—
- 15 (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.
- (5) A draft plan must be made available on a website specified in the notice under subsection (4) for public comment for at least 30 business days before adoption by the Minister.
- 20 (6) Before adopting a draft plan the Minister must have regard to comments (if any) made by the Minister administering the *Livestock Act 1997* or by members of the public and may, if the Minister thinks fit, vary the draft plan to take account of those comments.
- (7) The Minister must, by notice in the Gazette—
- 25 (a) state that a management plan has been adopted under this section; and
- (b) state the website at which the plan is available.
- (8) A management plan may be replaced or varied by a further plan prepared and adopted by the Minister in accordance with this section.
- (9) In this section—
- 30 ***relevant protected animal*** means an animal of the following species:
- (a) red kangaroo—*macropus rufus*;
- (b) western grey kangaroo—*macropus fuliginosus melanops*;
- (c) euro (wallaroo) (hill kangaroo)—*macropus robustus*;
- (d) eastern grey kangaroo—*macropus giganteus*;
- 35 (e) tammar wallaby—*macropus eugenii*;
- (f) western grey kangaroo—*macropus fuliginosus fuliginosus*;
- (g) a species prescribed by regulation for the purposes of this definition.

67—Declaration to take certain protected animals

- (1) The Minister may, by notice in the Gazette, declare that protected animals or protected eggs of a specified species may be taken.
- (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 may be taken (including, if the Minister thinks fit, the hours of the day during which animals 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 146 is required to take the species; and
 - (c) may prescribe restrictions or conditions applicable to the declaration.
- (4) It is lawful to take a protected animal in accordance with a notice under this section.

Part 6—Threatened species, threatened ecological communities and listed ecological entities**Division 1—Designated lists****68—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 dependant;
- (vii) SA extinct;
- (viii) SA extinct in the wild;
- 5 (ix) SA critically endangered;
- (x) SA endangered;
- (xi) SA vulnerable;
- (xii) SA rare;
- (xiii) any other category prescribed by the regulations.

69—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:
 - 15 (i) nationally collapsed;
 - (ii) nationally critically endangered;
 - (iii) nationally endangered;
 - (iv) nationally vulnerable;
 - (v) SA collapsed;
 - 20 (vi) SA critically endangered;
 - (vii) SA endangered;
 - (viii) SA vulnerable;
 - (ix) SA rare;
 - (x) any other category prescribed by the regulations.

70—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

71—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 (as the case requires) to be included in a
35 designated list and in a particular category of a designated list.

Biodiversity Bill 2025

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

Division 2—Eligibility

- (2) The eligibility criteria prescribed for the purposes of subsection (1) must—
- (a) only relate to matters of biodiversity conservation; and
 - (b) take into account national and international best practice in relation to criteria and categories.

Division 3—Processes**72—Establishing or revoking designated lists**

- (1) A designated list will be established by the Minister in accordance with processes determined by the Minister or prescribed by the regulations.
- (2) An ecological entities list established and maintained under section 70 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.

73—Listing decision

The Minister may make a *listing decision* in respect of a designated list, being 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.

74—Listing process

- (1) Subject to section 75, 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 the manner and form determined by the Minister, nominate a native species, ecological community or other ecological entity to the Minister for a listing decision.
- (3) The Minister may reject a nomination under subsection (2) in the following circumstances:
- (a) the nomination was not made in the 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 73(a) to (d).

- (4) The Minister must, unless the nomination is rejected, undertake a listing assessment against the eligibility criteria prescribed in accordance with section 71 within the prescribed period and make a preliminary listing decision.
- 5 (5) The Minister's preliminary listing decision must take into account any advice provided by the Scientific Committee and must be in accordance with any requirements prescribed by the regulations.
- 10 (6) After a preliminary listing decision has been made, the Minister must—
- (a) notify the entity that made the nomination; 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—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.
- 15 (7) Following the close of consultation referred to in subsection (6), the Minister must, by notice in the Gazette, make a final listing decision within the prescribed period.
- (8) Before the Minister makes a final listing decision, the Minister must—
- (a) consider any submissions received in relation to the preliminary listing decision, insofar as the submissions relate to biodiversity conservation; and
 - 20 (b) refer the proposed final listing decision to the Scientific Committee and take into account any advice provided by the Scientific Committee.
- (9) The Minister must publish reasons for the final listing decision on the Biodiversity Register.
- 25 (10) 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.

75—Expedited listing process

- (1) The Minister need not follow the process set out in section 74 in the following circumstances:
- 30 (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.
- (2) In this section—
- 35 ***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.

Biodiversity Bill 2025

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

Division 3—Processes

76—Provisional listing

- (1) The Minister 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 Minister 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 Minister to be threatened;
 - (c) if a native species or ecological community that was presumed to be extinct, extinct in the wild or collapsed has been located or reintroduced in the State and is considered by the Minister to be threatened;
 - (d) if an event rapidly changes the extinction risk or potential extinction risk of a native species or ecological community;
 - (e) in circumstances of a kind prescribed by the regulations.
- (2) Circumstances prescribed under subsection (1)(e) must relate to matters of biodiversity conservation.
- (3) A provisional listing expires 2 years after it has been made, unless a final listing decision has been made in place of the provisional listing.
- (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) until the provisional listing expires or a final listing decision is made in place of the provisional listing.

Division 4—Protection of threatened species, threatened ecological communities and listed ecological entities etc**77—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 First Nations persons and groups as the Minister considers appropriate, having regard to any relevant policy or document published under this Act.
- (4) An action plan may refer to or incorporate, wholly or partially and with or without modification any document prepared or published by an entity referred to in the plan.

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- (5) The regulations may prescribe matters relating to an action plan, including in relation to the form and content of a plan 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.

78—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 community or listed ecological entity; or
- (b) it could cause 1 or more species or ecological community that is not threatened to become threatened.

79—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 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 a plan and procedures for developing a plan.
- (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.

80—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 or extinct in the wild; or
 - (b) it is possible that an ecological community endemic to the State has, after the commencement of this section, collapsed,

Biodiversity Bill 2025

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

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

the Scientific Committee must undertake an inquiry into the potential extinction of the native species or ecological community (as the case may be).

(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 or extinct in the wild; or

(b) it is possible that an ecological community not endemic to the State has, after the commencement of this section, collapsed,

the Scientific Committee may undertake an inquiry into the potential extinction of the native species or ecological community (as the case may be).

(3) The regulations will prescribe requirements in relation to the conduct of an inquiry under this section.

81—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**82—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.

(2) The Minister must consider whether to make, amend or repeal a declaration under subsection (1)—

(a) within 6 months following a listing decision; or

(b) on the recommendation of the Scientific Committee,

and may make a declaration at any time.

(3) A habitat is eligible to be critical habitat if, in the opinion of the Minister after consideration of any relevant biodiversity policy, the area in which the habitat is located 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 for, or negatively impact on the recovery of, the threatened species, threatened ecological community or listed ecological entity (as the case may be).

(4) 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 (3) (the ***critical habitat features***); and

(b) the area in which the habitat is located.

- (5) Before making a declaration under subsection (1), the Minister must—
- (a) take into account any advice provided by the Scientific Committee; and
 - (b) undertake public consultation, and any other engagement the Minister considers appropriate, on the proposed declaration; and
 - (c) have regard to any submissions received during the consultation period.
- (6) The Minister may amend or repeal a declaration under subsection (1) if the Minister considers that the amendment or repeal (as the case may be) is appropriate on the basis of the eligibility requirements under subsection (3).
- (7) Before amending or repealing a declaration in accordance with subsection (6), the Minister must—
- (a) take into account any advice provided by the Scientific Committee; and
 - (b) undertake public consultation, and any other engagement the Minister considers appropriate, on the proposed amendment or repeal; and
 - (c) have regard to any submissions received during the consultation period.

83—Minister or Council may enter into agreement or arrange for action plan

The Minister or Council may take steps to engage with the owner or occupier of land on which critical habitat is located to—

- (a) enter into an agreement (such as a biodiversity agreement or conservation agreement under Part 7 Division 2) to protect the habitat; or
- (b) arrange for the preparation of an action plan under section 77.

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

- (1) A person must not destroy, damage or disturb critical habitat features of critical habitat unless authorised to do so in accordance with this Division.

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.

- (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.

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

For the purposes of section 84, a person is authorised to destroy, damage or disturb critical habitat features of critical habitat if—

- (a) in the case of clearance of critical habitat features that comprise or constitute native plants—the person has been given consent by the NPCAC in accordance with Part 4 Division 3 to clear the critical habitat features; or

Biodiversity Bill 2025

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

Division 5—Protection of critical habitat

(b) in the case of taking critical habitat features that comprise or constitute native plants—the person has been granted a permit by the Minister under Part 9 to take the critical habitat features; or

(c) in any other case—the person has been given consent by the NPCAC in accordance with this Division to destroy damage or disturb the critical habitat features,

and the destruction, damage or disturbance is carried out or undertaken in accordance with the consent or permit.

86—Application for consent

(1) This section applies to an application for consent to destroy, damage or disturb critical habitat features of critical habitat other than in the case of clearance of, or taking, critical habitat features that comprise or constitute native plants.

(2) Subject to subsection (3), an application for consent to which this section applies may be made by any person.

(3) If the land is held from the Crown under a lease that is not granted in perpetuity, an application for consent to which this section applies may only be made by the Minister responsible for the administration of the *Crown Land Management Act 2009*.

(4) An application for consent to which this section applies must be made in the manner and form approved by the NPCAC.

(5) An application for consent to which this section applies must be accompanied by—
(a) such information as may be reasonably required by the NPCAC; and
(b) the prescribed fee.

(6) The NPCAC may, following receipt of an application under this section, request the applicant to provide such additional documents or information as the NPCAC may reasonably require to assess the application.

(7) 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.

87—Circumstances in which consent may be given etc

(1) The NPCAC must not give consent under this Division unless satisfied that the proposed destruction, damage or disturbance of critical habitat features of critical habitat will not cause or contribute to an increase in the risk of extinction or collapse 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.

- (2) For the purposes of subsection (1), in determining whether a proposed destruction, damage or disturbance of critical habitat features of critical habitat will cause or contribute to an increase in the risk of extinction or collapse of the threatened species, threatened ecological community or listed ecological entity, the NPCAC may have regard to—
- (a) any act or activity that the applicant has carried out or undertaken, or caused to be carried out or undertaken, that the NPCAC is satisfied has offset the impacts of the destruction, damage or disturbance on the risk of extinction or collapse; or
- (b) any act or activity that the applicant proposes to carry out or undertake, or cause to be carried out or undertaken, that the NPCAC is satisfied will offset the impacts of the destruction, damage or disturbance on the risk of extinction or collapse.
- (3) For the purposes of subsection (2), the NPCAC may not consider payment into a fund as an act or activity which offsets the impacts of the destruction, damage or disturbance on the risk of extinction or collapse.

