New **South Wales**

Threatened Species Conservation Act 1995 No 101

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New South Wales

Threatened Species Conservation Act 1995 No 101

Act No 101, 1995

An Act to conserve threatened species, populations and ecological communities of animals and plants; to amend the *National Parks and Wildlife Act 1974, the Environmental Planning and Assessment Act 1979* and certain other Acts; to repeal the *Endangered Fauna (Interim Protection) Act 1991;* and for other purposes. [Assented to 22 December 1995]

The Legislature of New South Wales enacts:

Part 1 Preliminary

Introductory note

This Part contains provisions that set out the objects of this Act and define terms used in this Act. The Part also contains machinery provisions.

1 Name of Act

This Act is the *Threatened Species Conservation Act 1995*.

2 Commencement

(1) This Act commences on a day or days to be appointed by proclamation, except as provided in this section.

(2) Section 155 (2) commences on the date of assent to this Act.

3 Objects of Act

The objects of this Act are as follows:

(a) to conserve biological diversity and promote ecologically sustainable development, and

(b) to prevent the extinction and promote the recovery of threatened species, populations and ecological communities, and

(c) to protect the critical habitat of those threatened species, populations and ecological communities that are endangered, and

(d) to eliminate or manage certain processes that threaten the survival or evolutionary development of threatened species, populations and ecological communities, and

(e) to ensure that the impact of any action affecting threatened species, populations and ecological communities is properly assessed, and

(f) to encourage the conservation of threatened species, populations and ecological communities by the adoption of measures involving co-operative management.

4 Definitions

(1) In this Act:

Advisory Council means the Biological Diversity Advisory Council established under this Act.

animal means any animal-life that is indigenous to New South Wales or is known to periodically or occasionally migrate to New South Wales, whether vertebrate or invertebrate and in any stage of biological development, but does not include:

(a) humans, or

(b) fish within the meaning of the *Fisheries Management Act 1994*.

biological diversity means the diversity of life and is made up of the following 3 components:

(a) genetic diversity—the variety of genes (or units of heredity) in any population,

(b) species diversity—the variety of species,

(c) ecosystem diversity—the variety of communities or ecosystems.

council has the same meaning as in the *Local Government Act 1993*.

critical habitat means habitat declared to be critical habitat under Part 3.

Director-General means the Director-General of National Parks and Wildlife appointed under the *National Parks and Wildlife Act 1974*.

ecological community means an assemblage of species occupying a particular area.

ecologically sustainable development has the same meaning as under section 6 (2) of the *Protection of the Environment Administration Act 1991*.

endangered ecological community means an ecological community specified in Part 3 of Schedule 1.

endangered population means a population specified in Part 2 of Schedule 1.

endangered species means a species specified in Part 1 of Schedule 1.

endangered species, populations and ecological communities means species, populations and ecological communities specified in Schedule 1 and endangered species, population or ecological community means a species, population or ecological community respectively specified in that Schedule.

exercise a function includes perform a duty.

function includes a power, authority or duty.

habitat means an area or areas occupied, or periodically or occasionally occupied, by a species, population or ecological community and includes any biotic or abiotic component.

harm has the same meaning as in the National Parks and Wildlife Act 1974.

joint management agreement means an agreement entered into under Division 2 of Part 7.

key threatening process means a threatening process specified in Schedule 3.

land includes:

(a) buildings and other structures permanently fixed to land, and

(b) land covered with water, and

(c) the sea or an arm of the sea, and

(d) a bay, inlet, lagoon, lake or body of water, whether inland or not and whether tidal or not, and

(e) a river, stream or watercourse, whether tidal or not.

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

list means a list set out in Schedule 1, 2 or 3 and includes a list in one or more of those Schedules that does not contain any entries.

pick has the same meaning as in the *National Parks and Wildlife Act 1974*.

plant means any plant-life that is indigenous to New South Wales, whether vascular or non-vascular and in any stage of biological development, and includes fungi and lichens, but does not include marine vegetation within the meaning of the *Fisheries Management Act 1994*.

population means a group of organisms, all of the same species, occupying a particular area.

public authority means any public or local authority constituted by or under an Act, a government department, a statutory body representing the Crown, or a State owned corporation, and includes a person exercising any function on behalf of the authority, department, body or corporation and any person prescribed by the regulations to be a public authority.

recovery plan means a plan prepared and approved under Part 4.

region means, for the purposes of the provision in which it is used, a bioregion defined in a national system of bioregionalisation that is determined (by the Director-General by order published in the Gazette) to be appropriate for those purposes. If the bioregion occurs partly within and partly outside New South Wales, the region consists only of so much of the bioregion as occurs within New South Wales.

Scientific Committee means the Scientific Committee constituted under Part 8.

species of animal or plant includes any defined sub-species and taxon below a sub-species and any recognisable variant of a sub-species or taxon.

species impact statement means a statement referred to in Division 2 of Part 6 and includes an environmental impact statement, prepared under the *Environmental Planning and Assessment Act 1979*, that contains a species impact statement.

species presumed extinct means a species specified in Part 4 of Schedule 1.

Strategy means the Biological Diversity Strategy referred to in section 140.

threat abatement plan means a plan prepared and approved under Part 5.

threatened species means a species specified in Part 1 or 4 of Schedule 1 or in Schedule 2.

threatened species, populations and ecological communities means species, populations and ecological communities specified in Schedules 1 and 2 and threatened species, population or ecological community means a species, population or ecological community specified in either of those Schedules.

threatening process means a process that threatens, or may have the capability to threaten, the survival or evolutionary development of species, populations or ecological communities.

vulnerable species means a species specified in Schedule 2.

(2) A reference in this Act to animal-life or plant-life indigenous to New South Wales is a reference to animal-life or plant-life of a species that was established in New South Wales before European settlement.

(3) A reference in this Act to New South Wales includes a reference to the coastal waters of the State.

Note. Coastal wafers of the State is defined in section 58 of the *Interpretation Act 1987.*

5 Notes in text

Introductory notes to Parts and other notes do not form part of this Act.

Part 2 Listing of threatened species, populations and ecological communities and key threatening processes

Introductory note

This Part provides for the identification, and classification, of the species, populations and ecological communities with which this Act is concerned. It also provides for the identification of key threatening processes that are most likely to jeopardise the survival of those species, populations and ecological communities. To this end, this Part provides for the listing:

- in Schedule 1, of endangered species, endangered populations and ecological communities and species that are presumed to be extinct, and
- in Schedule 2, of vulnerable species, and
- in Schedule 3, of key threatening processes.

The initial lists of threatened species, that is, species that are endangered, presumed extinct or vulnerable are contained in this Act on its commencement. Responsibility for inserting lists of endangered populations and endangered ecological communities and threatening processes, and for adding items to, omitting items from or amending items in the lists of threatened species, populations and ecological communities and threatening processes rests with the Scientific Committee.

Division 1 makes provision with respect to Schedules 1–3 that are to contain lists of the species, populations and ecological communities and key threatening processes with which this Act is concerned.

Division 2 deals with eligibility for listing.

Division 3 describes the process by which the items may be added to or omitted from lists and by which items in lists may be amended, and makes provision for public participation in that process.

Division 4 describes the process by which species that are endangered may be listed provisionally in Schedule 1, on an emergency basis, before the formal listing process described in Division 3 has been undertaken or completed, and makes provision for public participation in that process.

Offences relating to the harming of threatened species, populations and ecological communities (being animals) and the picking of threatened species, populations and ecological communities (being plants) are contained in the *National Parks and Wildlife Act 1974.*

Division 1 Lists of threatened species, populations and ecological communities and key threatening processes

6 Schedule 1 List of endangered species, populations and ecological Communities

(1) Part 1 of Schedule 1 contains a list of endangered species for the purposes of this Act.

(2) Part 2 of Schedule 1 contains a list of endangered populations for the purposes of this Act.

(3) Part 3 of Schedule 1 contains a list of endangered ecological communities for the purposes of this Act.

(4) Part 4 of Schedule 1 contains a list of species presumed extinct for the purposes of this Act.

(5) Endangered species or ecological communities listed in Schedule 1 that are also listed in Part 1 of Schedule 1 or in Schedule 2 to the *Endangered Species Protection Act 1992* of the Commonwealth are marked with asterisks to show that they are endangered nationally.

(6) Species presumed extinct listed in Schedule 1 that are also listed in Part 3 of Schedule 1 to the *Endangered Species Protection Act 1992* of the Commonwealth are marked with asterisks to show that they are presumed extinct nationally.

7 Schedule 2 list of vulnerable species

(1) Schedule 2 contains a list of vulnerable species for the purposes of this Act.

(2) Vulnerable species listed in Schedule 2 that are also listed in Part 2 of Schedule 1 to the *Endangered Species Protection Act 1992* of the Commonwealth are marked with an asterisk to show that they are vulnerable nationally.

8 Schedule 3 list of key threatening processes

Schedule 3 contains a list of key threatening processes for the purposes of this Act.

9 Listing of nationally threatened species and ecological communities

(1) As soon as practicable after a species or ecological community that is or was indigenous to New South Wales is inserted in Schedule 1 or 2 to the *Endangered Species Protection Act 1992* of the Commonwealth, the Scientific Committee is to consider whether, in accordance with Divisions 2 and 3, the species or ecological community should be listed as a threatened species or endangered ecological community in Schedule 1 or 2 to this Act.

(2) Any species or ecological community that is inserted in a Schedule pursuant to this section is to be marked with an asterisk to show its national status.

(3) If a threatened species or endangered ecological community is omitted from Schedule 1 or 2 to the *Endangered Species Protection Act 1992* of the Commonwealth:

(a) the Minister is, by order published in the Gazette, to amend Schedule 1 or 2 to this Act to omit the asterisk showing its national status, and

(b) the Scientific Committee is to consider, in accordance with Division 3, whether the species or ecological community should be omitted from Schedule 1 or 2 to this Act.

Division 2 Eligibility for listing

10 Species eligible for listing as endangered species

A species is eligible to be listed as an endangered species if, in the opinion of the Scientific Committee:

(a) it is likely to become extinct in nature in New South Wales unless the circumstances and factors threatening its survival or evolutionary development cease to operate, or

(b) its numbers have been reduced to such a critical level, or its habitats have been so drastically reduced, that it is in immediate danger of extinction, or

(c) it might already be extinct, but is not presumed extinct.

11 Populations eligible for listing as endangered populations

A population is eligible to be listed as an endangered population if, in the opinion of the Scientific Committee, its numbers have been reduced to such a critical level, or its habitat has been so drastically reduced, that it is in immediate danger of extinction and it is not a population of a species already listed in Schedule 1, and:

(a) it is disjunct and at or near the limit of its geographic range, or

(b) it is or is likely to be genetically distinct, or

(c) it is otherwise of significant conservation value.

12 Ecological communities eligible for listing as endangered ecological communities

An ecological community is eligible to be listed as an endangered ecological community if, in the opinion of the Scientific Committee:

(a) it is likely to become extinct in nature in New South Wales unless the circumstances and factors threatening its survival or evolutionary development cease to operate, or

(b) it might already be extinct.

13 Species eligible for listing as species presumed extinct

A species is eligible to be listed as a species that is presumed extinct at a particular time if, to the knowledge of the Scientific Committee, it has not been definitely located in nature during the preceding 50 years despite searching of known and likely habitats during that period.

14 Species eligible for listing as vulnerable species

A species is eligible to be listed as a vulnerable species if, in the opinion of the Scientific Committee, the species is likely to become endangered unless the circumstances and factors threatening its survival or evolutionary development cease to operate.

15 Threatening processes eligible for listing as key threatening processes

A threatening process is eligible to be listed as a key threatening process if, in the opinion of the Scientific Committee, it:

(a) adversely affects 2 or more threatened species, populations or ecological communities, or

(b) could cause species, populations or ecological communities that are not threatened to become threatened.

Division 3 Procedure for listing

16 Operation of Division

(1) This Division sets out the procedure to be adopted for the purposes of inserting matter in, omitting matter from or amending matter in Schedule 1, 2 or 3.

(2) The procedure set out in this Division does not apply to the provisional listing of endangered species, populations or ecological communities, on an emergency basis, by the Scientific Committee under Division 4.

17 Scientific Committee responsible for lists

(1) The Scientific Committee is responsible for determining whether any species, population, ecological community or threatening process should be inserted in or omitted from Schedule 1, 2 or 3 or whether any matter in those Schedules should be amended.

(2) Accordingly, the Scientific Committee must keep the lists in those Schedules under review and must, at least bi-annually, determine whether any changes to the lists are necessary.

18 Who may initiate action for listing

(1) The Scientific Committee may make a determination for the purposes of this Division on its own initiative.

(2) The Scientific Committee may also make a determination:

(a) following a request by the Minister, or

(b) on a nomination, made in accordance with this Division, of any other person.

19 Making nomination for inclusion on, omission from or amendment of list

(1) Any person may nominate any species, population or ecological community for insertion in or omission from Schedule 1 or 2.

(2) Any person may nominate any matter in Schedule 1 or 2 for amendment.

(3) Any person may nominate any threatening process for insertion in or omission from Schedule 3.

(4) Any person may nominate any matter in Schedule 3 for amendment.

(5) A nomination must be in writing addressed to the Chairperson of the Scientific Committee and must include any information prescribed by the regulations.

20 Scientific Committee may request additional information

The Scientific Committee may request a person who makes a nomination to provide additional information about the subject matter of the nomination within a specified period.

21 Consideration of nomination by Scientific Committee

(1) The Scientific Committee is to consider.each nomination as soon as practicable after it is made or, if additional information has been requested, after that information has been provided or the period specified for its provision has expired.

(2) The Scientific Committee may consider different nominations about the same subject together.

(3) The Scientific Committee may reject a nomination if:

(a) the subject of the nomination has already been dealt with, or

(b) the nomination is vexatious, or

(c) the nomination is not accompanied by the information prescribed by the regulations, or

(d) any additional information requested by the Scientific Committee is not provided within the period specified for its provision, or

(e) any additional information provided is inadequate and does not satisfy the Scientific Committee's request.

(4) If the Scientific Committee rejects a nomination, it is to notify the Minister, the Director-General and the person who made the nomination and is to give reasons for the rejection.

(5) A person must not deliberately and wilfully make a vexatious nomination of any species, population or ecological community for insertion in or omission from Schedule 1 or 2.

Maximum penalty: 20 penalty units.

22 Scientific Committee's preliminary determination

(1) The Scientific Committee, after considering a proposal raised on its own initiative or in response to a request from the Minister or a nomination by another person, must make a preliminary determination as to whether the proposal should be supported or not supported.

(2) As soon as possible after making a preliminary determination, the Scientific Committee must:

(a) in a case involving a nomination, notify the person who made the nomination, the Minister and the Director-General, and

(b) in a case of a proposal raised on its own initiative or in response to a request from the Minister, notify the Minister and the Director-General, and

(c) publish notice of its preliminary determination and the reasons for it in a newspaper circulating generally throughout the State and, if the determination is likely to affect a particular area or areas (other than the State as a whole), in a newspaper circulating generally in that area or areas, and

(d) publish notice of the making of the preliminary determination in the Gazette.

