



# **EDO-NQ FACTSHEET SERIES**

## ***An Overview of the Nature Conservation Act 1992 (Qld)***

## TABLE OF CONTENTS

1.	What is the Nature Conservation Act 1992 <i>(Qld)</i> ?	p.3
2.	Types of protected areas under the NCA	p.4
3.	What are State Land Protected Areas?	p.4
4.	Aboriginal land, Torres Strait Islander land and Cape York Peninsula Aboriginal land as National Parks	p.6
5.	Nature refuges, coordinated conservation areas and wilderness areas	p.9
6.	World Heritage management areas	p.10
7.	International agreement areas	p.12
8.	How does the NCA manage wildlife in Queensland?	p.13
9.	How are conservation plans made for native wildlife?	p.16
10.	Offences for interfering with native wildlife	p.16
11.	Interim conservation orders	p.17
12.	How does the NCA manage non-native wildlife?	p.18
13.	Rights of the public under the NCA	p.19
14.	How to make a comment on a draft plan or proposed area	p.19
15.	Seeking to enforce the NCA	p.20
16.	Further information	p.20
17.	Useful contacts	p.21

# ***An Overview of the Nature Conservation Act 1992 (Qld)***

***This factsheet is intended as a plain English guide to a particular area of law. Whilst all care has been taken in its preparation, it is not a substitute for legal advice and is not intended to be a comprehensive examination of the legislation. If you require legal advice relating to your particular circumstances you should contact the EDO or your solicitor.***

## **1. What is the *Nature Conservation Act 1992 (Qld)*?**

---

The object of the *Nature Conservation Act 1992 (Qld)* (“NCA”)<sup>1</sup> is the conservation of nature.<sup>2</sup>

This object is supposed to be achieved by “an integrated and comprehensive conservation strategy for the whole of the State”<sup>3</sup>, which is supposed to include the following:

1. Gathering information and providing community education;
2. Dedicating, declaring and managing protected areas;
3. Protecting native wildlife and its habitat;
4. Ensuring that protected areas and protected wildlife are used in an ecologically sustainable manner;
5. Recognising the interest of Aborigines and Torres Strait Islanders in nature, and cooperatively involving them in nature conservation; and
6. Cooperatively involving land-holders in the conservation of nature.<sup>4</sup>

In summary then, the NCA generally does three main things:

1. creates and manages protected areas;
2. manages and protects native wildlife; and
3. manages the spread of non-native wildlife.

The NCA is currently administered by the Department of Environment and Resources Management (“DERM”). References to “the Minister” in this factsheet are references to the Minister overseeing the administration of DERM.

This factsheet will give an overview of how the NCA seeks to do each of these things, and will explain what rights the public have for being involved in some of what the NCA does and for enforcing the NCA.

---

<sup>1</sup> References to legislation in this factsheet will be to the NCA unless specified otherwise

<sup>2</sup> s.4

<sup>3</sup> s.5

<sup>4</sup> s.5

## 2. Types of protected areas under the NCA

---

The NCA creates mechanisms which can be used to establish five general types of protected areas:

1. Protected areas on State land (“State Land Protected Areas”);<sup>5</sup>
2. Protected areas on Aboriginal land or Torres Strait Islander (“ATSI Protected Areas”);<sup>6</sup>
3. nature refuges, coordinated conservation areas and wilderness areas;<sup>7</sup>
4. World Heritage management areas;<sup>8</sup> and
5. international agreement areas.<sup>9</sup>

*Note: Also see our explanatory diagram “Types of Protected Areas under the Nature Conservation Act 1992 (Qld)”.*

For each of these types of protected area, the NCA sets out how they are made and revoked, how they are to be managed, and any specific restrictions on activities that may be carried out in the areas.

## 3. What are State Land Protected Areas?

---

State Land Protected Areas enjoy the strongest protection of any public land in Queensland, and include the following areas:

1. national parks;
2. national parks (scientific);
3. national parks (recovery);
4. conservation parks; and
5. resources reserves.<sup>10</sup>

State Land Protected Areas are made by regulation.<sup>11</sup> The regulation which currently contains declarations of State Land Protected Areas is the *Nature Conservation (Protected Areas) Regulation 1994* (“NCPAR”).<sup>12</sup>

---

<sup>5</sup> Part 4, Division 2

<sup>6</sup> Part 4, Division 3

<sup>7</sup> Part 4, Division 4

<sup>8</sup> Part 4, Division 5

<sup>9</sup> Part 4, Division 6

<sup>10</sup> s.28

<sup>11</sup> s.29(1)

<sup>12</sup> see Schedules 1, 2, 2AA, 2A, 3 and 4 of the NCPAR

As soon as possible after such a declaration is made, the Minister must write a management plan for the area,<sup>13</sup> which must specify what the management outcomes are for the protection, presentation and use of the area, and the policies, guidelines and actions which will achieve those outcomes.<sup>14</sup> The management plan must be consistent with the particular area's management principles<sup>15</sup> (which differ slightly between the areas). In general, the management plan will therefore help govern how the area is to be used, in addition to any specific directions given by the NCA.