88—Conditions of consent

- (1) A consent given under this Division is subject to such conditions (if any) as the NPCAC thinks fit to impose.
- (2) Without limiting subsection (1), consent may be subject to a condition that the destruction, damage or disturbance 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) Without limiting subsection (1), if the applicant has proposed to carry out or undertake, or cause to be carried out or undertaken, an act or activity to offset the impacts of an act or activity under section 87(2), the NPCAC 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 applicant for the consent; and
- (b) all owners and subsequent owners of the land on which the critical habitat is situated and any other land to which a condition relates; and
- (c) an occupier of the land on which the critical habitat is situated and any other person who acquires the benefit of the consent.
- (5) The NPCAC must inform the Registrar-General of all conditions imposed under this section that relate to land in accordance with section 157.

89—Other matters relating to consents

- (1) Consent under this Division remains in force for 2 years or for such longer period as the NPCAC may fix at the time of giving consent or subsequently on application by a person who has the benefit of the consent.
- (2) The NPCAC must observe the rules of natural justice when considering and determining an application for consent under this Division.

Biodiversity Bill 2025

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

Division 5—Protection of critical habitat

- (3) The NPCAC must provide the applicant with a written statement of the reasons for its decision under this section.
- (4) The NPCAC must publish its decision and reasons under this Division on the Biodiversity Register.
- 5 (5) Before giving its consent, the NPCAC must undertake such consultation as is required (if any) by a scheme set out in the regulations.
- (6) The NPCAC must allow any person who desires to do so to make representations in writing to the NPCAC, within the period prescribed by the regulations, in relation to the giving or refusal of consent to an application to destroy, damage or disturb critical habitat features of critical habitat.
- 10 (7) The NPCAC may, as it thinks fit, allow a person to appear personally or by representative before it to be heard on whether the NPCAC should or should not consent to an application to destroy, damage or disturb critical habitat features of critical habitat.

Part 7—Conserved areas**Division 1—Sanctuaries and other conserved areas****90—Establishment of sanctuaries**

- 20 (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
 - 25 (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.
- 30 (3) The Minister—
 - (a) may revoke 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 revoke the declaration under which that land is constituted as a sanctuary.
 - 35

- (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.

91—Other conserved 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 and conservation agreements

92—Biodiversity agreements

- (1) The Minister may enter into a biodiversity agreement with the owner of land for the protection, restoration or enhancement of native plants on the land.
- (2) A biodiversity agreement attaches to the land and is binding on the current owner of the land whether or not that owner was the person with whom the agreement was made.
- (3) The Minister may, by agreement with the owner of the land to which a biodiversity agreement applies, vary or terminate the agreement.
- (4) A biodiversity agreement is, to the extent specified in the agreement, binding on the occupier of the land.
- (5) 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.
- (6) If—
- (a) the Minister enters into a biodiversity agreement; or
- (b) the Minister enters into an agreement varying a biodiversity agreement (including a variation of the term of the agreement), or terminating a biodiversity agreement; or
- (c) the term of a biodiversity agreement, as 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 157.

93—Effect of biodiversity agreement

- (1) 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; or
- (b) require specified work or work of a specified kind to be carried out in accordance with specified standards on the land; or
- (c) restrict the nature of work that may be carried out on the land; or

Biodiversity Bill 2025

Part 7—Conserved areas

Division 2—Biodiversity agreements and conservation agreements

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- (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 native plant management plan to be agreed from time to time between the Minister and the owner; or
 - 5 (e) provide for the period for or within which specified measures, actions or requirements are to be undertaken or carried out; or
 - (f) provide for remission of rates or taxes in respect of the land; or
 - (g) 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
 - 10 biodiversity agreement and noting by the Registrar-General of the fact that it has come into force; or
 - (h) provide for the Minister to pay to the owner of the land an amount as an incentive to enter into the biodiversity agreement.
 - (2) A term of a biodiversity agreement providing for the remission of rates or taxes has
 - 15 effect despite any law to the contrary.
 - (3) The amount that the Minister agrees to pay in respect of the decrease in the value of the land referred to in subsection (1) must not exceed the amount of the decrease determined by the Valuer-General.
 - (4) Any money required by the Minister to meet the Minister's obligations under a
 - 20 biodiversity agreement entered into under this section must be paid to the Minister from the Biodiversity Restoration Fund.

94—Conservation agreements

- (1) The Council may enter into a conservation agreement with the owner of land for the protection, restoration or enhancement of native plants on the land.
- 25 (2) A conservation agreement may contain such provisions as the Council thinks fit including (without limiting the generality of this subsection) provisions to—
 - (a) restrict the use of the 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
 - 30 (c) restrict the nature of work or other activities 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 native plant management plan or in accordance with native plant management plans to be
 - 35 agreed from time to time between the Council and the owner of the land; and
 - (e) provide for the Council to pay to the owner of the land an amount as an incentive to enter into the conservation agreement; and
 - (f) provide for the period for or within which specified measures, actions or requirements are to be undertaken or carried out; and
 - 40 (g) specify the term for which the agreement is to operate; and

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- (h) make provision for any other matters relating to the establishment, restoration, management, conservation, protection or enhancement of native plants on the land.
- 5 (3) If a conservation 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) Subject to subsection (5), the Council may, by agreement with the owner of the land to which a conservation agreement applies—
- 10 (a) vary the conservation 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); or
- (b) terminate the conservation agreement.
- 15 (5) If a conservation agreement is entered into in relation to a requirement under this Act that an environmental benefit be achieved by a person, the conservation 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 protection, restoration or enhancement of native plants on the land to which the conservation agreement applied.
- 20 (6) A conservation agreement attaches to the land to which it applies and is binding on the current owner of the land whether or not the owner was the person with whom the agreement was made.
- (7) A conservation agreement is, to the extent specified in the agreement, binding on the occupier of the land.
- 25 (8) If—
- (a) the Council enters into a conservation agreement; or
- (b) the Council enters into an agreement varying a conservation agreement (including a variation of the term of the agreement), or terminating a conservation agreement; or
- 30 (c) the term of a conservation agreement, as specified in the agreement, expires, the Council must inform the Registrar-General of the agreement, or the variation, termination or expiry, in accordance with section 157.
- (9) Any money required to meet the obligations of the Council under a conservation agreement entered into under this section must be paid from the Biodiversity Restoration Fund.
- 35 (10) If, in the opinion of the Council, a person to whom money from the Biodiversity Restoration Fund has been paid under a conservation agreement has contravened a term of the agreement, the Council may serve written notice on that person demanding repayment of the amount paid or such lesser amount as is specified in the notice.
- 40 (11) An amount demanded by the Council under subsection (10) 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.

- (12) A court that is considering a claim for payment of a debt referred to in subsection (11) 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—Approval by Council of proposal for revegetation

95—Application of Division

This Division applies to native plants if—

- (a) the Council has declared that this Division applies to the plants under section 96; or
- (b) the plants are established in accordance with a proposal approved by the Council under section 97.

96—Declaration in relation to existing plants

The Council may, on the application of the owner of land that has been revegetated with native plants, declare that this Division applies to the plants if, in its opinion, the value of the plants is sufficient to warrant the application of the controls against clearance under Part 4.

97—Proposal for revegetation of land

An owner of land who wishes to revegetate the land with native plants may submit the proposal to the Council for approval.

98—Information required on application or submission

The landowner's application under section 96 or submission under section 97 must be in a form approved by the Council and must include, or be accompanied by, such information as the Council requires.

99—Decision by Council

- (1) If, in the opinion of the Council after having regard to the State Biodiversity Plan and any other matter considered relevant by the Council, the value of the native plants referred to in section 96 or 97 is, or will be, sufficient to warrant application of the controls against clearance under Part 4, it may make a declaration in relation to the plants under section 96 or approve the proposal under section 97.
- (2) The Council may, on its own initiative or at the request of the owner of the land in relation to which a declaration made or approval given under this Division applies, if it thinks it appropriate to do so, vary or revoke the declaration or approval.

100—Council must inform Registrar-General of declaration or approval under Division

- (1) If the Council has made a declaration or given its approval under this Division, it must inform the Registrar-General of the declaration or approval in accordance with section 157.
- (2) However, the Council need not proceed to inform the Registrar-General of an approval under section 97 until the Council is satisfied that it is appropriate to do so in accordance with the terms of the approval.

Division 4—Financial and other assistance**101—Financial and other assistance**

(1) An application may be made to the Council—

(a) by an owner, or a person acting on behalf of the owner, of land, for financial or other assistance for 1 or more of the following purposes:

(i) managing the land, native plants growing or situated on the land or any animals living on or visiting the land;

(ii) preserving or enhancing native plants growing or situated on the land;

(iii) restoring or establishing native plants on the land (including in accordance with a proposal approved by the Council under Division 3);

(iv) undertaking research in relation to the conservation, restoration, enhancement or management of native plants growing or situated on the land or of animals living on or visiting the land; or

(b) by a person for financial or other assistance to purchase land for 1 or both of the following purposes:

(i) conserving, protecting, or enhancing native plants growing or situated on the land;

(ii) establishing or restoring native plants on the land.

(2) An application must be made in the manner and form approved by the Council and must—

(a) set out the applicant's proposal for the application of the assistance requested by the applicant; and

(b) include any other information required by the Council.

(3) An application must be in a form approved by the Council and must set out the applicant's proposals for the application of the assistance requested by the applicant.

(4) The applicant's proposals must be based on guidelines adopted by the Council under section 61.

(5) In granting an application for assistance under this section the Council must be satisfied that (as the case requires)—

(a) the land on which the native plants are growing or situated, or is to be established or restored; or

(b) the land to be purchased,

is, or will be, subject to a biodiversity agreement or a conservation agreement or is the subject of an approval under Part 7 Division 3.

Biodiversity Bill 2025

Part 7—Conserved areas

Division 4—Financial and other assistance

(6) The Council may attach to a grant of assistance under this section such conditions as it thinks fit including (without limiting the generality of this subsection) a condition requiring 1 or more of the following:

- (a) in the case of an application by the owner of land subject to a biodiversity agreement—the execution of an agreement varying the biodiversity agreement in a manner approved by the Council;
- (b) in the case of an application by the owner of land subject to a conservation agreement—the execution of an agreement varying the conservation agreement in a manner approved by the Council;
- (c) the applicant to enter into a biodiversity agreement or a conservation agreement in respect of the land to be purchased or the land on which the native plants are growing or situated, or are to be established or restored (as the case requires), in accordance with the requirements of the Council, within a period specified by the Council.

(7) Money payable by way of financial assistance under this section must be paid from the Biodiversity Restoration Fund.

(8) If, in the opinion of the Council, a person to whom the Council has granted financial assistance under this section—

- (a) contravenes or fails to comply with a condition attached to the grant of the assistance; or
- (b) 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.

(9) An amount demanded by the Council under subsection (8) 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.

(10) A court that is considering a claim for payment of a debt referred to in subsection (9) 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****102—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;
 - (d) persons of a class prescribed by regulation.
- 5 (2) 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.
- 10 (3) The Minister may, by notice in the Gazette, limit the powers of a class of persons constituted as authorised officers.