(3) The notice must:

(a) state that the preliminary determination has been prepared, and

(b) specify the address of the place at which copies of the determination may be inspected, and

(c) invite persons to make written submissions to the Director-General about the determination, and

(d) specify the address of the place to which submissions about the determination may be forwarded and the date by which submissions must be made.

(4) The notice must specify the date by which and the address of the place to which any person may forward written submissions to the Scientific Committee about a preliminary determination.

(5) The Scientific Committee must consider all written submissions received by it on or before the date specified in the notice, being a date occurring not more than 150 days after the date on which the notice was first published under this section.

23 Scientific Committee's final determination

(1) The Scientific Committee must either accept or reject a proposal for inclusion, or amendment, of matter in or omission of matter from Schedule 1, 2 or 3, and must give reasons for the determination.

(2) In a case involving a nomination, the Scientific Committee must make a determination under this section within 6 months after:

(a) the making of the nomination, or

(b) if additional information has been requested by the Scientific Committee, after that information has been provided or the period specified for its provision has expired.

24 Publication of final determination

On making a final determination, the Scientific Committee must, as soon as practicable:

(a) in a case involving a nomination, notify the person who made the nomination of the determination, and

(b) notify the Minister and the Director-General of the determination, and

(c) publish notice of the determination and the reasons for it in a newspaper circulating generally throughout the State and, if the determination is likely to affect a particular area or areas (other than the State as a whole), in a newspaper circulating generally in that area or areas, and

(d) publish notice of the making of the determination in the Gazette.

25 Revision of Schedule on publication of final determination

On the publication of a final determination in the Gazette that:

(a) a species, population, ecological community or threatening process be inserted in Schedule 1, 2 or 3—the relevant Schedule is amended by inserting the species, population, ecological community or threatening process, or

(b) a species, population, ecological community or threatening process be omitted from Schedule 1, 2 or 3—the relevant, Schedule is amended by omitting the species, population, ecological community or threatening process, or

(c) a species, population, ecological community or threatening process listed in Schedule 1, 2 or 3 be amended—the relevant Schedule is amended by omitting the species, population, ecological community or threatening process that is set out in the Schedule and by inserting instead a description of the species, population, ecological community or threatening process in the manner required by the determination.

Division 4 Procedure for provisional listing of endangered species on emergency basis

26 Operation of Division

This Division sets out the procedure to be adopted for the purposes of enabling matter to be provisionally listed in Schedule 1 on an emergency basis.

Note. Only species that are likely to be endangered may be provisionally listed.

27 Scientific Committee responsible for provisional listing

The Scientific Committee is responsible for determining whether any species should be provisionally listed in Schedule 1 as an endangered species on an emergency basis.

28 Eligibility for provisional listing

A species is eligible to be provisionally listed in Schedule 1 as an endangered species if, in the opinion of the Scientific Committee:

(a) the species:

(i) although not previously known to have existed in New South Wales, is believed on current knowledge to be indigenous to New South Wales, or

(ii) was presumed to be extinct in New South Wales but has been rediscovered, and

(b) the species is not listed in Part 1 of Schedule 1.

29 Who may initiate action for provisional listing

(1) The Scientific Committee may make a determination for the purposes of this Division on its own initiative.

(2) The Scientific Committee may also make a determination:

(a) following a request by the Minister, or

(b) on a nomination, made in accordance with this Division, of any other person.

30 Making nomination for provisional listing

(1) Any person may nominate any species for provisional listing in Schedule 1.

(2) A nomination must be in writing addressed to the Chairperson of the Scientific Committee and must include any information prescribed by the regulations.

31 Scientific Committee may request additional information

The Scientific Committee may request a person who makes a nomination for provisional listing to provide additional information about the subject matter of the nomination within a specified period.

32 Consideration of nomination for provisional listing by Scientific Committee

(1) The Scientific Committee is to consider each nomination as soon as practicable after it is made or, if additional information has been requested, after that information has been provided or the period specified for its provision has expired.

(2) In any event, the Scientific Committee must make a determination about a nomination within 6 months after it is made or, if additional information has been requested, after that information has been provided or the period specified for its provision has expired.

(3) The Scientific Committee may consider different nominations about the same subject together.

(4) The Scientific Committee may reject a nomination if

(a) the subject of the nomination has already been dealt with, or

(b) the nomination is vexatious, or

(c) the nomination is not accompanied by the information prescribed by the regulations, or

(d) any additional information requested by the Scientific Committee is not provided within the period specified for its provision, or

(e) any additional information provided is inadequate and does not satisfy the Scientific Committee's request.

(5) If the Scientific Committee rejects a nomination, it is to notify the Minister, the Director-General and the person who made the nomination and is to give reasons for the rejection.

33 Publication of determination for provisional listing

On making a determination for provisional listing, the Scientific Committee must, as soon as practicable:

(a) in a case involving a nomination, notify the person who made the nomination of the determination, and

(b) notify the Minister and the Director-General of the determination, and

(c) publish notice of the determination and the reasons for it in a newspaper circulating generally throughout the State and, if the determination is likely to affect a particular area or areas (other than the State as a whole), in a newspaper circulating generally in that area or areas, and

(d) publish notice of the making of the determination in the Gazette.

34 Effect of publication of determination for .provisional listing

On the publication of the determination that a species be provisionally listed in Schedule 1, Schedule 1 is taken for all purposes to have been amended by the insertion of the description of the species that is the subject of the determination until such time as the provisional listing ceases to have effect in accordance with this Division.

35 Scientific Committee to review status of provisionally listed species

(1) As soon as practicable after the publication of a determination under this Division, the Scientific Committee must review the status of a provisionally listed species, population or ecological community to determine whether or not the species should be listed as a threatened species.

(2) The requirements of sections 22–25 apply to the review of a provisional listing.

36 Termination of provisional listing

The provisional listing of a species in Schedule 1 ceases to have effect:

(a) if the Scientific Committee makes a final determination in accordance with Division 3 that the species should be listed in Schedule 1 or 2—when that determination is published in the Gazette, or

(b) if the Scientific Committee makes a final determination in accordance with Division 3 that the species should not be listed in Schedule 1 or 2—when the Scientific Committee publishes a notice to that effect in the Gazette, or

(c) within 12 months after the provisional listing,

whichever first occurs.

Part 3 Critical habitat of endangered species, populations and ecological communities

Introductory note

This Part makes the Director-General responsible for identifying (where this is possible) habitat that is critical to the survival of endangered species, populations and ecological communities (that is, those species, populations and ecological communities listed for the time being in Schedule 1) and for recommending to the Minister that the habitat so identified be declared critical habitat. The Director-General must consult with the Scientific Committee before preparing a recommendation and must have regard to any advice given by the Scientific Committee concerning identification of critical habitat of endangered populations and ecological communities.

Division 1 describes the process by which critical habitat is identified by the Director-General and declared by the Minister and makes provision for public participation in that process.

Division 2 deals with the preparation, publication and other dissemination of maps of critical habitat, and the maintenance of a register of critical habitat by the Director-General.

An offence relating to the damaging of critical habitat is contained in the *National Parks and Wildlife Act 1974.* That Act also makes it an offence for a person to damage the habitat of a threatened species, population or ecological community.

Division 1 Identification and declaration of critical habitat

37 Habitat eligible to be declared to be critical habitat

(1) The whole or any part or parts of the area or areas of land comprising the habitat of an endangered species, population or ecological community that is critical to the survival of the species, population or ecological community is eligible to be declared under this Part to be the critical habitat of the species, population or ecological community.

(2) The regulations may provide that a specified habitat, or habitat of a specified kind, may, or may not, be declared to be critical habitat for the purposes of this Part.

38 Director-General responsible for identifying critical habitat

The Director-General is responsible for identifying (where this is possible) the area or areas of land comprising the critical habitat of each endangered species, population and ecological community.

39 Director-General to consult with Scientific Committee

(1) The Director-General must consult with the Scientific Committee before preparing a recommendation for the identification of an area or areas of land comprising critical habitat for the purposes of this Act.

(2) In particular, the Director-General must consult with the Scientific Committee concerning the identification of the area or areas of land comprising the critical habitat of endangered populations and endangered ecological communities and must have regard to its advice in preparing any recommendation for that purpose.

40 Preparation of recommendation for identification of critical habitat

(1) After considering the Scientific Committee's advice, the Director-General must, if the Director-General considers that it is possible to identify the critical habitat of a species, population or ecological community, prepare a recommendation for identification of the area or areas of land comprising the critical habitat of that species, population or ecological community.

(2) In so doing, the Director-General must consider the likely social and economic consequences of the making of the recommendation in the manner proposed.

41 Publication of recommendation

(1) After preparing a recommendation for identification of the area or areas of land comprising the critical habitat of a species, population or ecological community, the Director-General must:

(a) give a copy of it to the Scientific Committee, and

(b) give notice of the recommendation to all persons known by the Director-General, following the making of reasonable searches and inquiries, to be affected by the recommendation, being:

(i) landholders (including public authorities who are landholders), and

(ii) other public authorities known to the Director-General to exercise relevant functions in relation to the land, and

(iii) if the land is subject to a mortgage, charge or positive covenant—the mortgagee, chargee or person entitled to the benefit of the covenant, and

(iv) holders of leases and other interests granted by the Crown, and

(c) publish notice of the recommendation in a newspaper circulating generally throughout the State and, if the recommendation is likely to affect a particular area or areas (other than the State as a whole), in a newspaper circulating generally in that area or areas, and

(d) publish notice of the recommendation in the Gazette.

(2) The notice must:

(a) state that the recommendation has been prepared, and

(b) specify the address of the place at which copies of the recommendation may be inspected, and

(c) invite persons to make written submissions to the Director-General about the recommendation, and

(d) specify the address of the place to which submissions about the recommendation may be forwarded and the date by which submissions must be made.

42 Consideration of Submissions by Director-General

(1) The Director-General must consider all written submissions received by the Director-General on or before the date specified in the notice.

(2) The Director-General may amend the recommendation to take account of any of those submissions or any advice given by the Scientific Committee.

43 Director-General to refer recommendation to Minister

After considering the submissions and making amendments (if any) to the recommendation, the Director-General:

(a) must forward the recommendation, identifying the area or areas of land comprising the critical habitat of the species, population or ecological community concerned, to the Minister, and

(b) must also provide the Minister with a summary of any advice given by the Scientific Committee concerning the matter and of all submissions received about the recommendation, and details of any amendments made to the recommendation by the Director-General to take account of that advice or those submissions.

44 Consideration of recommendation by Minister

(1) On receiving a recommendation from the Director-General, the Minister must consider the recommendation and have regard to the following:

(a) the likely social and economic consequences of a declaration of critical habitat in the manner indicated in the recommendation,

(b) without limiting paragraph (a), the likely consequences of a declaration of critical habitat in the manner indicated in the recommendation for landholders of, or other persons having an interest in, or on lawful uses of, the land,

(c) the advice of the Scientific Committee concerning the matter,

(d) any submissions made about the recommendation and, in particular, any submissions received from public authorities exercising relevant functions in relation to the land.

(2) In so doing, the Minister must also consider whether, consistent with the principles of ecologically sustainable development, the recommendation might be amended to avoid or lessen any adverse consequences of the making of a declaration of critical habitat.

45 Consultation between Ministers

If a submission from a public authority indicates that a recommendation is likely to affect the exercise of functions by the public authority, the Minister is to consult with the responsible Minister for the public authority concerning the recommendation before making a decision about the recommendation.

46 Minister may return recommendation to Director-General for amendment

(1) If the Minister thinks that a recommendation should be amended in some respect, the Minister may request the Director-General to amend the recommendation.

(2) On receiving such a request, the Director-General must:

(a) amend the recommendation in the manner requested by the Minister, and

(b) return the recommendation, as so amended, to the Minister.

47 Declaration of critical habitat by Minister

(1) The Minister may:

(a) approve a recommendation, without amendment or with any amendments that the Minister considers appropriate, or

(b) refuse a recommendation (on the basis of one or more of the factors referred to in section 44 (1) or otherwise), or

(c) refer it back to the Director-General for further consideration.

(2) Despite the other provisions of this Division, the Minister must approve or refuse a recommendation within 6 months after the date specified in the notice referred to in section 41 (2) as the date by which submissions about the recommendation must be made.

(3) If the Minister approves of a recommendation, with or without amendments, the Minister may, by notification published in the Gazette, declare the area or areas of land identified in the recommendation (with any appropriate amendment) and described in the notification to be the critical habitat of the endangered species, population or ecological community concerned.

(4) Section 53 (2) applies to the publication of a map of the critical habitat.

48 Publication of declaration of critical habitat

As soon as practicable after the declaration of critical habitat by the Minister, the Director-General must:

(a) give notice of the declaration to all persons known by the Director-General, following the making of reasonable searches and inquiries, to be affected by the declaration, being:

(i) landholders (including public authorities who are landholders), and

(ii) other public authorities known by the Director-General to exercise relevant functions in relation to the land, and

(iii) if the land is subject to a mortgage, charge or positive covenant—the mortgagee, chargee or person entitled to the benefit of the covenant, and

(b) publish notice of the declaration in a newspaper circulating generally throughout the State and, if the declaration is likely to affect a particular area or areas (other than the State as a whole), in a newspaper circulating generally in that area or areas, and

(c) publish notice of the declaration in the Gazette.

49 Amendment or revocation of declaration of critical habitat

(1) The Minister may amend or revoke a declaration of critical habitat by a further notification published in the Gazette. However, the Minister must not amend or revoke a declaration unless the Minister has obtained from, and considered, the advice of the Director-General.

(2) Before providing advice about a proposed amendment or revocation, the Director-General must:

(a) consult the Scientific Committee concerning the proposed amendment or revocation and have regard to its advice, and

(b) give and publish notice of the proposed amendment or revocation as if it were a recommendation referred to in section 41, and consider all written submissions concerning the proposed amendment or revocation that are received on or before the date specified in the notice.

(3) If a declaration is amended or revoked by the Minister, the Director-General must:

(a) give notice of the amendment or revocation to:

(i) those persons who were given notice of the making of the declaration and who retain the requisite interest in the land, and

(ii) any other person known by the Director-General, following the making of reasonable searches and inquiries, to have become a landholder, public authority exercising relevant functions in relation to the land, mortgagee, chargee or person entitled to the benefit of a positive covenant in the land after notice of the making of the declaration was given, and

(b) publish notice of the amendment or revocation in the Gazette.

(4) A notice under subsection (3) must give the reasons for the amendment or revocation of the declaration.

50 Public authorities to have regard to critical habitat

A public authority must, on and after publication of a declaration of critical habitat (whether or not a map of the critical habitat is published at the same time), have regard to the existence of critical habitat:

(a) in relation to use of land that it owns or controls that is within or contains critical habitat, or

(b) in exercising its functions in relation to land that is within or contains critical habitat.

51 Regulations may prohibit certain actions on critical habitat

The regulations may prohibit or regulate, for the purposes of this Act, the carrying out of specified actions, or actions of a specified class or description, on specified critical habitat.

52 Effect of failure to comply with procedural requirements

A declaration of critical habitat is not open to challenge because of a failure to comply with the procedural requirements of this Division after the declaration has been published in the Gazette.