### National Parks - management principles

Management principles vary for the three types of national parks which are State Land Protected Areas, as the following table shows:

Type of national park	Management principles
National Park	<ol style="list-style-type: none"> <li>1. To provide, to the greatest possible extent, for the permanent preservation of the area's natural condition and the protection of the area's cultural resources and values; and</li> <li>2. To present the area's cultural and natural resources and their values; and</li> <li>3. To ensure that the only use of the area is nature-based and ecologically sustainable.<sup>16</sup></li> </ol>
National Park (scientific)	<ol style="list-style-type: none"> <li>1. To protect the area's exceptional scientific values and, in particular--               <ol style="list-style-type: none"> <li>a. to ensure that the processes of nature continue unaffected in the area; and</li> <li>b. to protect the area's biological diversity to the greatest possible extent; and</li> </ol> </li> <li>2. To allow controlled scientific study and monitoring of the area's natural resource.<sup>17</sup></li> </ol>
National Park (recovery)	<ol style="list-style-type: none"> <li>1. To protect or restore, to the greatest possible extent, the park's natural condition and protect its cultural resources and values so that it can be dedicated as a national park; and</li> <li>2. To provide for the manipulation of the park's natural resources to restore its conservation values; and</li> <li>3. To ensure any commercial or other use of the park's natural resources to restore its conservation values is consistent with an approved regeneration plan for the park; and</li> <li>4. To ensure any other use of the park is nature-based.<sup>18</sup></li> </ol>

<sup>13</sup> s.111

<sup>14</sup> s.117(1)(b)

<sup>15</sup> s.117(1)(a)

<sup>16</sup> s.17(1)

<sup>17</sup> s.16(1)

<sup>18</sup> s.19A

### Conservation Parks - management principles

Conservation Parks must be managed to:

1. conserve and present the area's cultural and natural resources and their values; and
2. provide for the permanent conservation of the area's natural condition to the greatest possible extent; and
3. ensure that any commercial use of the area's natural resources, including fishing and grazing, is ecologically sustainable.<sup>19</sup>

### Resources Reserves – management principles

Resources Reserves must be managed to:

1. recognise and, if appropriate, protect the area's cultural and natural resources; and
2. provide for the controlled use of the area's cultural and natural resources; and
3. ensure that the area is maintained predominantly in its natural condition.

The NCA deals with a number of other issues relating to the management of these State Land Protected Areas, including revocation and amalgamation, the appointment of trustees, and the granting of leases, licences, permits and the like over them.

A notable and particularly strong protection which national parks and conservation parks share is that in most cases mining permits cannot be granted over them without specific recognition of the management principles of the particular area.<sup>20</sup> No other type of land in Queensland has this level of protection from mining activities.

## **4. Aboriginal land, Torres Strait Islander land and Cape York Peninsula Aboriginal land as National Parks**

---

There are a number of different sets of circumstances in which land can be declared as “national park (Aboriginal land)”, “national park (Torres Strait Islander land)” or “national park (Cape York Peninsula Aboriginal land)”. Generally, but subject to the requirements set out in the NCA:

- Land may only be declared as “national park (Aboriginal land)” or “national park (Torres Strait Islander land)” if it is *not* in the Cape York Peninsula Region (“CYPR”); and
- Land may only be declared as “national park (Cape York Peninsula Aboriginal land)” if it *is* in the CYPR and is Aboriginal land (not Torres Strait Islander land).

---

<sup>19</sup> s.20

<sup>20</sup> ss.27 & 34-35

The CYPR is defined by reference to certain maps held by the Queensland Department of Environment and Natural Resources (“DERM”).<sup>21</sup>

The circumstances and processes for declaring land as “national park (Aboriginal land)” or “national park (Torres Strait Islander land)” on the one hand, or “national park (Cape York Peninsula Aboriginal land)” on the other hand are different.