103—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
 - 15 (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.
- 20 (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 is an authorised officer in accordance with section 102(1)(a) or (d)—the identity card issued to the officer under this section; or
 - 25 (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.

104—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—
- 30 (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
- 35 (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

Biodiversity Bill 2025

Part 8—Enforcement

Division 1—Authorised officers

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- (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); and
 - (e) give directions with respect to the stopping, securing or movement of a vehicle, plant, equipment or other thing; and
 - 5 (f) if a persons is on a reserve and is suspected of contravening this Act—order the person off the reserve for a stated period (not exceeding 24 hours); and
 - (g) with the authority of a warrant issued by the Magistrates Court, 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 a prescribed
 - 10 offence; and
 - (h) 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
 - (i) take measurements or place any markers, pegs, buoys or other items or
 - 15 equipment at any place; and
 - (j) take samples of any substance or thing from any place (including under any land) or vehicle; and
 - (k) dig up any land by the use of hand-held equipment for the purpose of taking samples; and
 - 20 (l) with the authority of a warrant issued by the Magistrates Court, 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
 - 25 (m) 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
 - (n) examine, copy or take extracts from any documents or information so
 - 30 produced or require a person to provide a copy of any such document or information; and
 - (o) take photographs, films, audio, video or other recordings; and
 - (p) 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
 - 35 for such examination or testing; and
 - (q) seize and retain anything that the authorised officer 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
 - 40 Act; and

- 5 (r) without limiting the operation of paragraph (q), 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
- (s) require a person who the authorised officer 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
- 10 (t) 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—
- 15 (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
- (u) 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
- 20 (v) request a person holding or required to hold a permit or other authority under this Act, or acting in reliance of a permit or other authority under this Act, to produce the permit or authority for inspection; and
- (w) give expiation notices under the *Expiation of Offences Act 1996* for alleged offences against this Act; and
- (x) exercise any power prescribed by the regulations.
- 25 (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.
- (4) In this section—
- 30 *prescribed offence* means an offence against Part 5.

105—Issue of warrants

- (1) The Magistrates Court must not issue a warrant for the purposes of this Part unless—
- 35 (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 104(1)(l)—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) Where an application for the issue of a warrant is made by telephone, the following provisions apply:
- (a) the applicant must inform the Magistrates Court of their name and identify themselves as an authorised officer, and the Magistrates Court, 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 of the grounds on which the applicant seeks the issue of the warrant;
 - (c) if it appears to the Magistrates Court from the information furnished by the applicant that there are proper grounds for the issue of a warrant, the Magistrates Court must inform the applicant of the facts on which the Magistrates Court 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 may then make out and sign a warrant, noting on the warrant the facts on which the Magistrates Court 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;
 - (f) the Magistrates Court 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 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 one month from the date of its issue, then expires.

106—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 for an offence against 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 for an offence against this Act relating to the thing are instituted within the prescribed period after its seizure and the defendant is convicted or found guilty of the offence, 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 defendant pay to the Minister an amount equal to its market value at the time of its seizure;

(c) if proceedings for an offence against this Act relating to the thing are instituted within the prescribed period after its seizure and the defendant is convicted or found guilty of the offence, the Minister may recover from the offender the costs of having retained the thing;

(d) if—

(i) proceedings are not instituted for an offence against this Act relating to the thing within the prescribed period after its seizure; or

(ii) proceedings have been so instituted and—

(A) the defendant is found not guilty of the offence; or

(B) the defendant is convicted or found guilty of the offence but no order for forfeiture is made under paragraph (b); or

(C) the thing is no longer required to furnish evidence of the commission of an offence,

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 relevant 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 Minister may sell the thing (unless it is required for evidentiary purposes) and 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—

convicted includes found guilty without a conviction being recorded;

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 device; and

(f) a poison or other substance; and

(g) a document or record.

107—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 Division; or

(d) when required by an authorised officer under this Division 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.

(3) Despite subsection (1)(d), a person is not obliged to answer a question under this Division if to do so might tend to incriminate the person or make the person liable to a criminal penalty.

Division 2—Administrative remedies

108—Interpretation

In this Division—

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

109—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 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 the notice 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), 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) as reasonably required for the protection of biodiversity.
- (4) An emergency compliance order may be issued orally but, in that event, the person to whom the order is issued must be advised forthwith of the person's right to appeal to the ERD Court against the order.
- (5) If an emergency compliance order is issued orally, the person or body that issued it must confirm it in writing 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 contravention 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: \$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.

110—Reparation orders

- (1) If a designated authority is satisfied that a person has caused harm to biodiversity by contravention of any requirement imposed 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 scheme; 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 scheme;
 - (c) to make a payment into the Biodiversity Conservation Fund of an amount determined to be sufficient to remedy the impact of the alleged contravention;
 - (d) to make a payment into the relevant fund 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 contravention;
 - (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 contravention.
- (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) 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 the relevant fund.

(4) An emergency reparation order may be issued orally by the designated authority, but, in that event, the person to whom it is issued must be advised forthwith of the person's right to appeal to the ERD Court against the order.

(5) If an emergency reparation order is issued orally, the designated authority who issued it must confirm it in writing at the earliest opportunity by written notice given to the person to whom it applies.

(6) The 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 contravention of this Act and, in that event, a person incurs no liability to a penalty under this Act for compliance with the requirement.

(7) The designated authority may, by written notice served on a person to whom a reparation order has been issued, vary or revoke the order.

(8) A person to whom a reparation order is issued must comply with the order.

Maximum penalty: \$70 000.

Expiation fee: \$1 500.

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

(1) If the requirements of a compliance or reparation order are not complied with, the Minister may take any action required by 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) A person taking action under this section may enter any relevant land at any reasonable time.

(4) 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 or reparation order.

(5) 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.

112—Registration of orders by Registrar-General

- (1) If—

- (a) a designated authority has issued a compliance order under section 109 or a reparation order under section 110; 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 General Registry Office as the Registrar-General thinks fit.

- (4) The Minister must furnish 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).

113—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 contravention or alleged contravention 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 contravention or alleged contravention 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
 - (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 contravention or alleged contravention of this Act may be brought against a person if an undertaking is in effect in relation to that contravention.
- (8) No proceedings for a contravention or alleged contravention of this Act may be brought against a person who has made an undertaking under this section in relation to that contravention and who has completely discharged the undertaking.
- (9) The Minister may accept an undertaking in relation to a contravention or alleged contravention before proceedings in respect of that contravention 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 3—Enforcement proceedings

Subdivision 1—Civil enforcement

114—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—NPCAC;
- (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 biodiversity agreement or a conservation agreement—a party to the agreement;
- (e) in the case of an offence involving a Culturally Significant Biodiversity Entity—any affected First Nations person;
- (f) with permission of the Court—a First Nations 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 and are brought by a person other than NPCAC—

- (a) the applicant must serve a copy of the application on NPCAC within 3 days after filing the application with the ERD Court; and

- (b) the Court must, on application by NPCAC, join NPCAC 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, in the first instance, be referred 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:
- (c) require the respondent to refrain, either temporarily or permanently, from the act, 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 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 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 or course of action, or to undertake an act 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 (where known to the respondent) and any impacts to First Nations persons; and
 - (d) whether the harm caused or likely to be caused occurs in a protected 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 this Act or a term of a biodiversity agreement or a conservation agreement.

115—Order where native plants have been cleared

- (1) Subject to subsection (7)(d) or (8), where the ERD Court is satisfied on the balance of probabilities that the respondent—
- (a) has cleared native plants in contravention of this Act; or

- (b) has cleared native plants in accordance with the NPCAC's consent but has not complied with a condition of a kind referred to in section 50(7) or 52(2) attached to the consent,

the Court must make an order against the respondent under section 114(7)(d).

- (2) In making the order under section 114(7)(d), the ERD Court may (or, if requested to do so by NPCAC, must) consider whether the respondent should be required to enter into a biodiversity agreement in respect of the land.
- (3) The order under section 114(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 contravention; and
 - (e) refrain from an act or course of action, or to undertake an act or course of action, to ensure that the respondent does not gain an ongoing benefit from the contravention.
- (4) The order under section 114(7)(d) may—
 - (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) Where 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 114(7)(d); and

- (b) compliance with an order under section 114(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 114(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 114(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.

116—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 44 in relation to clearance of native plants; or

- (b) is convicted of an offence against section 45 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 reestablishing 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) 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.

- (4) 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;

117—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 114(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.

118—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) Where the ERD Court makes an order under section 114(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 costs and expenses of that work, as a debt, from the respondent.
- (3) Section 115(5) and (6) apply to, and in relation to, the Minister when acting under subsection (2) as though it were the respondent.
- (4) Where 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.

119—Miscellaneous provisions

- (1) If the ERD Court makes an order under this Division that requires any 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 114—
- (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 114 the ERD Court is satisfied—
- (a) that the respondent has not breached this Act; 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 114(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 118(4)(a) or 111(5)(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).

120—Commencement of proceedings

Proceedings under this Division 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 6 months 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 of the alleged contravention of a provision of this Act.

121—Making good clearance of plants orders

- (1) If a court convicts a person—

- (a) of an offence against section 44 in relation to clearance of native plants; or
(b) of an offence against section 45 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 NPCAC,

the Council 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 conviction is overturned on appeal.

- (2) In determining the amount by which the value of land has increased as the result of the commission of an offence under this section, no account may be taken of the possibility that the establishment of plants on the cleared land may be ordered by the ERD Court under this Subdivision.

- (3) In this section—

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

- (a) 6 months after the time within which the offender may appeal against the relevant conviction; or
(b) if an appeal is commenced—6 months after—
(i) the appeal is dismissed, struck out or withdrawn; or
(ii) any questions raised by the appeal have been finally determined.

122—Recovery of civil penalty in respect of contravention

- (1) Subject to this section, if the relevant authority is satisfied that a person has committed an offence by contravening a provision of this Act or the regulations, 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 contravention.

- (2) The relevant authority may not recover an amount under this section in respect of a contravention if the relevant offence requires proof of intention or some other state of mind, and must, in respect of any other contravention, determine whether to initiate proceedings for an offence or take action under this section, having regard to the seriousness of the contravention, 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 contravention—
- 5 (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 contravention 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
- 10 (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 contravention.
- (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 referred to in section 161(4)(d).
- 15 (5) The maximum amount that the relevant authority may recover by negotiation as a civil penalty in respect of a contravention is—
- (a) the amount specified by this Act as the criminal penalty in relation to that contravention; or
- (b) \$150 000,
- 20 whichever is the lesser.
- (6) If, on an application by the relevant authority, the ERD Court is satisfied on the balance of probabilities that a person has contravened a provision of 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 contravention).
- 25 (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 referred to in section 161(4)(d).
- (8) The jurisdiction conferred by this section is to be part of the civil jurisdiction of the ERD Court.
- 30 (9) If conduct of a person constitutes a contravention of 2 or more provisions of this Act, an amount may be recovered from the person under this section in relation to the contravention 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).
- 35 (10) Proceedings for an order under this section that a person pay an amount as a civil penalty in relation to a contravention 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 contravention.
- 40 (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 contravention 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 contravention.
- (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 contravention or, with the authorisation of the Attorney-General, at any later time within 10 years after the date of the alleged contravention.
- (15) In this section—
- relevant authority* means—
- (a) the Minister; or
 - (b) if the contravention relates to the clearance of native plants—the NPCAC.