Division 2 Maps and register of critical habitat

53 Map of critical habitat to be prepared and published

(1) On or as soon as practicable after the publication of a declaration, or an amendment of a declaration, of critical habitat, the Director-General must arrange for the preparation of a map that shows the location of the critical habitat as so declared or amended.

(2) A copy of the map is to be published in the Gazette on the publication of the declaration of the critical habitat.

54 Maps of critical habitat to be served

The Director-General must serve a copy of a map of critical habitat on the following:

(a) the Director-General of the Department of Land and Water Conservation,

(b) the Director of Planning,

(c) each council within whose area the whole or part of the critical habitat is located,

(d) landholders of land on which critical habitat is located (including public authorities who are landholders),

(e) holders of leases and other interests granted by the Crown,

(f) other public authorities known by the Director-General to exercise relevant functions in relation to the land.

55 Director-General to keep register of critical habitat

(1) The Director-General must keep a register containing copies of declarations of critical habitat as in force from time to time, and maps of the critical habitat that are published in the Gazette, and must make that register available to public authorities.

(2) The register is to be open for public inspection, without charge, during ordinary business hours, and copies of or extracts from the register are to be made available to the public on request, on payment of the fee fixed by the Director-General.

Part 4 Recovery plans for threatened species, populations and ecological communities

Introductory note

This Part is the first of 4 Parts that address responses to threats to the survival of threatened species, populations and ecological communities, and their habitats. This Part deals with recovery plans for threatened species, populations and ecological communities and makes further provision as to the protection of their critical habitats (if any).

The Director-General must prepare recovery plans for endangered species (other than species presumed extinct), populations and ecological communities and for vulnerable species. The object of a recovery plan is to promote the recovery of the threatened species, population or ecological community to which it relates to a position of viability in nature. If critical habitat has been declared for the species, population or ecological community, the plan must include reference to that fact.

Division 1 deals with the preparation, contents, publication and adoption of recovery plans.

Division 2 deals with the implementation of recovery plans, and includes procedures for public authorities to report on their implementation of, or on proposed departures from, measures specified to be taken in recovery plans.

In accordance with the *Environmental Planning and Assessment Act 1979,* the terms of recovery plans are to be taken into account by consent authorities and determining authorities (within the meaning of that Act) when they are considering development applications under Part 4, or the carrying out, or applications for approval for the carrying out, of activities under Part 5, of that Act.

Division 1 Preparation of recovery plans

56 Director-General to prepare recovery plans

(1) The Director-General is required to prepare a recovery plan for each endangered species (other than a species presumed extinct), population and ecological community, as soon as practicable after it is listed in Schedule 1, to promote the recovery of the species, population or ecological community to a position of viability in nature.

(2) The Director-General must also prepare recovery plans for vulnerable species.

(3) A recovery plan under this Act 'must be prepared within the same time limits as a recovery plan (within the meaning of the *Endangered Species Protection Act 1992* of the Commonwealth) must be prepared under that Act.

59 Guidelines for recovery plans

(1) The Director-General must, in preparing a recovery plan and in deciding which measures to include in it, have regard to the following:

(a) the objects of this Act,

(b) the likely social and economic consequences of the making of the plan,

(c) the most efficient and effective use of available resources for the conservation of threatened species, populations and ecological communities,

(d) the minimising of any significant adverse social and economic consequences.

(2) The Director-General is to consider, when preparing a recovery plan, any measures by which the public may co-operate in the conservation of a threatened species, population or ecological community.

58 Priorities for recovery plans

(1) The Director-General must, after consulting with the Scientific Committee, determine priorities in the preparation of recovery plans.

(2) The highest priority is to be given to the preparation of recovery plans for species, populations and ecological communities that are identified by asterisks in Schedule 1 as being endangered nationally.

(3) After complying with subsection (2), priorities in the preparation of recovery plans are to be determined in accordance with the following criteria and any other criteria that the Director-General, after consultation with the Scientific Committee, considers relevant:

(a) likelihood of extinction—whether the species, population or ecological community has a greater likelihood of extinction than other species, populations or ecological communities,

(b) likelihood of recovery—whether the species, population or ecological community is more likely to recover, if it is the subject of a recovery plan, than other species, populations or ecological communities,

(c) keystone species—whether many other species are dependant for survival on the species,

(d) indicator species—whether the relative abundance of the species is a measure of the overall health of its ecosystem.

59 Contents of recovery plans

A recovery plan must:

(a) identify the threatened species, population or ecological community to which it applies, and

(b) identify any critical habitat declared in relation to the threatened species, population or ecological community, and

(c) identify any threatening process or processes threatening the threatened species, population or ecological community, and

(d) identify methods by which adverse social and economic consequences of the making of the plan can be minimised, and

(e) state what must be done to ensure the recovery of the threatened species, population or ecological community, and

(f) state what must be done to protect the critical habitat (if any) identified in the plan, and

(g) state, with reference to the objects of this Act:

(i) the way in which those objects are to be implemented or promoted for the benefit of the threatened species, population or ecological community, and

(ii) the method by which progress towards achieving those objects is to be assessed, and

(h) identify the persons or public authorities who are responsible for the implementation of the measures included in the plan, and

(i) state the date by which the recovery plan should be subject to review by the Director-General.

60 Consultation between Ministers

(1) The Minister must, if the Director-General informs the Minister that the Director-General considers that a public authority should be responsible for the implementation of a measure to be included in a recovery plan, consult with the Minister responsible for the public authority before completing the preparation of the draft recovery plan.

(2) A measure must not be included in a recovery plan for implementation by a public authority unless the Minister responsible for the public authority approves of the inclusion of the measure.

61 Publication of draft recovery plan

(1) As soon as practicable after preparing a draft recovery plan, the Director-General must:

(a) give a copy of the draft recovery plan to the Scientific Committee, and

(b) give notice of the preparation of the draft recovery plan to any public authority that the Director-General knows is likely to be affected by the recovery plan, and

(c) publish notice of the preparation of the draft recovery plan in a newspaper circulating generally throughout the State and, if the recovery plan is likely to affect a particular area or areas (other than the State as a whole), in a newspaper circulating generally in that area or areas, and

(d) publish notice of the preparation of the draft recovery plan in the Gazette.

(2) The notice must:

(a) state that the draft recovery plan has been prepared, and

(b) specify the address of the place at which copies of the draft recovery plan may be inspected, and

(c) invite persons to make written submissions to the Director-General about the draft recovery plan, and

(d) specify the address of the place to which submissions about the draft recovery plan may be forwarded and the date by which submissions must be made.

62 Consideration of submissions by Director-General

(1) The Director-General must consider all written submissions received by the Director-General on or before the date specified in the notice.

(2) The Director-General may amend the draft recovery plan to take account of those submissions or any advice given by the Scientific Committee.

63 Director-General to refer draft recovery plan to Minister

After considering the submissions and making amendments (if any) to the draft recovery plan, the Director-General must:

(a) forward the draft recovery plan to the Minister, and

(b) provide the Minister with a summary of any advice given by the Scientific Committee and of all submissions received about the draft recovery plan, and details of any amendments made to the draft recovery plan by the Director-General to take account of that advice or those submissions.

64 Minister may return draft recovery plan to Director-General for amendment

(1) If the Minister thinks that a draft recovery plan should be amended in some respect, the Minister may request the Director-General to amend the plan.

(2) On receiving such a request, the Director-General must:

(a) amend the proposal in the manner requested by the Minister, and

(b) return the plan, as so amended, to the Minister.

65 Approval of recovery plan by Minister

(1) In considering whether to approve or to refuse to approve a draft recovery plan, the Minister must have regard to the likely social and economic consequences of the approval of the plan.

(2) The Minister may:

(a) approve a draft recovery plan without amendment or with any amendments that the Minister considers appropriate, or

(b) refuse to approve the plan (on the basis of the likely social or economic consequences of the plan or otherwise), or

(c) refer it back to the Director-General for further consideration.

66 Reasons for departure from draft recovery plan to be stated

If a recovery plan approved by the Minister is not in the form of' the draft recovery plan submitted to the Minister by the Director-General, the recovery plan approved must state the reasons for any departures from the draft plan.

67 Recovery plans to be published

(1) As soon as practicable after the Minister approves a draft recovery plan, the Director-General must:

(a) give a copy of the recovery plan to the Scientific Committee, and

(b) publish notice of the approval of the plan in a newspaper circulating generally throughout the State and, if the recovery plan is likely to affect a particular area or areas (other than the State as a whole), in a newspaper circulating generally in that area or areas, and

(c) notify any public authority likely to be affected by the plan, and

(d) publish notice of the approval of the plan in the Gazette.

(2) The Director-General must also make a copy of the recovery plan available for public inspection, without charge, during business hours and copies of or extracts from the recovery plan are to be made available to the public on request, on payment of the fee fixed by the Director-General.

68 Review of recovery plans

(1) The Director-General is required to keep each recovery plan under review and, if a date by which a plan is to be reviewed is stated in it, is to review the plan by that date.

(2) The Director-General is also to consider any submissions about recovery plans received from public authorities or the public.

(3) If the Director-General considers that any change (other than a minor change) should be made to a recovery plan, the Director-General is to prepare a new plan in accordance with this Part.

Division 2 Implementation of recovery plans

69 Ministers and public authorities to implement recovery plans

(1) Ministers and public authorities (including the Director-General) are to take anyappropriate action available to them to implement those measures included in a recovery plan for which they are responsible and must not make decisions that are inconsistent with the provisions of a recovery plan.

(2) If the implementation of a recovery plan affects a statutory discretion of a Minister or public authority, this section does not operate to exclude the discretion, but the Minister or authority must take the recovery plan into account.

(3) This section does not operate to require or authorise any action by a Minister or public authority that is inconsistent with any statutory or other legal obligation of the Minister or public authority.

70 Public authorities to report on implementation of recovery plans

(1) A public authority (including the Director-General but not including a council) identified in a recovery plan as responsible for the implementation of measures included in the plan must report on action taken by it to implement those measures in its annual report to Parliament.

(2) A council identified in a recovery plan as responsible for the implementation of measures included in the plan must report on action taken by it to implement those measures in its annual report as to the state of the environment of its area.

71 Notification of proposed departures from recovery plan

(1) A public authority must not exercise a function in a manner that is inconsistent with the implementation of measures included in a recovery plan unless:

(a) in the case of a public authority other than the Director-General—it has given written notice of the proposed exercise of the function to the Director-General, or

(b) in the case of the Director-General—the Director-General has given written notice of the proposed exercise of the function to the Minister.

(2) The Director-General must comply with any directions given by the Minister concerning a proposed departure from a recovery plan.

(3) This section does not apply in relation to anything authorised to be done by or under the *Bush Fires Act 1949* or the *State Emergency and Rescue Management Act 1989* that is reasonably necessary in order to avoid a threat to life or property.

72 Consultations with Director-General concerning proposed departures

(1) The Director-General must, on receiving notice of a proposed departure from a recovery plan from a public authority, determine whether exercise of the function in the manner proposed is acceptable or whether it is likely to jeopardise the effective implementation of the plan.

(2) If the Director-General considers that the departure is acceptable, the Director-General must notify the public authority accordingly.

(3) If the Director-General considers that the departure is unacceptable because it is likely to jeopardise the effective implementation of the recovery plan, the Director-General must consult with the public authority in an endeavour to resolve the matter by modification of the action proposed or by other mutually acceptable means.

73 Reference of proposed departures to Ministers and Premier

(1) A matter that has not been resolved after consultation between the Director-General and the public authority concerned must be referred by the parties to their respective Ministers.

(2) In the case of a council, the reference is to the Minister administering the *Local Government Act 1993* unless the matter relates, in whole or in part, to the exercise of functions under the *Environmental Planning and Assessment Act 1979*. In that event, the reference is to be to the Minister administering the *Environmental Planning and Assessment Act 1979*.

(3) The Ministers, on receiving a reference, are to consult in an endeavour to resolve the matter by means that the Ministers consider to be appropriate.

(4) If the Ministers are unable to resolve the matter after consultation, it is to be referred to the Premier for resolution.

(5) A public authority (including the Director-General) must give effect to any decision of, or directions made or given by, the Premier on the matter and is, despite the requirements of any other Act or law, empowered to comply with any such decision or directions.

Part 5 Threat abatement plans to manage key threatening processes

Introductory note

Part 2 provides for the identification of key threatening processes by the Scientific Committee. This Part deals with the preparation and implementation of threat abatement plans to manage key threatening processes with a view to their abatement, amelioration or elimination.

Division 1 deals with the preparation, contents, publication and adoption of threat abatement plans.

Division 2 deals with the implementation of threat abatement plans, and includes procedures for public authorities to report on their implementation of, or on proposed departures from, measures specified to be taken in threat abatement plans.

In accordance with the *Environmental Planning and Assessment Act 1979,* the terms of threat abatement plans are to be taken into account by consent authorities and determining authorities (within the meaning of that Act) when they are considering development applications under Part 4, or the carrying out, or applications for approval for the carrying out, of activities under Part 5, of that Act.

Division 1 Preparation of threat abatement plans

74 Director-General may prepare threat abatement plans

(1) The Director-General must prepare a threat abatement plan for each key threatening process to manage the threatening process so as to abate, ameliorate or eliminate its adverse effects on threatened species, populations or ecological communities.

(2) A threat abatement plan under this Act must be prepared within the same time limits as a threat abatement plan (within the meaning of the *Endangered Species Protection Act 1992* of the Commonwealth) must be prepared under that Act.

75 Guidelines for threat abatement plans

(1) The Director-General must, in preparing threat abatement plans and in deciding which measures to include in those plans, have regard to the following:

(a) the objects of this Act,

(b) the likely social and economic consequences of the making of the plan,

(c) the most efficient and effective use of available resources for the conservation of threatened species, populations and ecological communities,

(d) the desirability of minimising any significant adverse social and economic consequences.

(2) The Director-General is to consider, when preparing a threat abatement plan, any measures by which the public may co-operate in the abatement, amelioration or elimination of the adverse effects of key threatening processes on the prospects of survival of threatened species, populations or ecological communities and their recovery to a position of viability in nature.

76 Priorities for threat abatement plans

The Director-General must, after consulting with the Scientific Committee, determine priorities in the preparation of threat abatement plans.

77 Contents of threat abatement plans

A threat abatement plan must:

(a) state the criteria for assessing the achievement of the objective, and

(b) identify the actions needed to abate, ameliorate or eliminate the effects of the key threatening process, and

(c) identify the persons or public authorities who are responsible for the implementation of the measures included in the plan, and

(d) where practicable, provide a proposed timetable for the implementation of the plan, and

(e) state the estimated cost of the measures included in the plan, and

(f) state the date by which the plan should be subject to review by the Director-General, and

(g) include any other matter relating to the impact of the plan as the Director-General considers appropriate.

78 Consultation between Ministers

(1) The Minister must, if the Director-General informs the Minister that the Director-General considers that a public authority should be responsible for the implementation of a measure to be included in a threat abatement plan, consult with the Minister responsible for the public authority before completing the preparation of the draft threat abatement plan.

(2) A measure must not be included in a threat abatement plan for implementation by a public authority unless the Minister responsible for the public authority approves of the inclusion of the measure.