*Land as “national park (Aboriginal land)” or “national park (Torres Strait Islander land)”*

Land can be declared as either “national park (Aboriginal land)” or “national park (Torres Strait Islander land)” in certain circumstances, including in the following circumstances described below.

*Circumstance 1:*

*If:*

- 1. the land:*
  - a. is already a National Park, or in a National Park;*
  - b. later becomes ATSI Land; and*
- 2. a management plan for the land is approved;*

*then the Governor in Council must declare the land as “national park (Aboriginal land)” or “national park (Torres Strait Islander land)”, as the case may be, when the management plan is approved.*<sup>22</sup>

*Circumstance 2:*

*If:*

- 1. the land is:*
  - a. already ATSI Land; and*
  - b. is not already a National Park, or in a National Park; and*
- 2. the grantees of the ATSI Land and the Minister agree that the Minister may lease the land for the purpose of it being run as a “national park (Aboriginal land)” or “national park (Torres Strait Islander land)”;*

*then:*

- 3. the Minister may prepare a management plan for the land (any management plan must be prepared in cooperation with the land’s grantees and board of management; and*
- 4. the Governor in Council must declare the land as “national park (Aboriginal land)” or “national park (Torres Strait Islander land)”, as the case may be, when:*
  - a. the lease to the Minister is signed; and*
  - b. the management plan is approved.*<sup>23</sup>

---

<sup>21</sup> s.7 of the *Cape York Peninsula Heritage Act 2007 (Qld)*

<sup>22</sup> s.40

<sup>23</sup> s.41

Land as “national park (Cape York Peninsula Aboriginal land)”

Land can be declared as “national park (Cape York Peninsula Aboriginal land)” in certain circumstances, including in the following circumstances described below.

Circumstance 1:

If:

1. the land:
  - a. is already a National Park, or in a National Park;
  - b. is in the CYPR; and
  - c. later becomes Aboriginal Land; and
2. the Minister is satisfied that an indigenous management plan for the land has been entered into;

then, when the land becomes Aboriginal land, the Minister must recommend to the Governor in Council that the Governor in Council declare the land as a “national park (Cape York Peninsula Aboriginal land)”.<sup>24</sup>

Circumstance 2:

If:

1. the land is:
  - a. already Aboriginal land;
  - b. is not already a National Park, or in a National Park; and
  - c. is in the CYPR; and
2. the grantees of the Aboriginal land have entered into an indigenous management agreement for the land; and
3. the Minister and those grantees agree that the land is to be managed as a “national park (Cape York Peninsula Aboriginal land)”;

then the Minister must recommend to the Governor in Council that the Governor in Council declare the land as a “national park (Cape York Peninsula Aboriginal land)”.<sup>25</sup>

Circumstance 3:

If:

1. circumstance 2 above does not apply to the land; and
2. the land is:
  - a. is not already a National Park, or in a National Park; and
  - b. is in the CYPR; and
3. a land trust holding the land has entered into an indigenous management agreement for the land under the Aboriginal Land Act 1991 (Qld); and
4. the Minister and the land trust agree that the land is to be managed as a “national park (Cape York Peninsula Aboriginal land)”;

then, when the land becomes Aboriginal land:

---

<sup>24</sup> s.42AA

<sup>25</sup> s.42AB

5. the grant of the land as Aboriginal land is subject to a condition that the land must become “national park (Cape York Peninsula Aboriginal land)”; and
6. the Minister must recommend to the Governor in Council that the Governor in Council declare the land as a “national park (Cape York Peninsula Aboriginal land)”.<sup>26</sup>

#### Management principles for these types of national park

Land declared to be a “national park (Aboriginal land)”, a “national park (Torres Strait Islander land)” or a “national park (Cape York Peninsula Aboriginal land)”:

1. is to be managed as national parks;<sup>27</sup> and
2. subject to the management principles for national parks, is to be managed, as far as practicable, in a way that is consistent with any Aboriginal or Torres Strait Islander tradition (as the case may be) applicable to the area, including any tradition relating to activities in the area.<sup>28</sup>

To confirm, the management principles for national parks are to:

1. provide, to the greatest possible extent, for the permanent preservation of the area’s natural condition and the protection of the area’s cultural resources and values; and
2. present the area’s cultural and natural resources and their values; and
3. ensure that the only use of the area is nature-based and ecologically sustainable.<sup>29</sup>

## **5. Nature refuges, coordinated conservation areas and wilderness areas**

Nature refuges, coordinated conservation areas and wilderness areas are protected areas that may be declared over private land; they may also be declared over State land (including reserves under the *Land Act 1994* (Qld)).<sup>30</sup>