Subdivision 2—Criminal enforcement

123—Jurisdiction of ERD Court

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

124—Applications during 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 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 of the offence.

125—Proceedings for offence

- (1) Proceedings for an offence against this Act must be commenced within 5 years after the date on which the offence is alleged to have been committed.
- (2) A penalty payable in respect of an offence against this Act must be paid into the relevant fund.

126—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.

127—Evidentiary provisions

- (1) In proceedings for an offence against this Act, an allegation in the information—
- (a) that a place referred to in the information is, or was at a time specified in the information, a reserve, sanctuary or other conserved area under Part 7, wilderness protection area or wilderness protection zone or is situated within a reserve, sanctuary or other conserved area under Part 7, wilderness protection area or wilderness protection zone; or
 - (b) that an animal, animal product or egg referred to in the information was a protected animal, protected animal product or protected egg (as the case may be); or
 - (c) that an animal referred to in the information was of a specified species, or that an animal product or egg referred to in the information was the product or egg of an animal of a specified species; or
 - (d) that a person named in the information is, or was at a time specified in the information, an authorised officer,
- will be accepted as proved in the absence of proof to the contrary.
- (2) If in any proceedings for an offence against this Act, a question arises as to whether—
- (a) the defendant was duly authorised in accordance with this Act to be in possession of any plant, animal, animal product, egg or thing or to carry out or undertake any act or activity that is the subject to the charge, the onus of proving that authorisation lies on the defendant; or
 - (b) possession of any plant, animal, animal product, egg or thing was lawful, the onus of proving that the possession was lawful lies on the defendant; or
 - (c) a plant, animal, animal product or egg was taken or acquired illegally, the onus of proving that the plant, animal, animal product or egg (as the case may be) was not taken or acquired illegally lies on the defendant.
- (3) If a person seeks to rely on being a First Nations person, the onus of proving that they are a First Nations person lies on that person.
- (4) If in any proceedings for an offence against section 153, it is proved that the defendant had possession of any firearm or device capable of being used for the purpose of hunting in circumstances that lead to a reasonable suspicion that the defendant had the firearm or device for that purpose, it will be presumed, in the absence of proof to the contrary, that the defendant had possession of that firearm or device for the purpose of hunting.
- (5) If in proceedings for an offence against this Act, it is proved that the defendant was found in possession of a native plant, it will be presumed, in the absence of proof to the contrary, that the defendant took the plant in contravention of this Act.

- (6) If in proceedings for an offence against this Act, it is proved that the defendant was found in possession or control of a trafficable quantity of protected animals, it will be presumed, in the absence of proof to the contrary, that the protected animals were illegally taken from the wild.
- (7) In any proceedings for an offence against this Act in respect of a native plant, the prosecution must establish that the person knew, or was reckless with respect to, the fact that the plant was a native plant.
- (8) Despite subsection (7), the prosecution need not establish that the person knew, or was reckless with respect to, the particular species of the native plant or whether it was a threatened species.
- (9) In any proceedings for an offence against this Act in respect of a protected animal, protected egg or protected animal product, the prosecution must establish that the person knew, or was reckless with respect to, the fact that the animal, egg or animal product was a protected animal, protected egg or protected animal product (as the case requires).
- (10) Despite subsection (9), the prosecution need not establish that the person knew, or was reckless with respect to, the particular species of the relevant animal or whether the animal was a threatened species.
- (11) In proceedings for an offence against this Act or other legal proceedings, an apparently genuine document purporting to be signed by the Minister and to certify that, at a specified time or during any specified period—
- (a) a person had or had not been given consent under this Act; or
 - (b) a person was or was not the holder of a permit under this Act; or
 - (c) a designated list contained particular information; or
 - (d) an entity was a Culturally Significant Biodiversity Entity,
- is to be accepted, in the absence of proof to the contrary, as proof of the matter so certified.
- (12) In proceedings for an offence against this Act or other legal proceedings, an apparently genuine document purporting to be signed by the Attorney-General and to authorise the commencement of proceedings under section 122 is to be accepted, in the absence of proof to the contrary, as proof of the authorisation.

128—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 (where known to the respondent) and any impacts to First Nations persons;

- (d) whether the harm caused or likely to be caused by the offence occurs in a protected area;
- (e) any financial or other benefit that the defendant sought to gain by committing the offence,

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

Subdivision 3—Defences

129—Application of defences

A person charged with an offence against this Act bears an evidential onus in relation to establishing a defence under this Subdivision.

10 130—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.
- 15 (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.

131—Acts authorised under legislation

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

- 20 (a) in compliance with a requirement of, or in accordance with a power under, this Act or another Act; or
- (b) in accordance with a licence, permit, approval or other authorisation under this Act or another Act; or
- (c) in prescribed circumstances.

25 132—Defences in relation to Part 5

- (1) It is a defence to a charge of an offence against section 64 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
30 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.
- 35 (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 64 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*; 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 64 in respect of interfering with a protected animal to prove—
- (a) that the defendant acted in the best interests of the animal concerned; or
 - (b) that 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.

133—Defence in relation to hunting

It is a defence to a charge of an offence against section 153 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—General provisions

134—Classification of offences

All offences under this Act, other than summary offences, are classified as minor indictable offences.

135—Culturally sensitive information

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

136—Interest

- (1) Interest accrues on an amount payable under sections 111 and 118 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.

137—Sale of land for non-payment

- (1) Where 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.
- (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);
- 5 (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;
- 10 (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.
- 15 (11) Where 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
- 20 (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).
- 25 (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.
- 30 (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.

138—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
- 40 (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.

139—Assessment of costs and expenses

For the purposes of this Act, the 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.

140—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.

141—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 contravention 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 5—Appeals

142—Appeal to ERD Court

(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 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 113.

143—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 this Division; or
 - (b) a decision by a court not to make an order under this Division,
 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.

Subdivision 6—Review by SACAT

144—Review by SACAT

- (1) A person who has applied for a permit under section 146 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.
- 5 (2) Subject to subsection (4), an application must be made within 2 months after the applicant is notified by the Minister of the decision.
- (3) The Minister must, if required by the applicant for the review, state in writing the reasons for the decision.
- 10 (4) 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 the Tribunal runs from the time at which that person receives the written statement of those reasons.
- 15 (5) 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;
 - 20 (d) primary production;
 - (e) relevant fields of the biological sciences.
- (6) 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 (5).
- 25 (7) In this section—
President means the President of the Tribunal appointed under the *South Australian Civil and Administrative Tribunal Act 2013*.

Part 9—Permits

145—Prescribed matters

- 30 Without limiting section 166, the regulations may—
- (a) prescribe different classes of permits for the purposes of this Act; or
 - (b) prescribe circumstances in which the Minister must not grant a permit; or
 - (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; or
 - 35 (d) prescribe conditions that must be attached to particular kinds of permits (which may include conditions requiring the payment of a fee or royalty); or
 - (e) create offences relating to any activities authorised by a permit or connected to any such activities.

146—Permits

- (1) 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 subsection (4), pay to the Minister the prescribed fee in respect of the permit at the time of the application.
- (2) 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.
- (3) 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).
- (4) The Minister may, if satisfied that there are special reasons for doing so, waive or refund the whole or any portion of any fee payable in respect of the grant of a permit under this Act.
- (5) 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
 - (c) to grant the permit would be inconsistent with the objects and principles of this Act and 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.
- (6) If a permit granted under any provision of this Act relates to an 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.
- (7) If an application for a permit under any provision of this Act relates to an 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).
- (8) If a permit granted under any provision of this Act relates to an 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*.
- (9) If an application for a permit under any provision of this Act relates to an 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*.
- (10) 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 a permit.
- (11) A person must not contravene a condition of a permit.
- 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: \$250.
- (12) 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 instrument in writing served personally or by post on 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.
- (13) Without limiting the conditions on which a permit relating to animals may be granted under this Act, those conditions may—
- 5 (a) provide for marking, or otherwise identifying, plants or 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—
- 10 (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.
- (14) If the applicant has proposed to carry out or undertake, or cause to be carried out or undertaken, an act or activity to offset the impacts of an act or activity under
- 15 section 148(2), the Minister must attach a condition to the permit requiring that the proposed act or activity be achieved.
- (15) 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.
- 20 (16) 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 the permit for its expiry or, if no such day is fixed, on the expiration of 12 months from the day on which it came into operation.
- 25 (17) The holder of a permit may surrender the permit to the Minister if the Minister so allows.
- (18) 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
- 30 under subsection (17); 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.
- 35 (19) If the holder of a permit applies for a renewal of the permit before the expiry of the term of their existing permit and the application is not decided before that expiry, the permit continues in operation after the expiry until the application for the renewal is determined.

- (20) 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, and number of protected eggs, taken in accordance with the permit.

Maximum penalty: \$2 500.

Expiation fee: \$250.

- (21) A permit granted under a provision of this Act may be transferred only if it is a permit for a prescribed activity or a permit of a prescribed class and the transfer complies with any prescribed conditions.

- (22) 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.

- (23) 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.

- (24) 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.

- (25) In this section—

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

147—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) If this section applies to, and in relation to, a species of plant, the Minister must prepare draft recommendations 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,

and must make the recommendations available to the public for at least 3 months for comment before adoption by the Minister.

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- (3) Before adopting the draft recommendation, the Minister must have regard to comments (if any) made by members of the public and may, if the Minister thinks fit, vary the recommendations to take account of those comments.
- (4) Recommendations adopted by the Minister must be published in the Gazette and on a website determined by the Minister and may be revoked or varied by further recommendations prepared by the Minister in accordance with this section.
- (5) 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.
- (6) Restrictions and conditions imposed by regulation must implement recommendations adopted by the Minister under this section in relation to the commercial taking and sale of plants of the species concerned.
- (7) 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.

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

- (1) The Minister may only grant a permit under this Act for the taking of a native plant that is a critical habitat feature of critical habitat if satisfied that the taking of the native plant will not cause or contribute to an increase in the risk of extinction or collapse 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.
- (2) For the purposes of subsection (1), in determining whether taking of the native plant will cause or contribute to an increase in the risk of extinction or collapse of the threatened species, threatened ecological community or listed ecological entity, the Minister may have regard to—
- (a) any act or activity that the applicant has carried out or undertaken, or caused to be carried out or undertaken, that the Minister is satisfied has offset the impacts of the taking of the native plant on the risk of extinction or collapse; or
- (b) any act or activity that the applicant proposes to carry out or undertake, or cause to be carried out or undertaken, that the Minister is satisfied will offset the impacts of the taking of the native plant on the risk of extinction or collapse.
- (3) For the purposes of subsection (2), the Minister may not consider payment into a fund as an act or activity which offsets the impacts of the taking of the native plant on the risk of extinction or collapse.