79 Publication of draft threat abatement plan

(1) As soon as practicable after preparing a draft threat abatement plan, the Director-General must:

(a) give a copy of the draft threat abatement plan to the Scientific Committee, and

(b) give notice of the preparation of the draft threat abatement plan to any public authority that the Director-General knows is likely to be affected by the threat abatement plan, and

(c) publish notice of the preparation of the draft threat abatement plan in a newspaper circulating generally throughout the State and, if the threat abatement plan is likely to affect a particular area or areas (other than the State as a whole), in a newspaper circulating generally in that area or areas, and

(d) publish notice of the preparation of the draft threat abatement plan in the Gazette.

(2) The notice must:

(a) state that the draft threat abatement plan has been prepared, and

(b) specify the address of the place at which copies of the draft threat abatement plan may be inspected, and

(c) invite persons to make written submissions to the Director-General about the draft threat abatement plan, and

(d) specify the address of the place to which submissions about the draft threat abatement plan may be forwarded and the date by which submissions must be made.

80 Consideration of submissions by Director-General

(1) The Director-General must consider all written submissions received by the Director-General on or before the date specified in the notice.

(2) The Director-General may amend the draft threat abatement plan to take into account any of those submissions or any advice given by the Scientific Committee.

81 Director-General to refer draft threat abatement plan to Minister

After considering the submissions and making amendments (if any) to the draft threat abatement plan, the Director-General must:

(a) forward the draft threat abatement plan to the Minister, and

(b) provide the Minister with a summary of any advice given by the Scientific Committee and of all submissions received about the draft threat abatement plan, and details of any amendments made to the draft threat abatement plan by the Director-General to take account of that advice or those submissions.

82 Minister may return draft threat abatement plan to Director-General for amendment

(1) If the Minister thinks that a draft threat abatement plan should be amended in some respect, the Minister may request the Director-General to amend the plan.

(2) On receiving such a request, the Director-General must:

(a) amend the plan in the manner requested by the Minister, and

(b) return the plan, as so amended, to the Minister.

83 Approval of threat abatement plan by Minister

(1) In considering whether to approve or to refuse to approve a draft threat abatement plan, the Minister must have regard to the likely social and economic consequences of the approval of the plan.

(2) The Minister may:

(a) approve a threat abatement plan without amendment or with any amendments that the Minister considers appropriate, or

(b) refuse to approve the plan (on the basis of the likely social or economic consequences of the plan or otherwise), or

(c) refer it back to the Director-General for further consideration.

84 Threat abatement plans to be published

(1) As soon as practicable after the Minister approves a threat abatement plan, the Director-General must:

(a) give a copy of the threat abatement plan to the Scientific Committee, and

(b) publish notice of the approval of the plan in a newspaper circulating generally throughout the State and, if the threat abatement plan is likely to affect a particular area or areas (other than the State as a whole), in a newspaper circulating generally in that area or areas, and

(c) notify any public authority that the Director-General knows is likely to be affected by the plan, and

(d) publish notice of the approval of the plan in the Gazette.

(2) The Director-General must also make a copy of the threat abatement plan available for public inspection, without charge, during ordinary business hours and copies of or extracts from the threat abatement plan are to be made available to the public on request, on payment of the fee fixed by the Director-General.

85 Review of threat abatement plans

(1) The Director-General is required to keep each threat abatement plan under review and, if a date by which a plan is to be reviewed is stated in it, is to review the plan by that date.

(2) The Director-General is also to consider any submissions about threat abatement plans received from public authorities or the public.

(3) If the Director-General considers that any change (other than a minor change) should be made to a threat abatement plan, the Director-General is to prepare a new plan in accordance with this Part.

Division 2 Implementation of threat abatement plans

86 Ministers and public authorities to implement threat abatement plans

(1) Ministers and public authorities (including the Director-General) are to take any appropriate action available to them to implement those measures included in a threat abatement plan for which they are responsible and must not make decisions that are inconsistent with the provisions of a threat abatement plan.

(2) If the implementation of a threat abatement plan affects a statutory discretion of a Minister or public authority, this section does not operate to exclude the discretion, but the Minister or authority must take the plan into account.

(3) This section does not operate to require or authorise any action by a Minister or public authority that is inconsistent with any statutory or other legal obligation of the Minister or public authority.

87 Public authorities to report on implementation of threat abatement plans

(1) A public authority (including the Director-General but not including a council) identified in a threat abatement plan as responsible for the implementation of measures included in the plan must report on action taken by it to implement those measures in its annual report to Parliament.

(2) A council identified in a threat abatement plan as responsible for the implementation of measures included in the plan must report on action taken by it to implement those measures in its annual report as to the state of the environment of its area.

88 Notification of proposed departures from threat abatement plan

(1) A public authority must not exercise a function in a manner that is inconsistent with the implementation of measures included in a threat abatement plan unless:

(a) in the case of a public authority other than the Director-General—it has given written notice of the proposed exercise of the function to the Director-General, or

(b) in the case of the Director-General-the Director-General has given written notice of the proposed exercise of the function to the Minister.

(2) The Director-General must comply with any directions given by the Minister concerning a proposed departure from a threat abatement plan.

(3) This section does not apply in relation to anything authorised to be done by or under the *Bush Fires Act 1949* or the *State Emergency and Rescue Management Act 1989* that is reasonably necessary in order to avoid a threat to life or property.

89 Consultations with Director-General concerning proposed departures

(1) The Director-General must, on receiving notice of a proposed departure from a threat abatement plan from a public authority, determine whether exercise of the function in the manner proposed is acceptable or whether it is likely to jeopardise the effective implementation of the plan.

(2) If the Director-General considers that the departure is acceptable, the Director-General must notify the public authority accordingly.

(3) If the Director-General considers that the departure is unacceptable because it is likely to jeopardise the effective implementation of the threat abatement plan, the Director-General must consult with the public authority in an endeavour to resolve the matter by modification of the action proposed or by other mutually acceptable means.

90 Reference of proposed departures to Ministers and Premier

(1) A matter that has not been resolved after consultation between the Director-General and the public authority concerned must be referred by the parties to their respective Ministers.

(2) In the case of a council, the reference is to the Minister administering the *Local Government Act 1993* unless the matter relates, in whole or in part, to the exercise of functions under the *Environmental Planning and Assessment Act 1979*. In that event, the reference is to be to the Minister administering the *Environmental Planning and Assessment Act 1979*.

(3) The Ministers, on receiving a reference, are to consult in an endeavour to resolve the matter by means that the Ministers consider to be appropriate.

(4) If the Ministers are unable to resolve the matter after consultation, it is to be referred to the Premier for resolution.

(5) A public authority (including the Director-General) must give effect to any decision of, or directions made or given by, the Premier on the matter and is, despite the requirements of any other Act or law, empowered to comply with any such decision or directions.

Part 6 Licensing

Introductory note

This Part deals with the licensing by the Director-General of actions that are likely:

- to harm threatened species, populations or ecological communities (in so far as animals are concerned) or to result in the picking of threatened species, populations or ecological communities (in so far as plants are concerned), or
- to damage critical habitat or other habitat of those species, populations or ecological communities.

Harm and pick are defined in the *National Parks and Wildlife Act 1974.*

A person does not commit an offence under Part 8A of the *National Parks and Wildlife Act 1974* of harming or picking threatened species, populations or ecological communities or damaging a critical habitat or the habitat of threatened species, populations or ecological communities if the action taken by the person is essential for the carrying out of:

(a) development in accordance with a development consent within the meaning of the *Environmental Planning and Assessment Act 1979,* or

(b) an activity, whether by a determining authority or pursuant to an approval of a determining authority, within the meaning of Part 5 of that Act if the determining authority has complied with that Part.

Accordingly, a licence under this Act is not required for the taking of action that is so authorised under the *Environmental Planning and Assessment Act 1979.* However, the same tests are applied (with the involvement of the Minister administering this Act or the Director-General of National Parks and Wildlife) to assess the consequences of a development or an activity under that Act before a decision is made concerning it as are applied by the Director-General in determining whether a licence should be granted under this Part.

The Part also contains provisions about species impact statements. These statements are employed to measure the significance of the effect of actions on threatened species, populations or ecological communities, or their habitats, A species impact statement must be lodged with an application for a licence under this Part if the Director-General determines that the action proposed is likely to significantly affect threatened species, populations or ecological communities, or their habitats. A similar requirement applies when a development application is lodged, or an activity proposed, under the *Environmental Planning and Assessment Act 1979* over critical habitat or that is likely to significantly affect threatened species, populations or ecological communities, or their habitats.

Division 1 deals with the grant of licences, including the making of applications, fees, determinations as to whether actions proposed will significantly affect threatened species, populations or ecological

communities, publication of applications and the making of submissions concerning them, and matters that the Director-General must take into account before granting licences and appeals.

Division 2 deals with the form and content of species impact statements and the notification of the Director-General's requirements as to their preparation. It also makes provision for the accreditation of persons to prepare assessments of species impact statements.

Division 1 Grant of licences

91 Licence to harm or pick threatened species, population or ecological communities or damage habitat

(1) The Director-General may grant a licence authorising a person to take action that is likely to result in one or more of the following:

(a) harm to a threatened species, population or ecological community (so far as animals are concerned),

(b) picking of a threatened species, population or ecological community (so far as plants are concerned),

(c) damage to a critical habitat,

(d) damage to a habitat of a threatened species, population or ecological community.

(2) A general licence under section 120 of the *National Parks and Wildlife Act 1974* may only be issued for a purpose referred to in subsection (1):

(a) for scientific purposes, or

(b) for the welfare of an animal, or

(c) if there is a threat to life or property.

(3) Despite subsection (1), a licence under this Part is not required for the carrying out of routine agricultural activities unless the actions are, or are of a class of actions, that the regulations prescribe may be carried out only under the authority of a licence under this Part.

(4) The Minister must not recommend the making of a regulation that identifies actions, or actions of a class of actions, that may be carried out only under the authority of a licence under this Part

unless the Minister certifies that the Director-General has consulted with the Director-General of the Department of Agriculture concerning the making of the regulation.

(5) The Director-General may, for the purposes of this Act, approve of a property management plan for land prepared by a landholder. Any action identified in, and carried out in accordance with, a property management plan so approved by the Director-General does not require a licence under this Part even if the action is, or is of a class of actions, that may, in accordance with the regulations, be carried out only under the authority of a licence under this Part.

(6) It is a defence to a prosecution for an offence under Part 8A of the *National Parks and Wildlife Act 1974* if the accused proves that the action constituting the alleged offence:

(a) was a routine agricultural activity, or

(b) is identified in, and carried out in accordance with, a property management plan approved by the Director-General for the purposes of this Act.

92 Application for licence

(1) An application for a licence must be in a form approved, and be accompanied by an application fee of the amount prescribed, by the Director-General.

(2) If the action proposed to be taken under the authority of the licence is on land that is critical habitat, the application must be accompanied by a species impact statement prepared in accordance with Division 2.

(3) If the action proposed is not on land that is critical habitat, the application must include the following:

(a) details of the types, and condition, of habitats in and adjacent to the land to be affected by the action,

(b) particulars of any known records of a threatened species in the same or similar known habitats in the locality,

(c) details of any known or potential habitat for a threatened species on the land to be affected by the action,

(d) details of the amount of such habitat to be affected by the action proposed in relation to the known distribution of the species and its habitat in the locality and region,

(e) an assessment of the likely nature and intensity of the effect of the action on the life cycle and habitat of the species,

(f) details of possible measures to avoid or ameliorate the effect of the action.

(4) An applicant may lodge a species impact statement with an application even if the action proposed is not on land that is critical habitat. In that event, the application need not include the information referred to in subsection (3).

93 Payment of licence processing fee

(1) The Director-General is to levy a processing fee, being not more than the costs (including on-costs) incurred by the National Parks and Wildlife Service in the assessment and processing of a licence application (whether or not the application is successful).

(2) The fee is recoverable by the Director-General as a debt due to the Crown in a court of competent jurisdiction.

(3) The Director-General may, before dealing with an application, require the applicant to pay an amount not exceeding one-half of the estimated processing fee.

(4) The Director-General may reduce the amount of a processing fee levied for any licence application having regard to the following:

(a) the extent of scientific examination necessary for the processing of the application,

(b) the adequacy of any species impact statement or environmental impact statement that includes a species impact component supplied by the applicant,

(c) the capacity of the applicant or persons with whom the applicant is associated to meet the fee levied,

(d) whether and to what extent the activity sought to be licensed may confer a commercial benefit on the applicant if the licence is granted.

(5) Before a prospective applicant for a licence lodges an application, the Director-General must advise the applicant of the maximum fee payable in respect of the application.

94 Significant effect on threatened species, populations or ecological communities, or their habitats

(1) If the action proposed to be taken by the applicant is not on land that is critical habitat and the application is not accompanied by a species impact statement, the Director-General must determine whether the action proposed is likely to significantly affect threatened species, populations or ecological communities, or their habitats.

(2) For that purpose, the Director-General must take into account the following:

(a) in the case of a threatened species, whether the life cycle of the species is likely to be disrupted such that a viable local population of the species is likely to be placed at risk of extinction,

(b) in the case of an endangered population, whether the life cycle of the species that constitutes the endangered population is likely to be disrupted such that the viability of the population is likely to be significantly compromised,

(c) in relation to the regional distribution of the habitat of a threatened species, population or ecological community, whether a significant area of known habitat is to be modified or removed,

(d) whether an area of known habitat is likely to become isolated from currently interconnecting or proximate areas of habitat for a threatened species, population or ecological community,

(e) whether critical habitat will be affected,

(f) whether a threatened species, population or ecological community, or their habitats, are adequately represented in conservation reserves (or other similar protected areas) in the region,

(g) whether the action proposed is of a class of action that is recognised as a threatening process,

(h) whether any threatened species or ecological community is at the limit of its known distribution.

95 Determination by Director-General as to significant effect

(1) If the Director-General determines that an action proposed by an applicant for a licence is likely to significantly affect threatened species, populations or ecological communities, or their habitats, the Director-General must notify the applicant that, if the application is to proceed, a species impact statement prepared in accordance with Division 2 must be provided.

(2) If the Director-General determines that an action proposed is not likely to significantly affect threatened species, populations or ecological communities, or their habitats, a licence under this Act is not required and the Director-General must, as soon as practicable after making the determination, issue to the applicant a certificate to that effect.

Note. An action that is not required to be licensed under this Act may however be required to be licensed under the *National Parks and Wildlife Act 1974* if it is likely to affect protected fauna or protected native plants or may otherwise constitute an offence under that Act.

96 Publication of licence application

On the receipt of a licence application accompanied by a species impact statement or a species impact statement provided in response to a notification from the Director-General that a statement is required, the Director-General must cause to be placed in a newspaper circulating throughout the State a notice:

(a) outlining the nature of the application, and

(b) specifying the address of the place at which copies of the species impact statement may be inspected or purchased, and

(c) inviting written submissions within a period of not less than 28 days after the date of the notice.