#### Nature Refuges and Coordinated Conservation Areas

EDO-NQ has written an extensive factsheet which covers nature refuges and coordinated conservation areas in detail, including the declaration process and the protections enjoyed by them. It can be downloaded from the EDO-NQ website:

[http://www.edo.org.au/edong/images/stories/factsheets/2\\_private\\_conservation\\_nature\\_refuges\\_and\\_coordinated\\_conservation\\_areas.pdf](http://www.edo.org.au/edong/images/stories/factsheets/2_private_conservation_nature_refuges_and_coordinated_conservation_areas.pdf)

---

<sup>26</sup> s.42AC

<sup>27</sup> ss.18(1), 19(1) & 19AA(1)

<sup>28</sup> ss.18(2), 19(2) & 19AA(2)

<sup>29</sup> s.17

<sup>30</sup> s.46(1)

### Wilderness areas

Wilderness areas follow the same declaration process as nature refuges and coordinated conservation areas, though are usually more remote, and enjoy a higher level of protection as can be seen by their different management principles.

Wilderness areas must be managed to:

1. protect or restore the wilderness values, and the cultural and natural resources, of the area to the greatest possible extent; and
2. maintain the area to preserve its capacity to evolve in the absence of significant human interference; and
3. provide opportunities for solitude and appropriate self-reliant recreational and spiritual activities.<sup>31</sup>

Whilst these management principles provide a high level of protection for wilderness areas, wilderness areas do *not* have any specific protection from mining activities.

## **6. World Heritage management areas**

---

If an area has already been placed on the World Heritage List under the World Heritage Convention,<sup>32</sup> then the Minister may publish an advertisement proposing that the whole or part of that area be declared a “World Heritage management area” (“WHMA”).<sup>33</sup>

The advertisement must:

1. be published in a newspaper circulating throughout the State;
2. describe the lands to be included in the proposed WHMA;
3. specify the proposed management of the WHMA;
4. invite submission from affected landholders, interested groups and the public; and
5. specify a day by which submissions are to be made to the Minister.<sup>34</sup>

After the Minister publishes that advertisement and the submission period closes, the Minister must then consider all the properly made submissions and prepare a management plan for the proposed WHMA.<sup>35</sup> Once the management plan is approved by the Governor in

---

<sup>31</sup> s.24

<sup>32</sup> The “World Heritage Convention” means the *Convention for the Protection of the World Cultural and Natural Heritage* that has been adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization. A copy of the Convention (but not the World Heritage List) is set out in Schedule 2 to the *Wet Tropics World Heritage Protection and Management Act 1993* (Qld). A copy of the World Heritage List can be found at <http://whc.unesco.org/en/list>

<sup>33</sup> s.53(1)

<sup>34</sup> s.53

<sup>35</sup> s.54

Council, the WHMA must be declared by regulation.<sup>36</sup> There are currently no WHMAs declared in Queensland, but presumably any future declaration would be made in the NCPAR.

A WHMA must be managed in accordance with its management plan, as well as to:

1. meet international obligations in relation to the WHMA;
2. protect the internationally outstanding cultural and natural resources and biological diversity of the WHMA; and
3. transmit the world heritage values of the WHMA to future generations.<sup>37</sup>

The Governor in Council may only revoke the declaration of a WHMA, in whole or in part, if Queensland Parliament passes a resolution (on a motion with at least 28 days' notice) requesting the Governor in Council to do so.<sup>38</sup>

As at the time of publishing this factsheet (October 2009), the World Heritage List under the World Heritage Convention contains the following places in Queensland:<sup>39</sup>

- Great Barrier Reef;
- Gondwana Rainforests of Australia (previously known as the Central Eastern Rainforest Reserves) – at sites in both New South Wales and south eastern Queensland;
- Wet Tropics of Queensland;
- Fraser Island; and
- Australian Fossil Mammal Sites (Riversleigh/Naracoote) – the Queensland site is near Riversleigh approximately 50 kilometres southeast of Charleville.