149—Permits to carry out certain regulated acts or activities under Part 5

- (1) Subject to this section, the Minister may grant to any person a permit to carry out or undertake a regulated act or activity under Part 5.

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- (2) The Minister may only grant a permit to take a protected animal or a protected egg if satisfied that it is desirable to grant the permit—
- (a) to facilitate scientific research; or
 - (b) to enable the person to place bands, marks or tags on such animals and then to release them; or
 - (c) to permit the destruction or removal of animals that are causing, or are likely to cause, a safety risk or hazard to humans; or
 - (d) 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
 - (e) to facilitate the translocation, or captive breeding, of a species to aid in the conservation of the species; or
 - (f) to enable captive breeding for the purposes of selling, farming or exporting the progeny of that animal; or
 - (g) for any other purpose (other than for sale) that the Minister considers proper and not inconsistent with the objects of this Act.
- (3) 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) 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 67.
- (4) 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.
- (5) 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.

- (6) 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.
- (7) 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 66 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 Part—
 - (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.
- (8) 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.
- (9) Without limiting the conditions that may be imposed on the permit under this Act, a permit granted under this Part to carry out harvesting of 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.

150—Permits to hunt

- (1) Subject to this section, the Minister may grant to any person a permit to hunt for the purposes of section 153.
- (2) A permit granted by the Minister permitting a person to hunt cannot authorise hunting within the Adelaide Dolphin Sanctuary or the possession by any person, while in that Sanctuary, of a firearm or other device for the purpose of hunting.

151—Royalty

- (1) A permit granted under this Part 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).

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- (2) The amount of a royalty is to be fixed by fee notice in accordance with section 166(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.

152—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

153—Offence to hunt

Subject to this Act, a person must not hunt, or have possession of any firearm or device for the purpose of hunting unless authorised to do so by permit granted by the Minister under Part 9.

Maximum penalty: \$20 000.

Expiation fee: \$1 000.

154—Hunting by First Nations persons

- (1) This section does not apply to the taking of—
- (a) an animal of a prescribed species; or
 - (b) an animal by a prescribed means or in prescribed circumstances.
- (2) Nothing in section 153 prevents a First Nations person from hunting for the purposes of satisfying their non-commercial personal, domestic or communal needs through use of the hunted animal as food or for a cultural or spiritual activity.

Note—

In hunting in accordance with this section, a First Nations person is subject to laws of general application.

155—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, within the preceding 6 months, permission in writing to be on the land for that purpose:

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

Maximum penalty: \$5 000.

Expiation fee: \$500.

- (2) If the owner or occupier of any 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.

- (5) In proceedings for an offence against this section, proof that, while on land, a person has possession or control of an animal, firearm, device, poison or bait capable of being used for taking a protected animal, or for hunting, is evidence that that person was on the land for the purpose of taking a protected animal or for hunting (as the case requires).

- (6) In this section—

owner means—

- (a) in relation to private land, the owner of the land; and
(b) in relation to land held by a Minister, agent or instrumentality of the Crown, that Minister, agent or instrumentality or a person authorised by the Minister, agent or instrumentality; and
(c) in relation to unalienated land of the Crown, the Minister administering the *Crown Land Management Act 2009* or a person authorised by that Minister.

156—Restriction on use of certain devices

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

- (2) A person who contravenes a restriction or prohibition imposed under subsection (1) is guilty of an offence.

Maximum penalty: \$20 000.

Expiation fee: \$1000.

157—Noting of conditions, agreements declarations and approvals against title to land

- (1) If—

(a) the NPCAC is required to inform the Registrar-General of conditions imposed under this Act; or

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

(c) the Council is required to inform the Registrar-General of a declaration made or approval given under this Act,

the NPCAC, Minister or Council (as the case requires) must—

(d) inform the Registrar-General of the information in writing; and

(e) 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, agreement, declaration or approval (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 Council or NPCAC—

(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; or

(c) in the case of a declaration or approval noted in accordance with subsection (2)—after the making of a decision under section 99(2) in respect of the declaration or approval,

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

158—Minister may sell surrendered animal, animal product or egg

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

159—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.

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- (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) The regulations may—
- (a) prescribe the kinds of data that will or will not be considered to be State biodiversity data; and
 - (b) require persons or bodies referred to in the regulations to provide the Minister with State biodiversity data that is in their possession; and
 - (c) specify the kind or kinds of State biodiversity data to which subsection (2) applies; and
 - (d) prescribe requirements relating to access to State biodiversity data for the purposes of subsection (3); and
 - (e) prescribe purposes for which State biodiversity data may be restricted from access (the *prescribed purposes*); and
 - (f) prescribe payment of a prescribed fee for access to State biodiversity data where fair and reasonable cost recovery is warranted; and
 - (g) set standards and requirements relating to how State biodiversity data is managed, used and shared; and
 - (h) prescribe the form in which the Minister can accept State biodiversity data.
- (5) If a person or body has provided data of a kind to which this subsection applies 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).

160—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.

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- (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—
- 5 (a) set out principles, policies and strategic directions for achieving the objects of this Act; and
 - (b) identify priorities for the restoration, recovery, enhancement and conservation of biodiversity having regard for future climate scenarios; and
 - (c) as far as practicable, represent the priorities referred to in paragraph (b) spatially; and
 - 10 (d) define 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.
- 15 (5) In preparing or reviewing the State Biodiversity Plan, the Minister must—
- (a) have regard to threatened species, threatened ecological communities, listed ecological entities, Culturally Significant Biodiversity Entities, critical habitat and any key threatening processes; and
 - 20 (b) seek the advice of the Council, NPCAC, FNEBC and Scientific Committee in the manner determined by the Minister; and
 - (c) undertake such consultation as the Minister considers necessary or appropriate; and
 - (d) comply with any other requirement of this Act or prescribed by the regulations.
- 25 (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.
- 30 (8) Material required to be published under this section may be published on the Biodiversity Register.
- (9) Without limiting section 166, the regulations may prescribe the following:
- (a) requirements for the preparation, review and amendment of the State Biodiversity Plan;
 - 35 (b) any additional matters to be addressed by the State Biodiversity Plan;
 - (c) requirements for consultation in respect of preparing or reviewing the State Biodiversity Plan;
 - (d) requirements relating to reporting and evaluation for the purposes of subsection (6).

161—Biodiversity policies

- (1) The Minister may make biodiversity policies for the purposes of this Act.
- (2) The Minister may only make a biodiversity policy if satisfied that the provisions of the policy are consistent with the objects and principles of this Act.
- 5 (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 measures for the general duty, or what constitutes harm to biodiversity; or
 - 10 (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 First Nations' knowledge;
 - 15 (b) the identification, recognition and management of Culturally Significant Biodiversity Entities;
 - (c) the significant environmental benefit scheme (the **SEB policy**);
 - (d) calculating civil penalties;
 - (e) the approach to be taken to compliance and enforcement;
 - (f) cultural burning of native plants undertaken by First Nations.
- 20 (5) Without limiting the content of the SEB policy, the SEB scheme set out in that policy must provide that a significant environmental benefit may be achieved by—
- (a) measures undertaken, or to be undertaken, by the person; or
 - (b) application of the value of an environmental benefit credited to the person under section 57 or assigned to the person under section 58; or
 - 25 (c) measures undertaken by an accredited third party provider, on behalf of the person, in accordance with section 59.
- (6) A biodiversity policy may apply, adopt or incorporate, with or without modification, any code, standard or other document prepared 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.
- 30 (7) Before making a biodiversity policy referred to in subsection (4)(a) or (b), the Minister must seek advice on the policy from the FNEBC and comply with any requirements prescribed by the regulations.
- (8) The process for making a biodiversity policy is as follows:
- (a) the Minister must prepare a proposed biodiversity policy;
 - 35 (b) the Minister must undertake consultation on the proposed biodiversity policy with the public and any prescribed entities for a period of at least 30 days;
 - (c) the Minister must have regard to any submissions received during the consultation period;

- (d) if, following consultation, the Minister considers that the biodiversity policy (whether as proposed or incorporating changes arising from consultation) should be made, the Minister must adopt the biodiversity policy by publishing it on the Biodiversity Register.

- 5 (9) The regulations may prescribe additional matters relating to the making of a biodiversity policy.
- (10) The Minister may review and amend or revoke a biodiversity policy in accordance with any procedures prescribed by the regulations.
- 10 (11) Except in respect of an amendment considered by the Minister to be a minor amendment, amending a biodiversity policy is to follow the process in subsection (8).

162—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:
- 15 (a) the following information in respect of applications received by the NPCAC for consent to clear native plants under Part 4:
- (i) the date of the application and the date on which the application was received by the NPCAC;
 - (ii) a description of the application;
 - 20 (iii) the location and a description of the land to which the application relates;
 - (iv) when it is made, the decision made by the NPCAC in relation to the application;
 - (v) any other information required by the regulations;
- 25 (b) prescribed information in relation to clearances in respect of which the NPCAC must be notified under Schedule 2;
- (c) the following matters relating to environmental benefits under Part 4 Division 4:
- (i) each credit under section 57;
 - 30 (ii) each application of credit toward the matters contemplated by section 57(1)(d);
 - (iii) each assignment of credit under section 58;
 - (iv) each achievement of an environmental benefit by accredited third party providers under section 59;
- 35 (d) biodiversity agreements and conservation agreements made under this Act and any agreement varying or terminating such an agreement;
- (e) proposals approved by the Council under Part 7 Division 3;
- (f) each prescribed area of land;
- (g) each Culturally Significant Biodiversity Entity;
- 40 (h) any management plans adopted under section 66;

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- (i) a record of notices made under section 67;
 - (j) the threatened species list;
 - (k) the threatened ecological communities list;
 - (l) an ecological entities list established and maintained under section 70;
 - 5 (m) an action plan under section 77;
 - (n) a threat abatement plan under section 79;
 - (o) habitat declared to be critical habitat under section 82;
 - (p) records of compliance orders and reparation orders issued under this Act;
 - 10 (q) records of proceedings under this Act in respect of enforcement and any decision, order or determination of a court in such proceedings;
 - (r) enforceable voluntary undertakings accepted by the Minister under section 113;
 - (s) any other matter prescribed by the regulations,
- in such form and containing such information as the Minister thinks fit or as prescribed by the regulations.
- 15 (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.
- 20 (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.
- 25 (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.
- 30 (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:
- 35 (a) a sanctuary or other conserved area under Part 7 Division 1;
 - (b) land that is subject to a biodiversity agreement or conservation agreement;
 - (c) land that is subject to a declaration for revegetation under Part 7 Division 3;
 - (d) a reserve;
 - (e) a wilderness protection area or 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*;
- 5 (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.