97 Matters that Director-General must take into account

(1) In considering whether to grant or to refuse to grant a licence application, the Director-General must take. into account the following:

(a) any species impact statement,

(b) any written submissions received concerning the application within the period, and at the address for submissions, specified in the notice,

(c) the factors specified in sections 10–15,

(d) any relevant recovery plan or threat abatement plan,

(e) the principles of ecologically sustainable development,

(f) whether the action proposed is likely to irretrievably reduce the long-term viability of the species, population or ecological community in the region,

(g) whether the action proposed is likely to accelerate the extinction of the species or ecological community or place it at risk of extinction.

(2) The Director-General must also consider the likely social and economic consequences of granting or refusing to grant a licence application.

98 Director-General may request additional information

The Director-General may request the applicant to provide additional information in support of an application for a licence.

99 Determination of licence application

(1) After considering an application for a licence and accompanying material, the Director-General may:

(a) grant the application, unconditionally or subject to conditions or restrictions, or

(b) refuse the application.

(2) The Director-General must, subject to subsection (3), make a decision about an application within 120 days after the Director-General receives a species impact statement or within such further period as may be agreed with the applicant for the licence.

(3) The Director-General must not grant an application until the processing fee levied in respect of it has been paid.

(4) A licence may authorise specified persons in addition to the person to whom the licence is granted to do the things authorised by the licence. In any such case, the specified persons are taken to be the holders of the licence for the purposes of this Act.

(5) For the avoidance of doubt, it is declared that the Director-General is not a determining authority for the purposes of Part 5 of the *Environmental Planning and Assessment Act 1979* when granting a licence.

100 Licence may extend to protected fauna or protected native plants

(1) The Director-General may, in a licence granted under this Part, authorise a person to take action that is likely to result in either or both of the following:

(a) harm to protected fauna,

(b) picking of protected native plants.

(2) In this section, protected fauna and protected native plant have the same meanings as in the *National Parks and Wildlife Act 1974*.

101 Conditions and restrictions to licence

(1) Without limiting section 99 (1) (a), the Director-General may grant an application for a licence subject to a condition that the applicant:

(a) make specified modifications to the action proposed, whether in relation to the area of land proposed to be affected or otherwise, or

(b) make a monetary contribution towards the cost of preparation of a recovery plan for any threatened species, population or ecological community, or any of their habitats, likely to be affected by the action proposed.

(2) The Director-General may, by notice in writing served on the holder of a licence:

(a) attach any conditions or restrictions to the licence after its issue, or

(b) vary or remove any conditions or restrictions attached to any licence, or

(c) otherwise vary the licence.

Note. Section 133 of the *National Parks and Wildlife Act 1974* requires that the holder of a licence under this Part must not contravene or fail to comply with any condition or restriction attached to the licence.

102 Proposed variation of licence to be publicly notified

(1) Despite section 101 (2), the Director-General must, before removing or varying any condition or restriction attached to a licence:

(a) cause to be placed in a newspaper circulating throughout the State a notice:

(i) outlining the nature of the proposed variation to the licence, and

(ii) specifying the address of the place at which copies of any species impact statement relating to the licence may be inspected or purchased, and

(iii) inviting written submissions within a period of not less than 28 days after the date of the notice, and

(b) take into account the matters specified in section 97.

(2) This section does not apply if the proposed variation to the licence constitutes a minor amendment only of that licence.

103 Notification of licence determination

The Director-General is to notify an applicant and any person who has made submissions of the Director-General's determination of a licence application.

104 Director-General to keep register of licences

(1) The Director-General must keep a register containing copies of licences issued under this Division as in force from time to time.

(2) The register is to be open for public inspection, without charge, during ordinary business hours, and copies of or extracts from the register are to be made available to the public on request, on payment of the fee fixed by the Director-General.

105 Cancellation of licence

(1) A licence granted under this Part may be cancelled by the Director-General.

(2) The Director-General is to notify the holder of a licence of its cancellation and is to include the reasons for the cancellation in that notification.

106 Appeal by applicant or person commenting on licence application

(1) An applicant for a licence or a person who has made written submissions (within the period specified in this Division) about an application for a licence, or a person to whose licence conditions or restrictions have been attached or whose licence has been varied or cancelled may, if dissatisfied with the Director-General's decision, appeal to the Land and Environment court.

(2) In determining an appeal about an application for a licence, the Court must take into account the matters set out in section 97, but this requirement does not limit the operation of section 39 of the *Land and Environment Court Act 1979*.

107 Time for appeal, and deemed approval

(1) An appeal may be made by a person within 28 days after notification has been given to the person under section 101 (2), 103 or 105 (2) or, if the appellant is dissatisfied with any condition or restriction attached to a licence when it is granted, within 28 days after the licence is granted.

(2) If the Director-General fails to grant, but does not refuse, a licence application by the expiry of the period of 120 days referred to in section 99 (2) or of any extension of that period agreed to by the Director-General and the applicant for the licence, the application is taken to have been granted.

108 Stay of operation of licence pending appeal

(1) If an appeal relates to the grant of a licence, the licence has no operation until the expiration of the period within which a person entitled to lodge an appeal may do so or, if an appeal has been lodged, until the appeal is finally determined.

(2) If no written submissions about an application of a licence are received at the specified place and by the specified date and the applicant informs the Director-General in writing that the applicant does not wish to lodge an appeal but that the applicant wishes the licence to commence, the licence is to operate from a date stipulated by the Director-General.

Division 2 Species impact statements

109 Form of species impact statements

(1) A species impact statement must be in writing.

(2) A species impact statement must be signed by the principal author of the statement and by:

(a) the applicant for the licence, or

(b) if the species impact statement is prepared for the purposes of the *Environmental Planning and Assessment Act 1979*, the applicant for development consent or the proponent of the activity proposed to be carried out (as the case requires),

110 Content of species impact statements

(1) A species impact statement must include a full description of the action proposed, including its nature, extent, location, timing and layout and, to the fullest extent reasonably practicable, the information referred to in this section.

(2) A species impact statement must include the following information as to threatened species and populations:

(a) a general description of the threatened species or populations known or likely to be present in the area that is the subject of the action and in any area that is likely to be affected by the action,

(b) an assessment of which threatened species or populations known or likely to be present in the area are likely to be affected by the action,

(c) for each species or population likely to be affected, details of its local, regional and State-wide conservation status, the key threatening processes generally affecting it, its habitat requirements and any recovery plan or threat abatement plan applying to it,

(d) an estimate of the local and regional abundance of those species or populations,

(e) a general description of the threatened species or populations known or likely to be present in the area that is the subject of the action and in any area that is likely to be affected by the action,

(f) a full description of the type, location, size and condition of the habitat (including critical habitat) of those species and populations and details of the distribution and condition of similar habitats in the region,

(g) a full assessment of the likely effect of the action on those species and populations, including, if possible, the quantitative effect of local populations in the cumulative effect in the region,

(h) a description of any feasible alternatives to the action that are likely to be of lesser effect and the reasons justifying the carrying out of the action in the manner proposed, having regard to the biophysical, economic and social considerations and the principles of ecologically sustainable development,

(i) a full description and justification of the measures proposed to mitigate any adverse effect of the action on the species and populations, including a compilation (in a single section of the statement) of those measures,

(j) a list of any approvals that must be obtained under any other Act or law before the action may be lawfully carried out, including details of the conditions of any existing approvals that are relevant to the species or population.

(3) A species impact statement must include the following information as to ecological communities:

(a) a general description of the ecological community present in the area that is the subject of the action and in any area that is likely to be affected by the action,

(b) for each ecological community present, details of its local, regional and State-wide conservation status, the key threatening processes generally affecting it, its habitat requirements and any recovery plan or any threat abatement plan applying to it,

(c) a full description of the type, location, size and condition of the habitat of the ecological community and details of the distribution and condition of similar habitats in the region,

(d) a full assessment of the likely effect of the action on the ecological community, including, if possible, the quantitative effect of local populations in the cumulative effect in the region,

(e) a description of any feasible alternatives to the action that are likely to be of lesser effect and the reasons justifying the carrying out of the action in the manner proposed, having regard to the biophysical, economic and social considerations and the principles of ecologically sustainable development,

(f) a full description and justification of the measures proposed to mitigate any adverse effect of the action on the ecological community, including a compilation (in a single section of the statement) of those measures,

(g) a list of any approvals that must be obtained under any other Act or law before the action may be lawfully carried out, including details of the conditions of any existing approvals that are relevant to the ecological community.

(4) A species impact statement must include details of the qualifications and experience in threatened species conservation of the person preparing the statement and of any other person who has conducted research or investigations relied on in preparing the statement.

(5) The requirements of subsections (2) and (3) in relation to information concerning the State-wide conservation status of any species or population, or any ecological community, are taken to be satisfied by the information in that regard supplied to the principal author of the species impact statement by the National Parks and Wildlife Service, which information that Service is by this subsection authorised and required to provide.

111 Director-General's requirements

(1) The person applying for the licence (or, if the species impact statement is being prepared for the purposes of the *Environmental Planning and Assessment Act 1979*, the applicant for development consent or the proponent of the activity) must request from the Director-General and must, in preparing the species impact statement, comply with any requirements notified to the person by the Director-General concerning the form and content of the statement.

(2) The Director-General must notify any requirements under this section within 28 days after having been requested to provide them.

(3) Despite the other provisions of this Division, the Director-General may, having regard to the circumstances of a particular case, limit or modify (or limit and modify) the matters to be included in a species impact statement in such manner as may be specified by the Director-General in the particular case.

(4) Despite anything in this Act or the *Environmental Planning and Assessment Act 1979*, the Director-General may, having regard to the circumstances of a particular case, dispense with the requirement for a species impact statement in the particular case if the Director-General is satisfied that the impact of the activity concerned will be trivial or negligible.

112 Regulations

The regulations may make further provision for or with respect to the form and contents of species impact statements.

113 Director-General may accredit persons to prepare assessments of species impact statements

(1) The Director-General is to institute arrangements for the accreditation of suitably qualified and experienced persons to prepare assessment reports on species impact statements for the purposes of this Act.

(2) An applicant for accreditation must furnish the Director-General with such information as the Director-General requires to effectively determine the application and must be accompanied by the fee fixed by the Director-General for the consideration of the application.

(3) An accreditation is to be for the period specified by the Director-General in the instrument of accreditation, and the accreditation (or any renewal of it) may be given subject to the conditions and restrictions (if any) specified in the instrument of accreditation.

(4) The Director-General may vary conditions or restrictions (if any) attaching to an accreditation and may suspend or cancel an accreditation.

Part 7 Other conservation measures

Introductory note

This Part deals with certain other measures that may be taken to conserve threatened species, populations and ecological communities, and their habitats. These involve the making of stop work orders by the Director-General or the making of joint management agreements between the Director-General and other public authorities to manage or regulate actions on land that may jeopardise the survival of threatened species, populations or ecological communities, or their habitats.

Measures available under the *National Parks and Wildlife Act 1974,* involving the making of interim protection orders by the Minister or the entering into of conservation agreements by the Minister with land owners, may also be employed for the conservation of threatened species, populations or ecological communities, or their habitats.

Division 1 deals with the making of stop work orders by the Director-General, appeals, consultations about modification of detrimental action and recommendations for the making of interim protection orders under the *National Parks and Wildlife Act 1974.*

Division 2 deals with the preparation, contents and publication of joint management agreements, and provides for review of joint management agreements, and the performance of parties to them, by the Scientific Committee.

Division 1 Stop work orders

114 Director-General may make stop work order

(1) If the Director-General is of the opinion that any action is being, or is about to be, carried out that is likely to result in one or more of the following:

(a) harm to a threatened species, population or ecological community (so far as animals are concerned),

(b) picking of a threatened species, population or ecological community (so far as plants are concerned),

(c) damage to critical habitat,

(d) damage to habitats of threatened species, populations or ecological communities,

the Director-General may order that the action is to cease and that no action, other than such action as may be specified in the order, is to be carried out in or in the vicinity of the critical

habitat or the habitat of the threatened species, population or ecological community within a period of 40 days after the date of the order.

(2) An order takes effect on and from the date on which:

(a) a copy of the order is affixed in a conspicuous place in the critical habitat or other habitat the subject of the order, or

(b) the person performing or about to perform the action is notified that the order has been made,

whichever is the sooner.

(3) This section does not apply in relation to anything authorised to be done by or under:

(a) a license granted under this Act or the *National Parks and Wildlife Act 1974,* or

(b) the *Bush Fires Act 1949* or the *State Emergency and Rescue Management Act 1989* that is reasonably necessary in order to avoid a threat to life or property.

(4) This section does not apply in relation to anything that is essential for the carrying out of:

(a) development in accordance with a development consent within the meaning of the *Environmental Planning and Assessment Act 1979,* or

(6) an activity, whether by a determining authority or pursuant to an approval of a determining authority within the meaning of Part 5 of that Act if the determining authority has complied with that Part.

(5) In this Division, a reference to action being, or about to be, carried out includes a reference to action that should be, but is not being, carried out and the Director-General may make an order, in accordance with this Division, that any such action is to be carried out.

115 Prior notification of making of stop work order not required

The Director-General is not required, before making an order under this Division, to notify any person who may be affected by the order.

116 Appeal to Minister

(1) A person against whom an order is made under this Division may appeal to the Minister against the making of the order.

(2) After hearing an appeal, the Minister may:

(a) confirm the order, or

(b) modify or rescind the order, but only if this is consistent with the principles of ecologically sustainable development.

117 Extension of stop work order

The Director-General may extend an order under this Division for such further period or periods of 40 days as the Director-General thinks fit.

118 Consultation about modification of proposed detrimental action

(1) After making an order under this Division, the Director-General must immediately consult with the person proposing to perform the action to determine whether any modification of the action may be sufficient to protect the threatened species, populations or ecological communities, critical habitat or other habitat concerned.

(2) The Director-General may, for the purposes of making such determination and considering whether the adoption of any other steps, such as the grant of a licence under Part 6, may be appropriate, request the person proposing to perform the action to provide the information referred to in section 92 (3).

(3) After considering any information provided under subsection (2) in accordance with the requirements of section 94, the Director-General may, if appropriate and if the person concerned wishes to apply for a licence under Part 6, request the person to provide an application for a licence and a species impact statement for determination under that Part.

119 Recommendation for making of interim protection order

(1) The Director-General must recommend to the Minister the making of an interim protection order under Part 6A of the *National Parks and Wildlife Act 1974* if, after consulting with the person proposing to perform the action, the Director-General is of the opinion that satisfactory arrangements cannot be made to protect the threatened species, populations or ecological communities, critical habitat or other habitat that is the subject of an order under this Division.

(2) The Director-General must not recommend the making of an interim protection order in relation to anything that is authorised to be done by or under an authority referred to in section 114 (3) or that is essential for a purpose referred to in section 114 (4).

120 Stop work order prevails over other instruments

(1) An approval, notice, order or other instrument made or issued by or under any other Act or law that requires or permits critical habitat, the subject of an order in force under this Division, to be significantly affected is inoperative to the extent of any inconsistency with the order under this Division.

(2) This section has effect whether the approval, notice, order or other instrument concerned was made or issued before or after the making of the order under this Division.