---

<sup>36</sup> s.55

<sup>37</sup> ss.15(c) & 25

<sup>38</sup> s.56

<sup>39</sup> see <http://whc.unesco.org/en/list>

## 7. International agreement areas

---

If the Minister is of the opinion that an area has “internationally significant natural values”, then the Minister may publish an advertisement proposing that the whole or part of that area be declared an “international agreement area” (“IAA”).<sup>40</sup>

The advertisement must:

1. be published in a newspaper circulating throughout the State;
2. describe the lands to be included in the proposed IAA;
3. specify the proposed management of the IAA;
4. invite submissions from affected landholders, interested groups and the public; and
5. specify a day by which submissions are to be made to the Minister.<sup>41</sup>

After the Minister publishes that advertisement and the submission period closes, the Minister must then consider all the properly made submissions and prepare a management plan for the proposed IAA.<sup>42</sup> Once the management plan is approved by the Governor in Council, the IAA must be declared by regulation.<sup>43</sup> There are currently no IAAs declared in Queensland, but presumably any future declaration would be made in the NCPAR. The Governor in Council may revoke the declaration of an IAA, in whole or in part, by making a regulation to that effect.<sup>44</sup>

An IAA must be managed in accordance with its management plan, as well as to:

1. maintain the IAA’s importance to the conservation of nature that is the subject of significant international concern;
2. conserve the area’s native wildlife as far as practicable; and
3. provide for the interests of landholders to be taken into account.<sup>45</sup>

---

<sup>40</sup> s.57(1)

<sup>41</sup> s.57

<sup>42</sup> s.58

<sup>43</sup> s.59

<sup>44</sup> s.60

<sup>45</sup> ss.15(c) & 26

## 8. How does the NCA manage wildlife in Queensland?

---

The NCA divides all wildlife<sup>46</sup> in Queensland into three general classes:<sup>47</sup>

1. protected wildlife
2. international wildlife
3. prohibited wildlife

### Protected wildlife

The class of protected wildlife includes every native Australian plant and animal species found in Queensland, and is further divided into the following sub-classes based on conservation status:<sup>48</sup>

1. extinct in the wild
2. endangered
3. vulnerable
4. rare
5. near-threatened
6. least concern

### International wildlife and prohibited wildlife

Wildlife may be declared by the Governor in Council to be “international wildlife” if:

- it is not native to Australia; and
- is in appendix I or appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora which was entered into at Washington in the United States of America on 3 March 1973 (referred to as “CITES”).<sup>49</sup>

Wildlife may be declared by the Governor in Council to be “prohibited wildlife” if:

- it is either an unnatural hybrid or not native to Australia; and
- likely to constitute a threatening process to protected wildlife (native wildlife).<sup>50</sup>

Both international wildlife and prohibited wildlife are foreign species that are subject to control measures under the NCA to prevent their spread throughout Queensland, and any adverse impacts which they may have.

---

<sup>46</sup> “wildlife” means “any taxon or species of animal, plant, protista, procaryote or virus”: Schedule Dictionary

<sup>47</sup> s.71

<sup>48</sup> s.71(a)

<sup>49</sup> s.81

<sup>50</sup> s.82

The species that are within each class (protected, international and prohibited wildlife) and each sub-class of protected wildlife are listed in the *Nature Conservation (Wildlife) Regulation 2006* ("NCWR"):

Protected wildlife

- Schedule 1: *Extinct in the wild wildlife*
- Schedule 2: *Endangered wildlife*
- Schedule 3: *Vulnerable wildlife*
- Schedule 4: *Rare wildlife*
- Schedule 5: *Near threatened wildlife*
- Schedule 6: *Least concern wildlife*<sup>51</sup>

International wildlife and prohibited wildlife

- Schedule 7: *International wildlife*
- Schedule 8: *Prohibited wildlife*

Wildlife in Queensland is to be managed in accordance with:

1. the management principles for the particular class of wildlife;
2. the declared management intent for the wildlife; and
3. any conservation plan for the wildlife.<sup>52</sup>

Management of protected wildlife

The Management Principles for protected wildlife are:

1. to conserve the wildlife and its values and, in particular to--
  - a. ensure the survival and natural development of the wildlife in the wild; and
  - b. conserve the biological diversity of the wildlife to the greatest possible extent; and
  - c. identify, and reduce or remove, the effects of threatening processes relating to the wildlife; and
  - d. identify the wildlife's critical habitat and conserve it to the greatest possible extent; and
2. to ensure that any of the following use of the wildlife is ecologically sustainable:
  - a. for scientific study and monitoring; or
  - b. for educational, recreational, commercial and authorised purposes; or
  - c. by Aboriginal people under Aboriginal tradition or Torres Strait Islanders under Island custom.

---

<sup>51</sup> Essentially, "least concern" protected wildlife is any protected wildlife which does not fall into the categories of "extinct in the wild wildlife", "endangered wildlife", "vulnerable wildlife", "rare wildlife" or "near threatened wildlife".

<sup>52</sup> s.72(1)

The declared management intents for each sub-class of protected wildlife are set out in Part 2 of the NCWR.