163—False and misleading information

- 10 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.

15 164—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
- 20 (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
- 25 (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.

165—Concurrence under Planning, Development and Infrastructure Act

- 30 (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 have regard to the State Biodiversity Plan.
- 35 (2) The Minister must determine whether to grant concurrence under section 73 of the *Planning, Development and Infrastructure Act 2016* within the prescribed period.

166—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.

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- (2) Without limiting the generality of subsection (1), the regulations may for example—
- (a) provide for the exemption (whether conditional or unconditional) of any person, animal, plant, thing, location or circumstance, or 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 5; and
 - (c) regulate hunting; and
 - (d) make any other provision that may, in the opinion of the Governor, provide for the conservation, enhancement and restoration of biodiversity; and
 - (e) fix fines, not exceeding \$50 000, for offences against the regulations; and
 - (f) fix expiation fees, not exceeding \$1 500, for offences against this Act or the regulations; and
 - (g) provide for the facilitation of proof of the commission of offences against the regulations; and
 - (h) prescribe requirements in relation to the process for making listing decisions under Part 6, including setting timeframes in respect of the process.
- (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 1 to Schedule 4 (inclusive) by—
- (a) inserting a provision into, substituting a provision in, or deleting a provision from Schedule 1 to Schedule 4 (inclusive); or
 - (b) inserting material into, substituting material in, or deleting material from a provision of Schedule 1 to Schedule 4 (inclusive).

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- (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.
- 5 (9) A fee notice may provide for the waiver, reduction or remission of fees.
- (10) 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
- 10 (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.

167—Review of Act

- 15 (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),
- 20 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).
- 25 (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) For the purposes of Part 4, the *regulated clearance area* is the whole of the State subject to the following:
- 35 (a) the following parts of the Hundreds of Adelaide, Munno Para, Noarlunga and Yatala form part of the regulated clearance area:
- (i) those parts that are within the zone designated as the Hills Face Zone by the Planning and Design Code under the *Planning, Development and Infrastructure Act 2016*;
- (ii) those parts that are to the east of the Hills Face Zone;

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- (iii) those parts that are within an area prescribed by regulation for the purposes of this paragraph,
but not, subject to paragraphs (b) and (c), any other part of those Hundreds;
- (b) the whole of the area of the City of Onkaparinga forms part of the regulated clearance area;
- (c) that part of the City of Mitcham consisting of the following suburbs forms part of the regulated clearance area:
- (i) Belair;
 - (ii) Bellevue Heights;
 - (iii) Blackwood;
 - (iv) Coromandel Valley;
 - (v) Craighburn Farm;
 - (vi) Eden Hills;
 - (vii) Glenalta;
 - (viii) Hawthorndene;
- (d) the following parts of the State form part of the regulated clearance area:
- (i) that part of the Hundred of Port Adelaide bounded on the east by the western boundary of Port Wakefield Road and on the south by the northern boundary of the area of the Corporation of the City of Salisbury;
 - (ii) that part of the area of the Corporation of the City of Salisbury bounded on the east by the western boundary of Port Wakefield Road;
 - (iii) any other part of the Hundred of Port Adelaide prescribed by regulation for the purposes of this paragraph,
- but not any other part of the Hundred of Port Adelaide.
- (2) However, the Governor should not make a regulation under subclause (1)(a)(iii) or subclause (1)(d)(iii) unless—
- (a) —
- (i) the Governor considers that the regulation should be made in order to enhance the preservation or management of an area that includes significant native plants, or in order to assist in the provision of a significant environmental benefit in a particular respect; and
 - (ii) the Governor is satisfied that the Minister has taken reasonable steps to consult with—
 - (A) any local council whose area includes any part of the area to which the regulation relates; and
 - (B) the Environment, Resources and Development Committee of the Parliament; and

- (C) any member of the House of Assembly whose electoral district includes any part of the area to which the regulation relates,

about the proposal to make the regulation; or

(b) —

- (i) the Governor considers that the regulation should be made as an interim measure pending consultation under paragraph (a); and
- (ii) the regulation is expressed to expire not more than two months after the day on which it is made.

- (3) The Governor may, by regulation, exclude any other part or parts of the State from the definition of regulated clearance area.

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 NPCAC;

bushfire management plan means—

- (a) a plan prepared by a bushfire management committee for its bushfire management area as required under section 72B of the *Fire and Emergency Services Act 2005*; or
- (b) another plan for the management of bushfires approved by the Council or developed in accordance with guidelines that have been adopted by the Council under section 61;

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 (including through the commercial exploitation of the carbon absorption capacity of the forest vegetation);

Cultana Training Area means the land comprised by the following:

- (a) the Allotment comprising Pieces 81, 82 and 83 in Deposited Plan 85852 Out of Hundreds (Port Augusta);
- (b) Allotment 6 in Deposited Plan 88907 Hundred of Handyside County of Manchester and Out of Hundreds (Port Augusta);
- (c) Sections 4, 13, 14 and 15, Hundred of Jenkins County of Manchester;
- (d) Allotment 7 in Deposited Plan 29397 Out of Hundreds (Port Augusta);
- (e) the Allotment comprising the Pieces 8, 9, 10 and 11 in Deposited Plan 29397 Out of Hundreds (Port Augusta);
- (f) Allotment 68 in Deposited Plan 85851 Hundred of Cultana County of York;

Biodiversity Bill 2025

Schedule 2—Native plants—regulated acts or activities exclusions

- (g) Allotment 72 in Deposited Plan 85851 Hundred of Cultana County of York;
- (h) the Allotment comprising Pieces 30, 31 and 32 in Deposited Plan 85850 Out of Hundreds (Whyalla), Out of Hundreds (Port Augusta) and Hundred of Cultana County of York;
- (i) Allotment 67 in Deposited Plan 93251, Hundred of Cultana County of York and Out of Hundreds (Port Augusta);

designated Act means the *Energy Resources Act 2000*, the *Mining Act 1971*, the *Offshore Minerals Act 2000*, the *Opal Mining Act 1995* or the *Roxby Downs (Indenture Ratification) Act 1982*;

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

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;

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;

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

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;

SASES means the South Australian State Emergency Service;

SAMFS means the South Australian Metropolitan Fire Service.

2—Operation of Schedule

- (1) The activities set out in Part 2 and Part 3 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 guidelines adopted by the Council under section 61.

- (3) A person carrying out or undertaking, or intending to carry out or undertake, an act or activity set out in Part 2 of this Schedule must—
- (a) have regard to, and give effect to, the mitigation hierarchy in accordance with guidelines adopted by the Council under section 61 for the purposes of this paragraph; and
 - (b) if the NPCAC must be notified of the proposed clearance—include in the notification an explanation of how the person has had regard to, and given effect to, the mitigation hierarchy.
- (4) The operation of this Schedule extends to native plants that are growing or situated on land that is subject to a biodiversity agreement or conservation agreement unless a clause specifies that it does not apply to such plants.

Part 2—Clearance of native plants

Division 1—Intentionally sown or planted native plants

3—Intentionally sown or planted native plants

Clearance 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 NPCAC 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 Council under Part 7 Division 3 or by the Native Vegetation Council under Part 4 Division 2 of the repealed *Native Vegetation Act 1991*; or
 - (iii) in accordance with a biodiversity agreement or conservation 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 growing in a commercial forest or domestic gardens; or
- (c) is growing or situated on land that is not private land.

Division 2—Maintaining existing developments and infrastructure

4—Native plants within 3 m of prescribed building

- (1) Clearance of native plants that are growing or situated within 3 m of an existing prescribed building.
- 5 (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—
 - (i) involves the limb of a plant that is overhanging a prescribed building; and
 - 10 (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 of native plants undertaken in connection with subdivision of the land on which the plants are growing or situated.

5—Maintenance of infrastructure

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

- (a) the native plants to be cleared—
 - (i) are located in the vicinity of the infrastructure that is being repaired or maintained in an area in which native plants were previously lawfully cleared in connection with the construction, repair or maintenance of the infrastructure; and
 - 20 (ii) consists only of native plants or parts of native plants that have grown or regrown since that earlier clearance; or
- (b) the clearance is undertaken in accordance with guidelines relating to clearance of that kind that have been adopted by the Council under section 61.

6—Maintenance of dam

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

7—Clearance under *Electricity Act 1996*

Clearance 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 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 is undertaken in accordance with—

- (c) guidelines relating to clearance of that kind that have been adopted by the Council under section 61; and
- (d) if the guidelines referred to in paragraph (c) specify that a native plant management plan must be made in relation to clearance of that kind—a native plant management plan that is approved by the NPCAC and relates to the clearance.

- (2) The NPCAC may, in considering whether to approve a native plant management plan for the purposes of subclause (1), seek and consider the advice of the regional landscape board for the landscape management region in which the relevant land is situated.

- (3) If, in considering whether to approve a native plant management plan for the purposes of subclause (1), the NPCAC, is of the opinion that the clearance would be likely to result in residual significant adverse impacts despite the application of the guidelines or management plan (or both), the plan must not be approved.

- (4) Subclause (1) does not apply to native plants that are growing or situated on land that is subject to a biodiversity agreement or conservation agreement.

Division 3—New developments and infrastructure**9—Impact assessed development**

- (1) Clearance 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 NPCAC for comment and report and—

- (i) the NPCAC provided comments that were included (wholly or substantially) in the relevant Assessment Report; or

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- (ii) the NPCAC 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 is undertaken in accordance with—
 - (i) the consent granted for the proposed development; and
 - (ii) a native plant management plan, approved by the NPCAC, that achieves a significant environmental benefit in accordance with the requirements of the SEB scheme.

(2) Subclause (1)(d)(ii) 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 NPCAC to be sufficient to achieve the significant environmental benefit that would otherwise be required by the SEB scheme.

(3) Subclause (1) does not apply to native plants that are growing or situated on land that is subject to a biodiversity agreement or conservation agreement.

Division 4—Tracks and fences

10—Pedestrian tracks on private land

- (1) Clearance 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 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 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.

11—Vehicle tracks

- (1) Clearance 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.

(2) If clearance 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 or conservation agreement; and

(b) the NPCAC must be notified of the proposed clearance in the approved form.

(3) Subclause (1) does not apply to—

(a) clearance of native plants on a road reserve; or

(b) clearance 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 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 of native plants undertaken in connection with subdivision of the land on which the native plants are growing or situated.