Division 2 Joint management agreements

121 Joint management agreements

The Director-General may enter into a joint management agreement with one or more public authorities for the management, control, regulation or restriction of an action that is jeopardising the survival of a threatened species, population or ecological community.

122 Role of Scientific Committee

(1) Before a joint management agreement is entered into, the Scientific Committee must review the draft joint management agreement and provide the Director-General with comments on the review by the date specified for the making of public submissions on the draft agreement.

(2) The Scientific Committee must also:

(a) conduct an annual review of the performance of all parties to a joint management agreement, and

(b) advise the Director-General of any deficiencies in implementation of any joint management agreement by any party to it.

(3) The Director-General is to incorporate the Scientific Committee's advice on the annual review of joint management agreements in the Director-General's annual report to Parliament under the *National Parks and Wildlife Act 1974*.

123 Contents of joint management agreements

(1) A joint management agreement is to contain terms, binding on all parties, that:

(a) identify the threatened species, population or ecological community to which the agreement applies, and

(b) identify the action that it manages, controls, regulates or restricts, and

(c) state its objective (for example, maintenance of a habitat in a state that will contribute to the long-term survival of the species, population or ecological community), and

(d) state the way in which the objective is to be achieved, and

(e) specify the measures by which progress towards achieving the objective is to be assessed, and

(f) identify the parties who are responsible for the implementation of those measures.

(2) A joint management agreement entered into with a council or a consent authority (within the meaning of the *Environmental Planning and Assessment Act 1979)* is void to the extent to which it fetters any discretion of the council or consent authority in the granting or refusal of a consent or approval under the *Environmental Planning and Assessment Act 1979* or the *Local Government Act 1993*.

124 Publication of draft joint management agreement

(1) As soon as practicable after preparing a draft joint management agreement, the Director-General must:

(a) give a copy of the draft joint management agreement to the Scientific Committee for review, and

(b) publish notice of the preparation of the draft joint management agreement in a newspaper circulating generally throughout the State and in a newspaper circulating generally in the area or areas likely to be affected by the agreement, and

(c) publish notice of the preparation of the draft agreement in the Gazette.

(2) The notice must:

(a) state that thedraft joint management agreement has been prepared, and

(b) specify the address of the place at which copies of the draft joint management agreement may be inspected, and

(c) invite persons to make written submissions to the Director-General about the draft joint management agreement, and

(d) specify the address of the place to which submissions about the draft joint management agreement may be forwarded and the date by which submissions must be made.

125 Consideration of submissions by Director-General

(1) The Director-General must consider all written submissions received by the Director-General on or before the date specified in the notice.

(2) The Director-General may, with the consent of the other parties to the agreement, amend the draft joint management agreement to take into account any of those submissions and any comments made by the Scientific Committee about the draft agreement.

126 Amendment of joint management agreement

A joint management agreement may only be amended by a joint management agreement.

Part 8 Scientific Committee

Introductory note

This Part establishes, and describes the functions, membership and procedure of, and the manner of service of documents on, the Scientific Committee. The Part provides that the Scientific Committee is not subject to Ministerial control or direction.

127 Establishment of Scientific Committee

There is established by this Act a body corporate with the corporate name "Scientific Committee".

128 Functions of Scientific Committee

(1) The Scientific Committee has the functions conferred or imposed on it by or under this or any other Act or law.

(2) The principal functions of the Scientific Committee are as follows:

(a) to determine which species are to be listed under this Act as threatened species,

(b) to determine which populations are to be listed under this Act as endangered populations and to advise the Director-General on the identification of their critical habitat,

(c) to determine which ecological communities are to be listed under this Act as endangered ecological communities and to advise the Director-General on the identification of their critical habitat,

(d) to determine which threatening processes are to be listed under this Act as key threatening processes,

(e) to review draft joint management agreements and the performance of parties under executed joint management agreements,

(f) to advise the Director-General on the exercise of the Director-General's functions under this Act,

(g) to advise the Minister on any matter relating to the conservation of threatened species, populations or ecological communities that is referred to the Committee by the Minister or that the Committee considers appropriate.

(3) The Scientific Committee may, in the exercise of its functions, make use of consultants or obtain assistance or advice from other persons.

129 Members of Scientific Committee

(1) The Scientific Committee is to consist of 10 members appointed by the Minister.

(2) Of the members of the Scientific Committee:

(a) two are to be scientists employed by the National Parks and Wildlife Service nominated by the Director-General,

(b) one is to be a scientist employed by a public authority, having expertise in one or more of the areas of study referred to in subsection (3), selected by the Minister,

(c) one is to be a scientist nominated by the Commonwealth Scientific and Industrial Research Organisation,

(d) one is to be a scientist employed and nominated by the Australian Museum Trust,

(e) one is to be a scientist employed and nominated by the Royal Botanic Gardens and Domain Trust,

(f) one is to be a scientist nominated by the Ecological Society of Australia,

(g) one is to be a scientist nominated by the Entomological Society of Australia,

(h) one is to be a scientist who is employed by a tertiary educational institution and who is selected by the Minister,

(i) one is to be a scientist having expertise in agricultural science and natural resource management who is selected by the Minister.

(3) A person appointed as a member of the Scientific Committee is to have expertise in one or more of the following areas of study:

(a) vertebrate biology,

(b) invertebrate biology,

(c) plant biology,

(d) terrestrial ecology,

(e) plant community ecology,

(f) limnology,

(g) marine ecology,

(h) genetics of small populations,

(i) population dynamics (including population viability analysis or evolutionary ecology).

130 Provisions relating to members of Scientific Committee

(1) Subject to this Act, a member of the Scientific Committee holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

(2) A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

(3) The office of a member becomes vacant if the member:

(a) dies, or

(b) completes a term of office and is not reappointed, or

(c) resigns the office by instrument in writing addressed to the Minister, or

(d) is removed from office by the Minister under this section or by the Governor under Part 8 of the *Public Sector Management Act 1988*, or

(e) is absent from 4 consecutive meetings of the Scientific Committee of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Scientific Committee or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Scientific Committee for having been absent from those meetings, or

(f) becomes a mentally incapacitated person, or

(g) ceases to have the qualification required for the member's appointment.

(4) The Minister may remove a member from office.

(5) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member.

(6) If by or under any Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

131 Chairperson and Deputy Chairperson

A Chairperson and a Deputy Chairperson of the scientific Committee are to be appointed by the Minister from among the members of the Scientific Committee.

132 Disclosure of pecuniary interests

(1) If:

(a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Scientific Committee, and

(b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Scientific Committee.

(2) A disclosure by a member at a meeting of the Scientific Committee that the member:

(a) is a member, or is in the employment, of a specified company or other body, or

(b) is a partner, or is in the employment, of a specified person, or

(c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subsection (1).

(3) Particulars of any disclosure made under this section must be recorded by the Scientific Committee in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee (if any) determined by the Scientific Committee.

(4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Scientific Committee otherwise determines:

(a) be present during any deliberation of the Scientific Committee with respect to the matter, or

(b) take part in any decision of the Scientific Committee with respect to the matter.

(5) For the purposes of the making of a determination by the Scientific Committee under subsection (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:

(a) be present during any deliberation of the Scientific Committee for the purpose of making the determination, or

(b) take part in the making by the Scientific Committee of the determination.

(6) A contravention of this section does not invalidate any decision of the Scientific Committee.

133 Procedure of Scientific Committee

(1) The procedure for the calling of meetings of the Scientific Committee and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Scientific Committee.

(2) The quorum for a meeting of the Scientific Committee is 6 members.

(3) The Chairperson of the Scientific Committee or, in the absence of the Chairperson, the Deputy Chairperson or, in the absence of both the Chairperson and the Deputy Chairperson, another member elected to chair the meeting, is to preside at a meeting of the Scientific Committee. The person presiding at a meeting has a deliberative vote but not a casting vote.

(4) A decision supported by a majority of the votes cast at a meeting of the Scientific Committee at which a quorum is present is the decision of the Scientific Committee.

(5) The Scientific Committee may invite suitably qualified persons to attend meetings to advise or inform the Scientific Committee on any matter.

134 Transaction of business outside meeting or by telephone or other means

(1) The Scientific Committee may, if it thinks fit, transact any of its business by the circulation of papers among all the members for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Scientific Committee.

(2) The Scientific Committee may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

(3) For the purposes of:

(a) the approval of a resolution under subsection (1), or

(b) a meeting held in accordance with subsection (2),

the Chairperson and each other member have the same voting rights as they have at an ordinary meeting of the Scientific Committee.

(4) A resolution approved under subsection (1) is, subject to the regulations, to be recorded in the minutes of the meeting of the Scientific Committee.

(5) Papers may be circulated among the members for the purposes of subsection (1) by facsimile or other transmission of the information in the papers concerned.

135 Scientific Committee not subject to Ministerial control

The Scientific Committee is not subject to the control or direction of the Minister.

136 Service of documents on Scientific Committee

For the purposes of this Act, a nomination for listing under Part 2 or any other document is made, issued or given to the Scientific Committee if it is addressed to the Scientific Committee and is:

(a) lodged at the head office of the National Parks and Wildlife Service, or

(b) sent by post to the head office of the National Parks and Wildlife Service, or

(c) sent by facsimile transmission or other electronic means notified by the Scientific Committee as being an available means of communication, or

(d) sent by any means provided for the service of documents by another Act or law.

Part 9 Biological Diversity Strategy

137 Biological Diversity Advisory Council

(1) There is to be a Biological Diversity Advisory Council.

(2) The Advisory Council is to consist of the following 10 members:

(a) one scientist appointed by the Minister, who is to be the Chairperson of the Advisory Council,

(b) one person with expertise in industry appointed by the Minister,

(c) 3 scientists, one each to be selected by the Minister from 3 nominees of the Ecological Society of Australia, 3 nominees of the Australian Museum and 3 nominees of the National Biodiversity Council,

(d) 3 representatives of the environment movement selected by the Minister from 6 nominees of the Nature Conservation Council of New South Wales,

(e) one Aboriginal person selected by the Minister from 3 nominees of the New South Wales Aboriginal Land Council,

(f) one councillor within the meaning of the Local Government Act 1993 selected by the Minister from 3 nominees of the Local Government Association of New South Wales.

138 Provisions relating to Advisory Council and members of Advisory Council

The provisions of sections 130 (Provisions relating to members of Scientific Committee), 131 (Chairperson and Deputy Chairperson), 132 (Disclosure of pecuniary interests), 133 (Procedure of Scientific Committee) and 134 (Transaction of business outside meeting or by telephone or other means) apply to and in respect of the Advisory Council and the members of the Advisory Council as if references in those sections to the Scientific Committee were references to the Advisory Council.

139 Functions of Advisory Council

The Advisory Council has the following functions:

(a) to advise the Minister and the Director-General on the draft Strategy,

(b) to devise and to assist in the implementation of a comprehensive consultation process for preparation of the Strategy,

(c) to advise on the status of, and threats to, the biological diversity of the State,

(d) to undertake a review of existing legislation for implementing biological diversity programs and of existing legislation that may directly or indirectly result in the loss of biodiversity, and to advise on the necessity for future legislative action,

(e) to advise the Minister and the Director-General on matters relating to the conservation of biological diversity, including the monitoring of the implementation of the Strategy.

140 The Strategy

(1) The Director-General is to prepare a Biological Diversity Strategy within 9 months after the commencement of this Part setting out how the objects of this Act are to be achieved.

(2) The Strategy is to include proposals for:

(a) ensuring the survival and evolutionary development in nature of all species, populations and communities of plants and animals, including appropriate protection under the *Wilderness Act 1987* or the *National Parks and Wildlife Act 1974*, and

(b) preparing or contributing to the preparation of strategies for ecologically sustainable development in New South Wales, including the integration of biological diversity conservation and natural resource management, and

(c) an education program targeted at the community and public authorities, and

(d) a biological diversity research program, and

(e) encouraging greater community involvement in decision making affecting biological diversity.

(3) The Strategy must also include:

(a) the objectives and performance targets of the Strategy, and

(b) a statement of the means by which these objectives and performance targets are to be achieved, and

(c) a statement of the manner in which the National Parks and Wildlife Service constituted by the *National Parks and Wildlife Act 1974* proposes to assess its performance with respect to attainment of the objectives and performance targets of the Strategy.

(4) The Director-General may amend the Strategy.

141 Procedure for making or amending Strategy

(1) The Director-General is to prepare a draft Strategy and publish notice of the draft Strategy in a newspaper circulating generally throughout the State.

(2) A notice is to:

(a) be in the form prescribed by the regulations, and

(b) state the date by which submissions may be made to the Director-General, which is to be at least 30 days after the date on which the notice is published, and

(c) specify the manner in which submissions may be made, and

(d) fix a time and place at which a copy of the draft Strategy will be available to the public for inspection.

(3) Any person may make submissions to the Director-General about the draft Strategy.

(4) The Director-General may, after the expiration of the period referred to in subsection (2) (b) and after examination of submissions received, amend the Strategy. The Director-General is to refer the Strategy and any submissions received to the Scientific Committee for its consideration and advice.

(5) Before adopting the Strategy, the Director-General is to consider the comments and suggestions of the Scientific Committee and is to seek the advice of any other relevant public authority.

(6) The Director-General may adopt the Strategy without alteration or with such alterations as the Director-General thinks fit.

(7) After the Strategy has been adopted, the Director-General is to publish notice of its making in the Gazette and in a newspaper circulating generally throughout the State.

(8) The procedures applicable to the making of the Strategy apply to the making of an 7amendment to the Strategy that is not a minor amendment.

Part 10 Miscellaneous

Introductory note

This Part makes provision for a number of miscellaneous matters relating to the operation of the Act. These include:

- a statement that the Act binds the Crown
- a requirement that the Director-General report on the operation of the Act in the Director-General's annual report to Parliament
- a provision enabling third parties to bring proceedings in the Land and Environment Court for orders remedying or restraining breaches of the Act
- a statement that the Act is not intended to affect native title rights and interests
- a provision providing that the Director-General may decline to disclose the location of critical habitat (or proposed critical habitat) other than to specified persons if the Director-General is of the opinion that disclosure would be likely to expose the critical habitat (or proposed critical habitat) to a significant risk and that withholding of the location is in the public interest, and if affected landholders have requested, or are agreeable to, the withholding of the location
- a provision enabling third parties to bring proceedings in the Land and Environment Court for orders remedying or restraining breaches of the Act
- provisions as to the form and service of notices and other documents under the proposed Act
- a provision concerning review of the operation of the Act as soon as possible after the period of 18 months after the date of assent to the proposed Act.

The Part also authorises the making of regulations, and contains formal provisions giving effect to the Schedules amending other Acts and inserting savings, transitional and other provisions.

142 Act binds Crown

This Act binds the Crown, not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its capacities.

143 Annual report by Director-General on operation of Act

The Director-General is to report on the operation of this Act in the annual report of the National Parks and Wildlife Service.

144 Relationship of Act to National Parks and Wildlife Act 1974

Except as otherwise provided by this Act, nothing in this Act affects the operation of the National Parks and Wildlife Act 1974 in relation to animals and plants.

145 Native title rights and interests

This Act does not affect the operation of the *Native Title Act 1993* of the Commonwealth or the *Native Title (New South Wales) Act 1994* in respect of the recognition of native title rights and interests within the meaning of the Commonwealth Act or in any other respect.