Amongst other things, in an attempt to achieve these management intents in practice, the NCA:

1. focuses on the need to identify critical habitat and threats to the wildlife;
2. establishes conservation plans for conservation of the wildlife; and
3. requires permits for activities that would impact on the wildlife such as keeping, capturing or killing;
4. creates offences for interfering with wildlife without authorisation; and
5. provides for interim conservation orders to be made to prohibit or control a specified threatening process in certain circumstances for the conservation, protection or management of wildlife, habitats and areas.

These measures form the basis of the NCA's approach to managing and conserving native wildlife in Queensland.

#### Management of international wildlife

International wildlife is to be managed:

1. in accordance with the wildlife's international conservation significance;
2. to ensure the protection of protected wildlife from any threatening process that may be posed by the wildlife;
3. to prevent unlawful introduction of the wildlife into Queensland; and
4. to prohibit the release of the wildlife into the wild except under a licence, permit or other authority issued or given under a regulation.<sup>53</sup>

#### Management of prohibited wildlife

The Management Principles for prohibited wildlife are:

1. to prohibit the release of the wildlife into the wild except under a licence, permit or other authority issued or given under a regulation;
2. to identify and, if practicable, control any threatening process caused by the wildlife;
3. to reduce and, if possible, eliminate the population and distribution of the wildlife in the wild; and
4. to encourage the humane taking and use of the wildlife.<sup>54</sup>

---

<sup>53</sup> s.74

<sup>54</sup> s.75

## 9. How are conservation plans made for native wildlife?

---

Conservation plans may be made for native wildlife in two different circumstances:

1. The Minister may prepare a conservation plan for any of the following:<sup>55</sup>
  - a. any native wildlife;
  - b. any class of wildlife; or
  - c. any native wildlife habitat or area that is an area of major interest.
2. If a person applies for a permit to take or use native wildlife, then the Minister may:
  - a. prepare a draft conservation plan; or
  - b. require the person applying for a permit to prepare a draft conservation plan at the person's own cost.<sup>56</sup>

After a draft conservation plan has been prepared in one of those circumstances, the Minister must publish notice of the draft conservation plan in a newspaper and invite public comments on the draft plan.<sup>57</sup> After consideration of any properly made submissions, the Minister can prepare a final conservation plan.<sup>58</sup> The final conservation plan must be consistent with the management principles for protected wildlife in the NCA<sup>59</sup> (those management principles are stated on page 14 of this factsheet).

## 10. Offences for interfering with native wildlife

---

The NCA creates a number of offences for doing certain activities where those activities will impact on protected native wildlife, and are undertaken without a permit or contrary to a conservation plan.

For example, doing any of the following is an offence under the NCA, unless the person is an authorised person or the activity is otherwise authorised under the NCA:

- Taking a protected animal.<sup>60</sup>
- Keeping or using a protected animal in certain circumstances.<sup>61</sup>
- Destroying a flying-fox roost, driving away (or attempting to drive away) a flying-fox from a roost or disturbing a flying fox in a roost.<sup>62</sup>
- Taking a protected plant in the wild, or keeping such a plant.<sup>63</sup>

---

<sup>55</sup> s.112(1)

<sup>56</sup> s.112(2)

<sup>57</sup> s.115

<sup>58</sup> s.116

<sup>59</sup> s.118(1)

<sup>60</sup> s.88(2)

<sup>61</sup> ss.88(5), 88A & 88B

<sup>62</sup> s.88C

- Using a protected plant, including protected plants taken from the wild.<sup>64</sup>
- Taking native wildlife in an area that has been identified under a conservation plan as, or including, a critical habitat or an area of major interest.<sup>65</sup>

“Take” has a very broad definition in the NCA,<sup>66</sup> and includes:

- *For animals:*  
Hunting, shooting, wounding, killing, skinning, poisoning, netting, snaring, trapping, catching, dredging for, bringing ashore or aboard a boat, pursuing, luring, injuring or harming the animal, or attempting to do any of those things.
- *For plants:*  
Gathering, plucking, cutting, pulling up, destroying, digging up, felling, removing or injuring the plant or any part of the plant, or attempting to do any of those things.

