

# ***Animal Care and Protection and Other Legislation Amendment Bill 2012***

## ***Marked up copy of the Acts being amended***

### ***Aboriginal and Torres Strait Islander Communities (Justice Land and Other Matters) Act 1984***

No amendments to sections 1 - 60Y of the Act

#### **61 Right of Aborigines and Torres Strait Islanders to particular natural resources**

- (1) ~~Subject~~ *Subject to the [Animal Care and Protection Act 2001](#) and to sections 62 and 93 of the [Nature Conservation Act 1992](#), but despite the provisions of any other Act, a member of a community of Aborigines or Torres Strait Islanders resident in a community government or IRC area shall not be liable to prosecution as for an offence for taking marine products or fauna by traditional means for consumption, [in the community government or IRC area](#), by members of the community.*
- (2) Subsection (1) shall not be construed to authorise the sale or other disposal for gain of any marine product or fauna taken by traditional means.

No amendments to remainder of the Act

# ***Animal Care and Protection Act 2001***

No amendments to sections 1 - 4 of the Act

## **5 Act binds all persons**

- (1) Subject to sections 6 to & 7, this Act binds all persons, including the State and, to the extent the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) However, the Commonwealth or a State can not be prosecuted for an offence against this Act.

No amendment to section 6 of the Act

## **6A Relationship with Nature Conservation Act 1992**

- (1) This Act does not affect the application of the *Nature Conservation Act 1992* other than as provided under subsection (2).
- (2) This Act applies to an act done, or omission made, by a person for the purposes of either of the following if authorised under the *Nature Conservation Act 1992*—
- (a) taking, keeping or using an animal to exercise Aboriginal tradition or Island custom;
  - (b) using an animal for a scientific purpose.
- (3) A person does not commit an offence under this Act only because the person does an act or makes an omission that—
- (a) is authorised under the *Nature Conservation Act 1992*, other than an act or omission mentioned in subsection (2); and
  - (b) would, apart from this subsection, constitute an offence under this Act.

## **7 Relationship with certain other Acts**

- (1) This Act does not affect the application of—
- (a) the *Fisheries Act 1994*; or
  - ~~(b) the *Nature Conservation Act 1992*; or~~
  - ~~(c) the *Racing Act 2002*.~~
- (2) A person who lawfully does an act, or makes an omission, authorised under an Act mentioned in subsection (1) that would, ~~but for~~ **apart from** this subsection, constitute an offence under this Act, is taken not to commit the offence by reason only of doing the act or making the omission.
- (3) However, subsection (2) does not apply if the act is the use of an animal for a scientific purpose.

## ~~8~~ — ~~Aboriginal tradition and Island custom~~

~~(1) This Act does not apply to or affect an act done, or omission made, by—~~

- ~~(a) an Aborigine under Aboriginal tradition; or~~
- ~~(b) a Torres Strait Islander under Island custom.~~

~~(2) However, if a regulation prescribes conditions for the doing the act, or making the omission, subsection (1) only applies if the conditions have been complied with.~~

~~(3) For the *Statutory Instruments Act 1992*, section 43, a proposed regulation under subsection (2) is taken to be likely to impose appreciable costs on the community or part of the community.~~

## 8 Relationship with native title

A person does not avoid liability to be prosecuted for an offence under this Act only because the act or omission that constitutes the offence happens in the exercise or enjoyment of native title rights and interests.

No amendments to sections 9 - 37 of the Act
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### 38 Operation of pt 6

(1) Sections 40 and ~~41A-42~~ to 47 each provide an exemption (an *offence exemption*) to the offences created under this chapter for a proceeding against a person for the offence.

(2) If an offence exemption applies to a particular act or omission, the person does not commit the offence that would otherwise be committed by the act or omission.

(3) The *Justices Act 1886*, section 76, applies to each exemption.

(4) This part does not limit another provision of this Act that creates an exemption to which the *Justices Act 1886*, section 76, applies.

No amendments to sections 39 - 41 of the Act
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### 41A Killing an animal under Aboriginal tradition, Island custom or native title

(1) This section applies for an offence if the act that constitutes the offence—

- (a) involves the killing of an animal; and
- (b) is done—
  - (i) in the exercise of native title rights and interests; or
  - (ii) under the authority of another law of the State or the Commonwealth to take the animal to exercise Aboriginal tradition or Island custom; or
  - (iii) under the *Aboriginal and Torres Strait Islander*

*Communities (Justice, Land and Other Matters)*  
*Act 1984*, section 61; or  
(iv) under the *Aurukun and Mornington Shire Leases*  
*Act 1978*, section 26.

*Example—*

hunting and killing an animal for personal consumption

(2) It is an offence exemption for the offence if the act is done in a way that causes the animal as little pain as is reasonable.

(3) In this section—

**take**, under the authority of another law, includes take, keep or use under the authority of the *Nature Conservation Act 1992*.

No amendments to remainder of the Act
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## ***Aurukun and Mornington Shire Leases Act 1978***

No amendments to sections 1 - 25 of the Act

### **26 Preservation of Aborigines' hunting and gathering rights**

(1) Subject to the *Nature Conservation Act 1992*, sections 62 and 93, and, for paragraph (a), subject also to the *Animal Care and Protection Act 2001*, but despite the provisions of any other Act, an Aborigine who lawfully resides in the Shire of Aurukun or the Shire of Mornington—

(a) may capture, have in possession, and kill within the shire any specimen of native fauna and consume the same to the extent necessary for the sustenance of the Aborigine and members of the Aborigine's family or household;

(b) may gather, dig and remove forest products, quarry material and similar material within the shire to the extent that the Aborigine requires the same for the Aborigine's domestic use.

(2) An Aborigine must not enter Aboriginal land for a purpose mentioned in subsection (1) unless the Aborigine is entitled or permitted to enter the land under Aboriginal tradition.

No amendments to remainder of the Act

## **Nature Conservation Act 1992**

No amendments to sections 1 - 92 of the Act

### **93 *Aborigines' and Torres Strait Islanders' rights to take etc. protected wildlife***

(1) Despite any other Act, [but subject to the \*Animal Care and Protection Act 2001\*](#), an Aborigine or Torres Strait Islander may take, use or keep protected wildlife under Aboriginal tradition or Island custom.

(2) Subsection (1) applies subject to any provision of a conservation plan that expressly applies to the taking, using or keeping of protected wildlife under Aboriginal tradition or Island custom.

(3) An Aborigine or Torres Strait Islander who takes, uses or keeps protected wildlife in contravention of a provision of a conservation plan that expressly prohibits the taking, using or keeping of protected wildlife under Aboriginal tradition or Island custom commits an offence against this Act.

(4) Subsection (1) does not apply to the taking, using or keeping of protected wildlife in a protected area.

Maximum penalty—3000 penalty units or imprisonment for 2 years.

*Editor's note—*

This provision had not commenced on or before the reprint date.

No amendments to remainder of the Act