146 Decision not to disclose location of critical habitat

(1) Despite the other provisions of this Act, the Director-General may decline:

(a) to give public notice (by publication in a newspaper or in the Gazette) of a proposal (or amended proposal) to identify an area or areas of land as critical habitat, the approval of such a proposal, a declaration of critical habitat or the amendment or revocation of such a declaration, and

(b) to serve a copy of a map of critical habitat on any one or more of the persons or bodies referred to in section 54 (Maps of critical habitat to be served), and

(c) to include a copy of a declaration of critical habitat or a map of critical habitat in the register kept under section 55 (Director-General to keep register of critical habitat).

(2) The Director-General may exercise the function under subsection (1) only if:

(a) the Director-General is of the opinion that:

(i) not to exercise the function would be likely to expose the critical habitat (or the proposed critical habitat) and the endangered species, population or ecological community that occupies it to a significant threat, and

(ii) the public interest requires the function to be exercised, and

(b) each landholder of land concerned has requested or is agreeable to the exercise of the function.

(3) Nothing in this section prevents the Director-General from disclosing the location of criticaI habitat to:

(a) landholders or other persons having any legal or equitable estate, interest, easement, servitude, privilege or right in or over the land, or

(b) public authorities exercising functions in relation to the land, or

(c) any other person entitled by or under this or any other Act or law to notice of the declaration of critical habitat or the existence of interests in or proposals affecting the land.

147 Restraint of breaches of Act

(1) Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of this Act, whether or not any right of that person has been or may be infringed by or as a consequence of that breach.

(2) Proceedings under this section may be brought by a person on the person's own behalf or on behalf of the person and other persons (with their consent), or a body corporate or unincorporated (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings.

(3) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.

(4) Proceedings under this section may not be brought in connection with development carried out by, for or on behalf of the Olympic Co-ordination Authority in accordance with the *Olympic Co-ordination Authority Act 1995*.

148 Form of notices

Any notice or other document issued, made or given for the purposes of this Act or the regulations must be in writing, except where this Act expressly authorises another means of giving notice.

149 Service of documents

(1) Any notice or other document that is authorised or required under this Act or the regulations to be served on any person may be served:

(a) personally or by post, or

(b) by leaving it with a person apparently of or above the age of 16 years at, or by posting it to, the person's place of business or, in the case of a corporation, the registered office of the corporation.

(2) This section does not apply with respect to the service of documents in accordance with section 136 (Service of documents on Scientific Committee).

150 Regulations

(1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for the carrying out or giving effect to this Act.

(2) A regulation may create an offence punishable by a penalty not exceeding 50 penalty units.

151 Proceedings for offences

Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

152 Amendment of National Parks and Wildlife Act 1974 No 80

The *National Parks and Wildlife Act I974* is amended as set out in Schedule 4.

153 Amendment of Environmental Planning and Assessment Act 1979 No 203

The *Environmental Planning and Assessment Act 1979* is amended as set out in Schedule 5.

154 Amendment of other Acts and regulations

The Acts and regulations specified in Schedule 6 are amended as set out in that Schedule.

155 Repeal of Endangered Fauna (Interim Protection) Act 1991 No 66 and amending Acts

(1) The *Endangered Fauna (Interim Protection) Act 1991* is repealed.

(2) Section 7 of the *Endangered Fauna (Interim Protection) Act 1991* has no operation and is taken never to have had any operation. This subsection applies whether or not it commences before or after 31 December 1995.

(3) The following Acts are also repealed:

Endangered Fauna (Interim Protection) Amendment Act I992 No 97

Endangered Fauna (Interim Protection) Amendment Act I993 No 53

Endangered Fauna (Interim Protection) Amendment Act 1995 No 33.

156 Savings, transitional and other provisions

Schedule 7 has effect.

157 Review of Act

(1) A Parliamentary Committee established for that purpose is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 18 months from the date of assent to this Act.

(3) A report of the outcome of the review is to be tabled in each House of Parliament within 6 months after the end of the period of 18 months.

Schedule 1 Endangered species, populations and ecological communities

(Section 6)

Part 1 Endangered species

Animals

Amphibians

Hylidae

Litoria aurea	Green and Golden Bell Frog
Litoria castanea	
Litoria raniformis	
Litoria spenceri	

Birds

Falconiformes

Erythrotriorchis radiatus	Red Goshawk

Anseriformes

Nettapus coromandelianus	Cotton Pygmy-Goose

Galliformes

Leipoa ocellata	Malleefowl

Gruiformes

Ardeotis australis	Australian Bustard
Tricholimnas sylvestris	Woodhen
Tumix melanogaster	Black-breasted Button Quail

Charadriiformes

Burhinus mugnirostris	Bush Thick-knee
Burhinus neglectus	Beach Thick-knee
Charadrius rubricollis	Hooded Plover
Pedionomus torquatus	Plains-wanderer
Stem albifrons	Little Tern

Part 1 Endangered species—continued

Animals

Columbiformes

Geophaps scripta	Squatter Pigeon
Phaps histrionica	Flock Bronzewing

Psittaciformes

Polytelis anthopeplus	Regent Parrot
Psittaculirostris diophthalma coxeni	Double-eyed Fig Parrot

Passeriformes

Arnytornis textilis	Thick-billed Grasswren
Manorina melanotis	Black-eared Miner
Pachycephala rufogularis	Red-lored Whistler
Poephila cincta	Black-throated Finch
Xanthornyza phrygia	Regent Honeyeater

Mammals

Dasyuridae

Antechinornys laniger	Kultarr
Dasyurus viverrinus	Eastern Quoll

Macropodidae

Macropus dorsalis	Black-striped Wallaby
Petrogale xanthopus	Yellow-footed Rock-Wallaby

Muridae

Pseudornys apodernoides	Silky Mouse
Pseudomys bolami	Bolam's Mouse
Pseudomys furneus	Smoky Mouse
Pseudomys oralis	Hastings River Mouse

Peramelidae

Isoodon obesulus	Southern Brown Bandicoot

Part1 Endangeredspecies—continued

Animals

Potoroidae

Potorous longipes	Long-footed Potoroo

Marine mammals

Cetacea

Balaenoptera musculus musculus	Blue Whale

Reptiles

Elapidae

Hoplocephalus bungaroides	Broad-headed Snake

Scincidae

Anomlopus muckayi
Eularnprus leuraensis

Plants

Acanthaceae

Calophanoides hygrophiloides (F. Muell.) R. Barker
Dipteracanthus australasicus subsp. *corynothecus* (F. Muell. ex Benth.) R. Barker
**Isoglossa eranthemoides* (F. Muell.) R. Barker
Xerothamnella parvifolia C. White

Anthericaceae

Caesia parviflora var. minor R.J.F. Hind.

Apiaceae

Gingidia montana (Forster & Forster f.) J. Wyndham Dawson
Trachymene saniculifolia Stapf

Part 1 Endangered species—continued

Plants

Apocynaceae

Ochrosia moorei (F. Muell.) F. Muell. ex Benth.

Araliaceae

**Astrotricha roddii* Makinson

Araucariaceae

Wollemia noblei W. Jones & K. Hill ms

Asclepiadaceae

**Cynanchum elegans* (Benth.) Domin
**Marsdenia longiloba* Benth.
**Tylophora linearis* P. Forster
**Tylophora woollsii* Benth.

Asteraceae

Calotis moorei P. Short
Crarystylis conocephala (F. Muell.) S. Moore
Erodiophyllum elderi F. Muell.
Kippistia suaedifolia F. Muell.
Leptorhynchos waitzia Sonder
**Olearia jlocktoniae* Maiden & E. Betche
**Rutidosis leptorrhynchoides* F. Muell.
Senecio spathulatus A. Rich.
Senecio squarrosus A. Rich.

Brassicaceae

Irenepharsus mgicus Hewson
Irenepharsus trypherus Hewson
**Lepidium hyssopifolium* Desv.
**Lepidium monoplocoides* F. Muell.
Lepidium pseudopapillosum Thell.

Part 1 Endangered species—continued

Plants

Campanulaceae

Wahlenbergia scopulicola Carolin ex P.J. Smith

Capparaceae

Capparis loranthifolia var. *loranthifolia* Lindley

Caryophyllaceae

Polycarpaea spirostylis subsp. *glabra* (C. White & Francis) Pedley

Casuarinaceae

**Allocasuarina defungens* L. Johnson
Allocasuarina glareicola L. Johnson
**Allocasuarina portuensis* L. Johnson
Casuarina obesa Miq.

Celastraceae

**Apatophyllum constablei McGillivray*

Chenopodiaceae

Arriplex rhagodioides F. Muell.
Atriplex sturtii S. Jacobs
Dysphania platycarpa Paul G. Wilson
Dysphania plantaginella F. Muell.
Osteocarpum scleropterurn (F. Muell.) Volkens
Threlkeldia inchoata (J. Black) J. Black

Convolvulaceae

Ipornoea diamentinensis J. Black
Ipornoea polyrnorpha Roemer & Schultes

Cupressaceae

Callitris baileyi C. White

Part 1 Endangered species—continued

Plants

Cyperaceae

Carex raleighii Nelmes
Cyperus aquatilis R. Br.
Cyperus conicus (R. Br.) Boeck

Davaliiaceae

Arthropteris palisotii (Desv.) Aiston

Davidsoniaceae

Davidsonia pruriens var. jerseyana Bailey
**Davidsonia sp. A Mullumbimby-Currimbin Ck* (A.G. Floyd 1595)

Dilleniaceae

Hibbertia hexandra C. White
Hibbertia procumbens (Labill.) DC.

Droseraceae

Aldrovanda vesiculosa L.

Dryopteridaceae

Lastreopsis hispida (Sw.) Tind.

Ebenaceae

**Diospyms mabacea* (F. Muell.) F. Muell.
Diospyros major var. *ebenus* (Sprengel) Balch.

Elaeocarpaceae

Elaeocarpus sp. Rocky Creek (G. Read AQ 562114)
**Elaeocarpus williamsianus* Guymer

Part 1 Endangered species—continued

Plants

Epacridaceae

Epacris hamiltonii Maiden & E. Betche
Leucopogon confertus Benth.
Melichms hirsutus J.B. WilIiams ms
Monotoca rotundifolia J.H. Willis

Eriocaulaceae

**Eriocaulon carsonii* F. Muell.

Euphorbiaceae

Acalypha eremrum Muell. Arg.
Bertya ingramii T. James
Euphorbia sarcostemmoides J.H. Willis
**Fontainea oraria* Jessup & Guymer
Monotaxis mucrophylla Benth.
Phyllanthus maderaspatanus L.
Pseudanthus ovalifalius F. Muell.
Sauropus albiforus subsp. *rnicmcladus* (Muell. Arg.) Airy Shaw

Fabaceae

Acacia acanthoclada F. Muell.
Acacia acrionustes Pedley
Acacia jucunda Maiden & Blakely
Acacia macnuttiana Maiden & Blakely
Acacia notabilis F. Muell.
Acacia petraea Pedley
Acacia pubifolia Pedley
Acacia rivalis J. Black
Acacia ruppii Maiden & E. Betche
Almleea cambagei (Maiden & E. Betche) Crisp & P. Weston
Crotalaria cunninghamii R. Br.
Desmdium campylocaulon F. Muell.
Indigofera efoliata F. Muell.

Part 1 Endangered species—continued

Plants

Indigofera helmsii Peter G. Wilson
Indigofera leucotricha E. Pritzel
Indigofera longibractea J. Black
**Psoralea parva* F. Muell.
Pultenaea parrisiae subsp. *elusa* J.D. Briggs & Crisp
Pultenaea parviflora Sieber ex DC.
Senna acclinis (F. Muell.) Randell
Swainsona adenophylla J. Black
Swainsona colutoides F. Muell.
Swainsona flavicarinata J. Black
**Swainsona recta A.* Lee
Swainsona viridis J. Black

Gentianaceae

**Gentians baeuerlenii* L. Adam
**Gentians wingecarribiensis* L. Adams

Goodeniaceae

Goodenia occidentalis Carolin
Scaevola collaris F. Muell.
Velleia perfoliata R. Br.

Grammitaceae

Grammitis stenophylla B.S. Parris

Haloragaceae

Haioragodendron lucasii (Maiden & E. Betche) Orch.

Lamiaceae

Plectranthus alloplectus S.T. Blake
Plectranthus nitidus P. Forst.
Prostanthera sp. Somersby (B.J. Conn 4024)
Westringia kydrenis Conn

Part 1 Endangered species—continued

Plants

Lauraceae

**Endiandra fzoydii* B. Hyland
Endiandra muelleri subsp. *bracteata* B. Hyland

Lindsaeaceae

Lindsaea brachypoda (Baker) Salomon
Lindsaea fraseri Hook.
Lindsaea incisa Prent.

Loranthaceae

Amyema scandens (Tieghem) Danser
Muellerina myrtifolia (Cunn. ex Benth.) Barlow

Malvaceae

Sida rohlenue Domin

Marattiaceae

Angiopteris evecta Hoffm.

Marsileaceae

Pilularia novae-hollandiae A. Braun

Menispennaceae

Tinospora smilacina Benth.

Monimiaceae

Daphnandra sp. C Illawarra (R. Schodde 3475)

Myrtaceae

**Austromyrtus fragrantissima* (F. Muell. ex Benth.) Burret
Baeckea camphorata R. Br.
Choricarpia subargentea (C. White) L. Johnson
Eucalyptus approximans Maiden

Part 1 Endangered species—continued

Plants

Eucalyptus camphora subsp. *relicta* L. Johnson & K. Hill
Eucalyptus copulans L. Johnson & K. Hill
Eucalyptus imlayensis Crisp & Brooker
Eucalyptus microcodon L. Johnson & K. Hill
Eucalyptus pachycalyx Maiden & Blakely
**Eucalyptus recurva* Crisp
Eucalyptus saxatilis Kirkpatr. & Brooker
Eucalyptus sp. Howes Swamp Creek (M. Doherty 19/7/85, NSW 207054)
**Kunzea rupestris* Blakely
**Ummyrtus australis* A.J. Scott

Orchidaceae

**Caladenia rosella* G.W. Carr
Diuris pedunculata R. Br.
**Genoplesium rhyoliticum* D.L. Jones & M.A. Clem.
Phaius tankervilliae (Banks ex L'Her.) Blume
Prasophyllum affine Lindl.
**Prasophyllum petilum* D.L. Jones & R.J. Bates
**Prasophyllurn uroglossum* Rupp
**Pterostylis gibbosa* R. Br.
Pterostylis sp. Botany Bay (A. Bishop J22 1/1-13)

Platyzomataceae

Platyzoma microphyllum R. Br.

Poaceae

Deyeuxia appressa Vickery
**Digitaria porrecta* S.T. Blake
Stipa nullanulla J. Everett & S.W.L. Jacobs
Stipa wakoolica Vickery, S.W.L. Jacobs & J. Everett

Podocarpaceae

Microstrobos fitzgeraldii (F. Muell.) J. Garden & L. Johnson

Part 1 Endangered species—continued

Plants

Polygalaceae

Polygala linariifolia Willd.