12—Fences

(1) Clearance 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) in the case of clearance for the purposes of establishing a new fence—the NPCAC has been notified of the proposed clearance in the approved form; and

(d) in any case—

(i) if the fence is on the boundary of a person's land—the width of the strip does not exceed 5 m; or

(ii) if the fence 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) clearance of native plants on a road reserve; or

(b) clearance 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

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- (c) clearance 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 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 activities

13—Mining operations

- (1) Clearance 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 is envisaged or authorised by or under a program or approval under the relevant Act; or
 - (ii) the clearance would reasonably be expected to have been required under the authorisation under the relevant 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 of native plants for the purposes of mining activities or operations of a kind specified in subclause (1)(a) is permitted only if it is undertaken in accordance with—
 - (a) a native plant management plan, approved by the NPCAC, that achieves a significant environmental benefit in accordance with the requirements of the SEB scheme; and
 - (b) in the case of operations authorised under a designated Act (other than the *Energy Resources Act 2000*)—a management plan under that Act; and
 - (c) 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 activities or 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 NPCAC to be sufficient to achieve the significant environmental benefit that would otherwise be required by the SEB scheme.
- (4) Subclause (1)(b) does not apply to native plants that are growing or situated on land that is subject to a biodiversity agreement or conservation agreement.

14—Mining explorations

- (1) Clearance of native plants incidental to exploratory operations authorised under a designated Act if undertaken in accordance with guidelines adopted by the Council under section 61 for the purposes of this clause following consultation with the Minister responsible for the administration of the *Mining Act 1971* (the *mining Minister*).
- (2) Guidelines adopted by the Council for the purposes of this clause must—
- (a) 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; and
 - (b) adequately address any concerns raised by the mining Minister during consultation.
- (3) However, if there are no applicable industry standards, or if it is not possible for the applicant to undertake the operations in accordance with applicable industry standards, the clearance is permitted if—
- (a) the clearance is undertaken in accordance with a native plant management plan, approved by the NPCAC, that achieves a significant environmental benefit in accordance with the requirements of the SEB scheme; or
 - (b) the person undertaking the operations makes a payment into the Biodiversity Restoration Fund of an amount considered by the NPCAC to be sufficient to achieve the significant environmental benefit that would otherwise be required by the SEB scheme.

Division 6—Plant and animal control

15—Plant and animal control

Clearance 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) the plants are not on a road reserve, rail corridor or rail reserve; and
 - (ii) it is not possible to comply with the obligation without at the same time destroying, damaging or otherwise clearing the native plants; and
 - (iii) guidelines relating to clearance of that kind have been adopted by the Council under section 61 and the clearance is undertaken in accordance with those guidelines; and
 - (iv) the NPCAC 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 guidelines adopted by the Council under section 61 for the purposes of this paragraph and the clearance is undertaken in accordance with those guidelines; and
- (ii) the NPCAC has been notified of the proposed clearance in the approved form.

Division 7—Safety and fire prevention

16—Clearance under *Emergency Management Act 2004*

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

17—Clearance for purposes of *Fire and Emergency Services Act 2005*

Clearance 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*.

18—Safety of persons and property

- (1) Clearance 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 NPCAC and the NPCAC 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 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.

- (2) Subclause (1) does not apply to clearance of native plants on a road reserve, rail corridor or rail reserve unless guidelines that apply to the clearance have been adopted by the Council under section 61 and the clearance is undertaken in accordance with those guidelines.

19—Fire hazard reduction

Clearance 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 and clearance is for the purposes of reducing the risk that bushfire poses to life or property (other than where the native plant consists of a tree that has a trunk circumference (measured at a point 1 m above the base of the tree) of 1 m or more);
- (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 the clearance 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.

20—Fire hazard reduction with Chief Officer approval

(1) Clearance of native plants in any of the following circumstances:

- (a) where the native plant consists of a tree that has a trunk circumference (measured at a point 1 m above the base of the tree) of 1 m or more that is growing or situated within 20 m of an existing dwelling and clearance 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.

Biodiversity Bill 2025

Schedule 2—Native plants—regulated acts or activities exclusions

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- (2) Subclause (1) only applies if—
- (a) clearance of the native plants is undertaken in accordance with the written approval of the Chief Officer of SACFS and any applicable bushfire management plan; and
 - (b) the NPCAC has been notified of the proposed clearance in the approved form.
- (3) The Chief Officer of SACFS must not grant an approval under this clause unless the Chief Officer is satisfied that the clearance 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 Chief Officer of SACFS must have regard to—
- (a) any applicable bushfire management plan; and
 - (b) any applicable guidelines adopted by the Council under section 61.
- (5) Subclause (1)(a) does not apply to native plants that are growing or situated on land that is subject to a biodiversity agreement or conservation agreement.

Division 8—Traditional cultural practices**21—Cultural burning**

Cultural burning of native plants undertaken by First Nations persons in accordance with the biodiversity policy referred to in section 161(4)(f).

Division 9—Miscellaneous**22—Fungi and algae**

Clearance of fungi or algae (other than fungi or algae of a prescribed species) on private land.

23—Firewood

- (1) Clearance 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 were growing or situated for the purposes of domestic heating or cooking if—
- (a) the quantity of firewood provided by the clearance when aggregated with the quantity of firewood (if any) previously provided by clearance 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 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 conservation agreement; or
- (b) clearance 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 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.

24—Regrowth

(1) Clearance 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 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 for that purpose within the immediately preceding 5 years; and
- (c) the native plants to be cleared 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 or conservation agreement.

25—Conservation, management and restoration of biodiversity

(1) Clearance of native plants for the purposes of conserving, managing or restoring biodiversity if it is undertaken in accordance with—

- (a) guidelines relating to clearance of that kind adopted by the Council under section 61; and
- (b) if the guidelines referred to in paragraph (a) specify that a native plant management plan must be made in relation to clearance of that kind—a native plant management plan that is approved by the NPCAC and relates to the clearance.

(2) The NPCAC may, in considering whether to approve a native plant management plan for the purposes of subclause (1), seek and consider the advice of the regional landscape board for the landscape management region where the relevant land is situated.

(3) If, in considering whether to approve a native plant management plan for the purposes of subclause (1), the NPCAC, is of the opinion that the clearance would be likely to result in residual significant adverse impacts despite the application of the guidelines or management plan (or both), the plan must not be approved.

26—Ongoing grazing practices

- (1) Clearance 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.

- (2) In this clause—

degradation has the same meaning as in the *Pastoral Land Management and Conservation Act 1989*.

27—Maintenance of existing agriculture, forestry or farming

- (1) Clearance 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 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) guidelines relating to clearance of that kind have been adopted by the Council under section 61 and the clearance is undertaken in accordance with those guidelines.

- (2) Subclause (1) does not apply to native plants that are growing or situated on land that is subject to a biodiversity agreement or conservation agreement.

28—Cultana Training Area

- (1) Clearance of native plants that are growing or situated in the Cultana Training Area if the clearance 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 or conservation agreement.

Part 3—Taking or dealing with native plants**29—Maintenance pruning**

Maintenance pruning of native plants on public land undertaken by the owner or person with the care, control or management of that land.

Schedule 3—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 NPCAC—

- (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

The following acts or activities are specified as not being regulated acts or activities for the purposes of section 62(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) 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; 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;
- (d) an act or activity referred to in section 62(1) carried out or undertaken in respect of an animal that is the subject of a licence under the *Aquaculture Act 2001*;
- (e) a prescribed act or activity carried out or undertaken in respect of a prescribed species of animal.

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 *Coast Protection Act 1972*

4—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 4—Amendment of *Community Titles Act 1996*

5—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 5—Amendment of *Criminal Assets Confiscation Act 2005*

6—Amendment of section 3—Interpretation

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

(v) the following provisions of the *Biodiversity Act 2025*:

(A) section 44, insofar as it relates to acts or activities referred to in—

- section 42(1)(b) or (c) of that Act; or

- section 42(1)(d) of that Act to the extent it relates to selling, giving away or otherwise disposing of a native plant;

(B) section 46;

5 (C) section 64, insofar as it relates to acts or activities referred to in section 62(1)(a) of that Act;

(D) section 65; or

Part 6—Amendment of *Criminal Investigation (Covert Operations) Act 2009*

10 7—Amendment of section 3—Interpretation

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

(e) the following provisions of the *Biodiversity Act 2025*:

(A) section 44, insofar as it relates to acts or activities referred to in—

15

- section 42(1)(b) or (c) of that Act; or
- section 42(1)(d) of that Act to the extent it relates to selling, giving away or otherwise disposing of a native plant;

20

(B) section 46;

(C) section 64, insofar as it relates to acts or activities referred to in section 62(1)(a) of that Act;

(D) section 65; or

Part 7—Amendment of *Crown Land Management Act 2009*

25 8—Amendment of section 5—Principles of Crown land management

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

the *Biodiversity Act 2025* and

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

30

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

10—Amendment of section 78—Liability of the Crown

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

Part 8—Amendment of *Dog and Cat Management Act 1995*

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

35

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

12—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);

13—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 9—Amendment of *Energy Resources Act 2000***14—Amendment of section 6A—Interaction with other legislation**

Section 6A—after paragraph (d) insert:

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

Part 10—Amendment of *Environment Protection Act 1993***15—Amendment of section 112—State of environment reports**

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

- (aa) include an assessment of the state-wide biodiversity indicators set out in the State Biodiversity Plan under the *Biodiversity Act 2025*.

Part 11—Amendment of *Fire and Emergency Services Act 2005***16—Amendment of section 42—Powers**

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

17—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*)

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

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

19—Amendment of section 97—Powers

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

Part 12—Amendment of *Firearms Act 2015***20—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 13—Amendment of *Fisheries Management Act 2007***21—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 that is listed as a threatened species under the *Biodiversity Act 2025*;

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

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

or a threatened fish

23—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

24—Amendment of section 115—Exemptions

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

or a threatened fish

Part 14—Amendment of *Harbors and Navigation Act 1993***25—Amendment of section 15—Property of Crown**

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

Part 15—Amendment of *Hydrogen and Renewable Energy Act 2023***26—Amendment of section 4—Interpretation**

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

Part 16—Amendment of *Landscape South Australia Act 2019*

27—Amendment of section 3—Interpretation

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

biological diversity or *biodiversity* 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 *natural resources*, (d)—delete "native vegetation, native animals" and substitute:

native plants, protected animals

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

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

- (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

28—Amendment of section 7—Objects and principles

- (1) Section 7(1)(c)(ii)—delete "native fauna and flora" and substitute:

protected animals and native plants

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

protected

29—Amendment of section 9—Functions of Minister

Section 9(1)(f)—after "seas" insert:

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

30—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

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

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

32—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*.

33—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)

34—Amendment of section 97—Interpretation

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

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

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

36—Amendment of section 185—Preliminary

(1) Section 185(3)—delete "native animals" and substitute:
protected animals or native plants

(2) Section 185—after subsection (4) insert:

- (4a) A notice under subsection (1) made with respect to a class of protected animals or native plants cannot be made without the concurrence of the Minister responsible for the administration of the *Biodiversity Act 2025*, unless the notice is being made to give effect to a provision of a landscapes affecting activities control policy.