“Use” is also relatively broadly defined in the NCA, and in relation to wildlife includes buying, selling, giving away, processing, moving or gaining any benefit from the wildlife.<sup>67</sup>

## 11. Interim conservation orders

---

An interim conservation order (“ICO”) allows the Minister to order specific short-term prohibitions or controls on a specified threatening process in certain circumstances for the conservation, protection or management of wildlife, habitats and areas.<sup>68</sup>

An ICO may be made if the Minister is of the opinion that a threatening process is likely to have a significant detrimental effect on any of the following:

1. threatened, rare or near threatened wildlife;
2. a protected wildlife habitat that is, in the Minister’s opinion, a critical habitat;
3. an area of major interest; or
4. a protected area.<sup>69</sup>

*Notes:*

- “*threatened wildlife*” means native wildlife that is prescribed under the NCA to be either “*extinct in the wild wildlife*”, “*endangered wildlife*” or “*vulnerable wildlife*”.
- “*rare wildlife*” means native wildlife that is prescribed under the NCA as “*rare wildlife*”, and the circumstances in which wildlife may be prescribed “*rare wildlife*” are set out in section 78A of the NCA.

---

<sup>63</sup> s.89

<sup>64</sup> ss.89(1), 89(4) & 90

<sup>65</sup> s.97(1) & (2)

<sup>66</sup> Schedule Dictionary

<sup>67</sup> Schedule Dictionary

<sup>68</sup> ss.102 & 103(1)

<sup>69</sup> s.102

- “near threatened wildlife” means native wildlife that is prescribed under the NCA as “near threatened wildlife” , and the circumstances in which wildlife may be prescribed “near threatened wildlife” are set out in section 79 of the NCA.

An ICO generally applies for a short period; an initial period of not more than 60 days with an opportunity to extend it by not more than a further 90 days.<sup>70</sup> Although they may only apply for short periods, ICOs can be used to apply strong control over a particular process or activity. An ICO will override any local planning scheme for the area, allows for the suspension of any permit that would otherwise contravene the order, and carries a maximum penalty of two years imprisonment for breaching the ICO.<sup>71</sup>

## **12. How does the NCA manage non-native wildlife?**

---

The NCA separates foreign (non-native) wildlife into the two following categories:

### 1. international wildlife

*Wildlife may be declared by the Governor in Council to be “international wildlife” if:*

- *it is not native to Australia; and*
- *is in appendix I or appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora which was entered into at Washington in the United States of America on 3 March 1973 (referred to as “CITES”).<sup>72</sup>*

### 2. prohibited wildlife

*Wildlife may be declared by the Governor in Council to be “prohibited wildlife” if:*

- *it is either an unnatural hybrid or not native to Australia; and*
- *likely to constitute a threatening process to protected wildlife (native wildlife).<sup>73</sup>*

Both classes of wildlife are to be managed in such a way as to prevent their release into the wild, and to protect native wildlife from any negative impacts they may have.<sup>74</sup> The main difference is that prohibited wildlife is to be actively managed to identify its negative impacts and remove it from the wild if possible.<sup>75</sup>

---

<sup>70</sup> s.105

<sup>71</sup> ss.106, 107 & 109

<sup>72</sup> s.81

<sup>73</sup> s.82

<sup>74</sup> ss.74 & 75

<sup>75</sup> s.75

### **13. Rights of the public under the NCA**

---

The NCA stands out from many other environmental laws due the opportunities it provides for public involvement; the NCA allows the public to:

1. lodge submissions on a range of matters, including in relation to draft regeneration plans,<sup>76</sup> draft management plans,<sup>77</sup> draft conservation plans,<sup>78</sup> proposals to declare a World Heritage management area,<sup>79</sup> or proposals to declare an international agreement area;<sup>80</sup> and
2. make applications in the Planning and Environment Court to seek enforcement of the NCA.<sup>81</sup>

### **14. How to make a comment on a draft plan or proposed area**

---

The Minister is obliged to seek public submissions and comment after preparing the following, and before making a final decision on them:<sup>82</sup>

1. draft regeneration plans;
2. draft management plans;
3. draft conservation plans;
4. proposals to declare a World Heritage management area; or
5. proposals to declare an international agreement area.

Those advertisements are usually published in newspapers circulating in the relevant area (and are sometimes required to be published in a Queensland-wide newspaper, such as in the case of a proposed declaration of a World Heritage management area), and must state a deadline by which time the public may make submissions.

There is generally no restriction on what can be included in a submission, but it should be in writing, clearly state the names and addresses of who is making the submission, and be relevant to the draft plan or proposed area. If you have any questions about what to include in a submission, please contact us and we will see how we can help.