37—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 (within the meaning of the *Biodiversity Act 2025*) under section 61 of the *Biodiversity Act 2025*; and

(2) Section 201(2)—delete "native" wherever occurring and substitute in each case:
protected

38—Amendment of Schedule 2—Activities control policies

(1) Schedule 2, clause 2(3)—delete subclause (3) and substitute:

(3) In undertaking a review under subclause (1) or (2), the prescribed authority will—

- (a) undertake such consultation as the prescribed authority determines to be reasonable after taking into account any guidelines specified by the Minister for the purposes of this clause; and
- (b) if, in the opinion of the prescribed authority, the policy relates to protected animals or native plants (within the meaning of the *Biodiversity Act 2025*)—consult with the Minister responsible for the administration of the *Biodiversity Act 2025*.

(2) Schedule 2, clause 3(1)—delete subclause (1) and substitute:

(1) A prescribed authority proposing to create or amend a policy must—

- (a) undertake such consultation as the prescribed authority determines to be reasonable after taking into account any guidelines specified by the Minister for the purposes of this clause; and
- (b) if, in the opinion of the prescribed authority, the policy proposes to relate, or relates, to protected animals or native plants (within the meaning of the *Biodiversity Act 2025*)—consult with the Minister responsible for the administration of the *Biodiversity Act 2025*.

(3) Schedule 2, clause 4—after subclause (1) insert:

- (1a) Subject to subclause (1b), if in the opinion of the Minister the implementation of a policy would adversely affect any protected animal or native plant that is subject to any form of control under the *Biodiversity Act 2025*, the Minister must not approve the policy without the consent of the Minister for the time being administering that Act.
- (1b) If the relevant Ministers cannot reach agreement on a plan under subclause (1a), the Minister administering this Act may approve the plan with the consent of the Governor.

(4) Schedule 2, clause 4(8)—after "subclauses" insert:

(other than subclauses (1a) and (1b))

Part 17—Amendment of *Land Tax Act 1936*

39—Amendment of section 4—Imposition of land tax

5 Section 4(1)(ba)—delete "heritage agreement under the *Native Vegetation Act 1991*" and substitute:

biodiversity agreement under the *Biodiversity Act 2025*

Part 18—Amendment of *Livestock Act 1997*

10 **40—Amendment of section 42—Exercising powers in relation to native or feral animals**

Section 42(4)—delete "*and Wildlife*"

Part 19—Amendment of *Maralinga Tjarutja Land Rights Act 1984*

41—Amendment of section 3—Interpretation

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

42—Amendment of section 15A—Interpretation

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

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

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

20 **44—Amendment of section 17—Rights of traditional owners with respect to lands**

Section 17(2)—delete "*and Wildlife*"

Part 20—Amendment of *Marine Parks Act 2007*

45—Amendment of section 3—Interpretation

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

46—Amendment of section 32—Appointment of authorised officers

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

Part 21—Amendment of *Mining Act 1971*

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

30 Section 10B—after paragraph (e) insert:

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

Part 22—Amendment of *National Parks and Wildlife Act 1972*

48—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,

49—Amendment of section 1—Short title

Section 1—delete "and Wildlife"

50—Amendment of section 5—Interpretation

(1) Section 5, definition of *aircraft*—delete the definition and substitute:

aircraft includes—

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

(2) Section 5—after the definition of *co-management board* insert:

conservation of wildlife includes the restoration and recovery of wildlife and ecosystems;

(3) Section 5, definition of *controlled species*—delete the definition

(4) Section 5, definition of *Director*—delete "and Wildlife"

(5) Section 5, definition of *endangered species*—delete the definition

(6) Section 5, definition of *forest reserve*—delete the definition

(7) Section 5, definition of *marine mammal*—delete the definition

(8) Section 5, definition of *Murray-Darling Basin*—delete "1993" and substitute:
2008

(9) Section 5, definition of *native plant*—delete the definition and substitute:

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

(10) Section 5, definition of *plant*—delete the definition and substitute:

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

(11) 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*;

(12) Section 5, definition of *rare species*—delete the definition

(13) 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*;

(14) Section 5, definition of *vulnerable species*—delete the definition

(15) Section 5, definition of *wildlife*—delete the definition and substitute:

wildlife means protected animals and native plants.

51—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"

52—Repeal of section 11

Section 11—delete the section

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

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

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

54—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

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

Section 13(2)—delete subsection (2)

56—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*.

57—Amendment of section 19C—Functions of Council

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

58—Amendment of section 22—Powers of wardens

- (1) Section 22(1)(ca)—delete paragraph (ca)

- (2) Section 22(1a) to (1c)—delete subsections (1a) to (1c) (inclusive)

- (3) Section 22(4)—delete subsection (4)

59—Amendment of section 23—Forfeiture

- (1) Section 23(1)(c)—delete paragraph (c)

- (2) Section 23(4)(a)—delete "three months of the date of seizure" and substitute:
12 months after its seizure (or such longer period as the court may, on application by the Minister, allow)

- (3) Section 23(4)(b)—delete "within three months of the date of seizure"

- (4) Section 23(4)(d)—delete "Wildlife Conservation Fund" and substitute:
General Reserves Fund

- (5) Section 23(5)(b)—delete "Wildlife Conservation Fund" and substitute:
General Reserves Fund

60—Amendment of section 37—Objectives of management

- (1) Section 37(1)(a)—delete "preservation" and substitute:
conservation

- (2) Section 37(1)—after paragraph (l) insert:
and
(m) the objects of the *Biodiversity Act 2025*.

61—Amendment of section 38—Management plans

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

62—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

63—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 protected species 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 species 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*.

64—Repeal of Part 3 Division 7

Part 3 Division 7—delete Division 7

65—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.

66—Repeal of Parts 4 and 5

Parts 4 and 5—delete the Parts

67—Substitution of heading to Part 5A

Heading to Part 5A—delete the heading and substitute:

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

68—Repeal of Part 5A Division 1

Part 5A Division 1—delete Division 1

69—Substitution of heading to Part 5A Division 2

Heading to Part 5A Division 2—delete the heading to Division 2 and substitute:

Division 2—Taking of plants and animals by Aboriginal persons

70—Amendment of section 68D—Hunting and food gathering by Aboriginal persons

- (1) Section 68D, heading—delete "Hunting and food gathering" and substitute:

Taking of plants and animals

- (2) Section 68D(1) and (2)—delete subsections (1) and (2)

Biodiversity Bill 2025

Schedule 5—Related amendments and repeals

- (3) Section 68D(3)—delete "It is not illegal by virtue of section 47(1)" and substitute:

Despite any other provision of this Act or any other Act or law, it is not illegal

- (4) Section 68D(3)—delete "or from a wilderness protection area or a wilderness protection zone"

- (5) Section 68D(3)—delete "or wilderness protection area or wilderness protection zone"

- (6) Section 68D(4)—delete "It is not illegal by virtue of section 51" and substitute:

Despite any other provision of this Act or any other Act or law, it is not illegal

- (7) Section 68D(4)—delete "or from a wilderness protection area or a wilderness protection zone"

- (8) Section 68D(4)—delete "or wilderness protection area or wilderness protection zone"

- (9) Section 68D(5)—delete "It is not illegal by virtue of section 47(1) or 51" and substitute:

Despite any other provision of this Act or any other Act or law, it is not illegal

- (10) Section 68D(6)—delete subsection (6) and substitute:

- (6) An animal, egg or plant is taken in accordance with this Division if it is taken for the purposes of satisfying the person's non-commercial personal, domestic or communal needs through use of the animal, egg or plant as food or for a cultural or spiritual activity.

71—Repeal of section 68E

Section 68E—delete the section

72—Repeal of sections 74 and 74A

Sections 74 and 74A—delete the sections

73—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)

74—Amendment of section 75A—Defence

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

Biodiversity Act 2025

75—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)

76—Repeal of Schedules 7 to 11

Schedules 7 to 11 (inclusive)—delete the Schedules

Part 23—Amendment of *Parliamentary Committees Act 1991***77—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 24—Amendment of *Pastoral Land Management and Conservation Act 1989***78—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*"

79—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

80—Amendment of section 12—Establishment of Pastoral Board

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

Biodiversity Act 2025

Part 25—Amendment of *Planning, Development and Infrastructure Act 2016***81—Amendment of section 11—Recognition of special legislative schemes**

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

(v) the *Biodiversity Act 2025*; or

82—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 this section—

native plant, protected animal and threatened species have the same meaning as in the *Biodiversity Act 2025*.

83—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

84—Amendment of section 76—Minor or operational amendments

Section 76—after subsection (3) insert:

- (3a) Without limiting subsection (1) or (2) the Minister may, by notice in the Gazette, amend the Planning and Design Code to include information relating to critical habitat (within the meaning of the *Biodiversity Act 2025*).

85—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 26—Amendment of *Real Property Act 1886***86—Amendment of section 154B—Effect of priority notice**

Section 154B(2)(l)—delete "*Native Vegetation Act 1991*" and substitute:

Biodiversity Act 2025

87—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 27—Amendment of *Recreational Greenways Act 2000***88—Amendment of section 3—Interpretation**

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

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

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

90—Amendment of section 26—Other authorised officers

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

91—Amendment of section 27—Powers of authorised officers

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

Part 28—Amendment of *River Murray Act 2003***92—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 29—Amendment of *Strata Titles Act 1988***93—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 30—Amendment of *Unexplained Wealth (Commonwealth Powers) Act 2021***94—Amendment of section 8—Relevant offences**

Section 8(b)(v)—delete paragraph (v) and substitute:

(v) the following provisions of the *Biodiversity Act 2025*:

(A) section 44, insofar as it relates to acts or activities referred to in—

- section 42(1)(b) or (c) of that Act; or

- section 42(1)(d) of that Act to the extent it relates to selling, giving away or otherwise disposing of a native plant;

(B) section 46;

(C) section 64, insofar as it relates to acts or activities referred to in section 62(1)(a) of that Act;

(D) section 65; or

Part 31—Amendment of *Wilderness Protection Act 1992*

95—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 *reserve* insert:

take has the same meaning as in the *Biodiversity Act 2025*;

(6) Section 3(1), definition of *wildlife*—delete the definition and substitute:

wildlife has the same meaning as in the National Parks Act.

(7) Section 3(1), definition of *Wildlife Conservation Fund*—delete the definition

96—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

97—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) an animal, or the eggs of an animal, of a prescribed species or a plant of a prescribed species; or

(b) an animal, egg or plant by a prescribed means or in prescribed circumstances.

(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, vary or revoke a proclamation referred to in subsection (2) or (3).

(5) An animal, egg or plant is taken in accordance with this section if it is taken for the purposes of satisfying the person's non-commercial personal, domestic or communal needs through use of the animal, egg or plant as food or for a cultural or spiritual activity.

(6) In this section—

Aboriginal person has the same meaning as in the *National Parks and Wildlife Act 1972*.

98—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 to the General Reserves Fund.

99—Amendment of section 39—Financial provision

Section 39(2)—delete "Wildlife Conservation" and substitute:

General Reserves

Part 32—Repeal of *Native Vegetation Act 1991*

100—Repeal of Act and regulations

The *Native Vegetation Act 1991*, and all regulations made under that Act, are repealed.