---

<sup>76</sup> s.42C

<sup>77</sup> s.113

<sup>78</sup> s.113

<sup>79</sup> s.53

<sup>80</sup> s.57

<sup>81</sup> s.173D(1)

<sup>82</sup> ss.42C, 53, 57 & 113

## 15. Seeking to enforce the NCA

---

As the NCA is administered by DERM the first step after identifying a possible breach or contravention of the NCA should be to contact DERM or the Minister.

However, *any person* may make an application in the Planning and Environment Court seeking to enforce certain aspects of the NCA. For those matters the standing (or legal right) to make such an application is wide – *any person* may make the application even if they have not suffered any loss from the breach of the NCA.<sup>83</sup>

Any person may apply for:

1. an enforcement order to remedy or restrain the commission of a “nominated offence”;
2. an interim enforcement order if the person has already bought an application for an enforcement order and the Court has not yet decided the proceedings; or
3. an order to cancel or change an enforcement order or interim enforcement order.<sup>84</sup>

A “nominated offence” means the following offences:<sup>85</sup>

- Taking, using, keeping or interfering with a cultural or natural resource of a protected area unless authorised or permitted to do so.<sup>86</sup>
- Taking a protected animal from outside a protected area unless authorised or permitted to do so.<sup>87</sup>
- Keeping or using a lawfully taken protected animal or a descendant of such an animal taken unless authorised or permitted to do so.<sup>88</sup>
- Taking a protected plant that is in the wild, or keeping or using such a plant, unless authorised or permitted to do so.<sup>89</sup>
- Using particular protected plants unless authorised or permitted to do so.<sup>90</sup>
- Abandoning, releasing, introducing, keeping or using international wildlife or prohibited wildlife unless authorised or permitted to do so.<sup>91</sup>
- Breeding hybrids or mutations of protected animals, abandoning them in the wild, or releasing them into the wild unless authorised or permitted to do so.<sup>92</sup>

---

<sup>83</sup> s.173D(2)

<sup>84</sup> s.173D(1)

<sup>85</sup> s.173A

<sup>86</sup> s.62 (Restriction on taking etc. of cultural and natural resources of protected areas)

<sup>87</sup> s.88 (Restrictions on taking protected animal and keeping or use of unlawfully taken protected animal)

<sup>88</sup> s.88A (Restriction on keeping or use of lawfully taken protected animal)

<sup>89</sup> s.89 (Restriction on taking etc. particular protected plants)

<sup>90</sup> s.90 (Restriction on using particular protected plants)

<sup>91</sup> s.91 (Restriction on release etc. of international and prohibited wildlife)

<sup>92</sup> s.92 (Restriction on breeding etc. hybrids of protected animals)

- Having certain dealings with protected wildlife as a conservation officer.<sup>93</sup>
- Taking, using, keeping or interfering with native wildlife in an area identified under a conservation plan as, or including, a critical habitat or an area of major interest unless authorised or permitted to do so.<sup>94</sup>
- Contravening an interim conservation order.<sup>95</sup>

This enforcement process has been used with some success before, most notably to stop the deaths of flying foxes killed without a permit. However, the most important step before applying for an enforcement order is to consult with a qualified lawyer about the chances of the application succeeding. They should also be able to advise in detail about the legal (and other costs) such an application may cost. This information will be critical to determine if making such an application is the correct thing for you to do in your individual case.

## 16. Further information

---

If you have any further questions or concerns about any of these matters, then please contact us on the details below. While we have limited resources, often we can give you quick advice over the phone or direct you to someone who may help on a free or reduced rate basis.

**Stay in contact with your local Environmental Defenders Office.**

## 17. Useful Contacts

---

### EDO-NQ

Suite 1, Level 1  
 96-98 Lake Street  
 CAIRNS QLD 4870  
 Ph : 07 4031 4766; Fax: 07 4041 4535  
 Email: [edonq@edo.org.au](mailto:edonq@edo.org.au)

### EDO (Qld)

30 Hardgrave Road,  
 WEST END QLD 4101  
 Ph: 07 3211-4466; Fax: 07 3211-4655  
 Email: [edoqld@edo.org.au](mailto:edoqld@edo.org.au)

***To become a member of the Environmental Defenders Office of Northern Queensland, or for more information about factsheets and legal advice, please contact us at [edonq@edo.org.au](mailto:edonq@edo.org.au) or on 07 4031 4766. Our web address is [www.edo.org.au/edonq](http://www.edo.org.au/edonq)***

<sup>93</sup> s.94 (Conservation officers prohibited in dealing with protected wildlife)

<sup>94</sup> s.97 (Restriction on taking etc. of native wildlife in areas of major interest and critical habitats)

<sup>95</sup> s.109 (Compliance with order)