Primulaceae

Lysimachia vulgaris var. *davurica* (Ledeb.) Knuth

Proteaceae

Grevillea acanthifolia subsp. *paludosa* Makinson & Albrecht
**Grevillea beadleana* McGillivray
**Grevillea caleyi* R. Br.
Grevillea guthrieana P. Olde & N. Marriott
**Grevillea iaspicula* McGillivray
Grevillea masonii P. Olde & N. Marriott
Grevillea mollis P. Olde & Molyneux
Grevillea molyneuxii McGillivray
Grevillea obtusljlora R. Br.
Grevillea nvularis L. Johnson & McGillivray
**Grevillea wilkinsonii* R. Makinson
**Hakea pulvinifera* L. Johnson
Hakea sp. B Kowmung River (M. Doherty 17-24)
Persoonia rnollis subsp. *maxima* Krauss & L. Johnson
**Persoonia nutans* R. Br.

Psilotaceae

Psiloturn cornplanaturn Sw.

Rhamnaceae

Discaria nitida Tortosa
**Pomaderris cotoneaster* Wakef.
Pornuderris elachophylla F. Muell.
Pomaderris queenslandica C. White
Pomaderris sericea Wakef.

Part 1 Endangered species—continued

Plants

Rubiaceae

Dentella minutissima C. White & Francis
Hedyotis galioides F. Muell.
**Randia moorei* F. Muell. ex Benth.
Tarenna cameronii (C.T. White) Ali & Robbr.

Rutaceae

**Acronychia littoralis* T. Hartley & J. Williams
**Asterolasia elegans* McDougall & Porteners
**Boronia granitica* Maiden & E. Betche
**Boronia repanda* (F. Muell. ex E. Betche) Maiden & E. Betche
Geijera paniculata (F. Muell.) Druce
Phebalium glandulosum subsp. *eglandulosum* (Blakely) Paul G. Wilson
**Phebalium lachnaeoides* Cunn.
Zieria adenodonta (F. Muell.) J.A. Armstrong ms
Zieria adenophora Blakely
**Zieria baeuerlenii* J.A. Armstrong ms
**Zieria buxijugum* J. Briggs & J.A. Armstrong ms
Zieria covenyi J.A. Armstrong ms
Zieria fzoydii J.A. Armstrong ms
**Zieria formosa* J. Briggs & J.A. Armstrong ms
Zieria granulata (F. Muell.) C. Moore ex Benth.
Zieria ingramii J.A. Armstrong ms
Zieria lasiocaulis J.A. Armstrong ms
**Zieria obcordata* Cunn.
**Zieria parrisiae* J. Briggs & J.A. Armstrong ms
**Zieria prostrata* J.A. Armstrong ms

Santalaceae

Santalum murrayanum (Mitchell) Gardner

Part 1 Endangered species—continued

Plants

Sapindaceae

**Diploglottis campbellii* Cheel

Dodonaea microzyga var. *microzyga* F. Muell.

Dodonaea sinuolata subsp. *acrodentata* J. West

Scrophulariaceae

**Euphrasia collina* subsp. *muelleri* (Wettst.) W.R. Barker

Simaroubaceae

**Quassia* sp. *Mooney Creek* (J. King s.n., 1949)

Sinopteridaceae

Cheilanthes sieberi subsp. *pseudovellea* H. Quirk & T.C. Chambers

Stackhousiaceae

Stackhousia clementii Domin

Sterculiaceae

Rulingia prostrata Maiden & Betche

Thymelaeaceae

Pimelea elongata Threlfall

Pimelea serpyllifolia subsp. *serpyllifolia* R. Br.

**Pimelea spicata* R. Br.

Pimelea venosa Threlfall

Tiliaceae

**Corchorus cunninghamii* F. Muell.

Urticaceae

Dendrocnide moroides (Wedd.) Chew

Violaceae

Viola cleistogamoides (L. Adams) Seppelt

Part 1 Endangered species—continued

Plants

Zamiaceae

Macmzamia moorei F. Muell.

Part 2 Endangered populations

Part 3 Endangered ecological communities

Part 4 Species presumed extinct

Animals

Birds

Gruiformes

Notornis alba	White Gallinule

Columbiforrnes

Colurnba vitiensis godmnae	Lord Howe Pigeon

Part 4 Species presumed extinct—continued

Animals

Psittaciformes

Cyanorhamphus novaezelandiae subjlavescens	Lord Howe Parrakeet
Geopsittacus occidentalis	Night Parrot
Psephotus pulcherrimus	Paradise Parrot

Strigiformes

Ninox novaeseelandiae albaria	Lord Howe Boobook Owl

Passeriformes

Aplonis fuscus hullianus	Lord Howe Starling
Gerygone insularis	Lord Howe Warbler
Neochmia rujicauda	Star Finch
Rhipidura cervina	Lord Howe Fantail
Turdus xanthopus vinitinetus	Vinous-tinted Thrush
Zosterops strenua	Robust silvereye

Mammals

Dasyuridae

Dasycercus cristicauda	Mulgara
Dasyurus geoffroii	Western Quoll
Phascogale calura	Red-tailed Phascogale

Macropodidae

hgorchestes leporides	Eastern Hare-wallaby
Onychogalea fraenuta	Bridled Nailtail Wallaby
Onychogalea lunata	Crescent Nailtail Wallaby

Muridae

Conilurus albipes	White-footed Rabbit-rat
Leporillus apicalis	Lesser Stick-nest Rat
Leporillus conditor	Greater Stick-nest Rat
Notomys cervinus	Fawn Hopping-mouse

Part 4 Species presumed extinct—continued

Animals

Notomys fuscus	Dusky Hopping-mouse
Notomys longicaudutus	Long-tailed Hopping-mouse
Notomys mitchellii	Mitchell's Hopping-mouse
Pseudomys australis	Plain's Rat
Pseudomys desertor	Desert Mouse
Pseudomys gouldii	Gould's Mouse
Myrmecobiidae	
Myrmecobius fasciatus	Numbat
Peramelidae	
Chaeropus ecaudatus	Pig-footed Bandicoot
Isoodon auratus	Golden Bandicoot
Perameles bougainville	Western Barred Bandicoot
Potoroidae	
Bettongia gaimurdi	Tasmanian Bettong
Bettongia lesueur	Burrowing Bettong
Bettongia penicillata	Brush-tailed Bettong
Bettongia tropica	
Thylacomyidae	
Macmtis lagotis	Bilby
Vespertilionidae	
Nyctophilus howensis	
Vombatidae	
Lasiorhinus kreflii	Northern Hairy-nosed Wombat

Reptiles

Elapidae	
Oxyuranus rnicrolepidota	Fierce Snake

Part 4 Species presumed extinct—continued

Plants

Acanthaceae

Rhaphidospora bonneyana (F. Muell.) R. Barker

Aizoaceae

Glinus orygioides F. Muell.

**Trianthema cypseloides* (Fenzl) Benth.

Amaranthaceae

Ptilotus extenuatus Benl

Asteraceae

Acanthocladium dockeri F. Muell.

Blumea lacera (Burman f.) DC.

**Olemia oliganthema* F. Muell. ex Benth.

Senecio behrianus Sonder & F. Muell.

**Senecio georgianus* DC.

Sternmacantha australis (Gaudich.) Dittr.

Brassicaceae

Lepidium foliosum Desv.

**Lepidium peregrinum* Thell.

Stenopetalunl velutinum F. Muell.

Chenopodiaceae

Atriplex acutiloba R. Anderson

Maireana lanosa (Lindley) Paul G. Wilson

Osteocarpum pentapterum (F. Muell. & Tate) Volkens

Cyperaceae

Eleocharis tetraquetra Nees

Dennstaedtiaceae

Hypolepis elegans Carruth.

Part 4 Species presumed extinct—continued

Plants

Euphorbiaceae
Arnperea xiphoclada var. *pedicellata* R.F.J. Hend.

Gyrostemonaceae
Codonocarpus pyrarnidalis (F. Muell.) F. Muell.

Haloragaceae
Haloragis stricta R. Br. ex Benth.
Myriophyllurn irnplicaturn Orch.

Lamiaceae
Prostanthera marifolia R. Br.

Lobeliaceae
**Hypsela sessiliflora* E Wimmer

Myrsinaceae
**Rapanea* sp. A Richmond River (J.H. Maiden & J.L. Boorman NSW 26751)

Orchidaceae
Diuris bracteata Fitzg.
Thelyrnitra epipactoides F. Muell.

Polygalaceae
Cornespemuz scoparium Drummond

Polypodiaceae
Drynaria rigidula (Sw.) Beddome

Proteaceae
Grevillea nematophylla F. Muell.
Persoonia laxa L. Johnson & P. Weston

Part 4 Species presumed extinct—continued

Plants

Rhamnaceae

Pomuderris oraria F. Muell. ex Reisseck

Rosaceae

Aphanes pentamera Rothm.

Rubiaceae

Galium australe DC.

Knoxia sumutrensis (Retz.) DC.

Rutaceae

Eriostemon angustifolius subsp. *angustifolius* Paul G. Wilson

Micromelurn minutum (Forster f.) Wight & Am.

Sapindaceae

Dodonaea stenophylla E Muell.

Scrophulariaceae

**Euphrasia arguta* R. Br.

**Euphrusia* sp. Tamworth (Rupp. s.n., -/09/1904)

Tremandraceae

Tetratheca pilosa subsp. *pilosa* Labill.

Schedule 2 Vulnerable species

(Section 7)

Animals

Amphibians

Hylidae

Litoria brevipalmta	Green Thighed Frog
Litoria olongburenshs	
Litoria piperata	
Litoria subglandulosa	

Myobatrachidae

Assa darlingtoni	Pouched Frog
Crinia tinnula	
Heleioporus australiacus	Giant Burrowing Frog
Mixophyes balbus	
Mixophyes fleayi	
Mixophyes iteratus	Giant Barred Frog
Philoria kundagungan	
Philoria loveridgei	Loveridge's Frog
Philoria sphagnicolus	Sphagnum Frog
Pseudophryne australis	Red-crowned Toadlet
Pseudophryne corroboree	Corroboree Frog

Birds

Procellariiformes

Diomedea exulans	Wandering Albatross
Fregetta grallaria	White-bellied Storm-petrel
Pterodroma leucoptera	Gould's Petrel
Pterodroma neglecta	Kermadec Petrel
Pterodenna nigripennis	Black-winged Petrel
Pterodemuz solandri	Providence Petrel
Puflnus assimilus	Little Shearwater
Puflnis carneipes	Fleshy-footed Shearwater

Animals

Pelecaniformes

Phaeton rubricauda	Red-tailed Tropic-bird
Sula dactylatra	Masked Booby

Ciconiiformes

Botaurus poiciloptilus	Australasian Bittern
Dupetor jlavicollis	Black Bittern
Xenorhynchus asiaticus	Black-necked Stork

Falconiformes

Falco hypoleucos	Grey Falcon
Hamirostra melanosternon	Black-breasted Buzzard
Lophoictinia isura	Square-tailed Kite
Pandion huliaetus	Osprey

Anseriformes

Anseranas semipalmata	Magpie Goose
Oxyura australis	Blue-billed Duck
Stictonetta naevosa	Freckled Duck

Gruiformes

Galiinula olivacea	Bush Hen
Grus rubicundus	Brolga

Charadriiformes

Calidris alba	Sanderling
Caiidris tenuirostris	Great Knot
Charadrius leschenaulti	Large Sand-Plover
Charadrius mongolus	Mongolian Plover
Gygis ciba	White Tern
Haemutopus fuliginosus	Sooty Oystercatcher
Haemtopus longirostris	Pied Oystercatcher
Irediparra gallinacea	Comb-crested Jacana
Limicola falcinellus	Broad-billed Sandpiper
Limosa limosa	Black-tailed Godwit
Procelsterna cerulea	Grey Ternlet

Animals

Rostratula benghalensis	Painted Snipe
Sterna fuscata	Sooty Tern
Tringa terek	Terek Sandpiper
Columbiformes	
Ptilinopus magnificus	Wompoo Fruit-dove
Ptilinopus regina	Rose-crowned Fruit-dove
Ptilinopus superbus	Superb Fruit-dove
Psittaciformes	
Cacatua leadbeateri	Pink Cockatoo
Calyptorhynchus lathami	Glossy Black-Cockatoo
Calyptorhynchus mgnijicus	Red-tailed Black-Cockatoo
Glossopsitta porphyrocephala	Purple-crowned Lorikeet
Lathamus discolor	Swift Parrot
Neophema pulchella	Turquoise Parrot
Neophema splendida	Scarlet-chested Parrot
Pezoporus wallicus	Ground Parrot
Polytelis swainsonii	Superb Parrot
Strigiformes	
Ninox strenua	Powerful Owl
Tyto longimembris	Eastern Grass Owl
Tyto novaehollandiae	Masked Owl
Tyto tenebricosa	sooty Owl
Caprimulgiformes	
Podargus ocellatus	Marbled Frogmouth
Coraciiformes	
Halcyon Chloris	Collared Kingfisher
Passeriformes	
Amytomis barbatus	Grey Grasswren
Amytomis striatus	Striated Grasswren

Animals

Atrichomis rufescens	Rufous Scrub-bird
Certhionyx variegatus	Pied Honeyeater
Cinclosoma castanotum	Chestnut Quail-thrush
Coracina lineata	Yellow-eyed Cuckoo-shrike
Dasyomis brachypterus	Eastern Bristlebird
Drymodes brunneopygia	Southern Scrub-robin
Grantiella picta	Painted Honeyeater
Lichenostomus cratitius	Purple-gaped Honeyeater
Liehenostomus fasciogularis	Mangrove Honeyeater
Menura alberti	Albert's Lyrebird
Monarcha leucotis	White-eared Monarch
Pachycephula inornata	Gilbert's Whistler
Pachycephala olivacea	Olive Whistler
Pachycephala pectoralis contempta	Lord Howe Golden Whistler
Petroica rodinogaster	Pink Robin
Pomtostomus halli	Hall's Babbler
Sericornis brunneus	Redthroat
Sericornis cautus	Shy Hylacola
Sericornis jidiginosus	Calamanthus
Stipiturus ruficeps	Rufous-crowned Emu-Wren
Strepera graculina crissaiis	Lord Howe Pied Currawong
Zosterops tephropleura	Lord Howe Silvereye

Mammals

Burramyidae

Burramys parvus	Mountain Pygmy-possum

Dasyuridae

Dasyurus mculatus	Tiger Quoll
Ningaui yvonneae	
Phascogale tapoatafa	Brush-tailed Phascogale
Planigale maculata	Common Planigale
Sminthopsis leucopus	White-footed Dunnart
Sminthopsis macmura	Stripe-faced Dunnart

Animals

Emballonuridae	
Saccolairnus flaviventris	Yellow-bellied Sheathtail-Bat
Macropodidae	
Macropus parma	Parma Wallaby
Petrogale penicillata	Brush-tailed Rock Wallaby
Thylogale stigmatica	Red-legged Pademelon
Molossidae	
Monnopterus beccarii	Beccari's Mastiff-bat
Monnopterus norfolkensis	Eastern Little Mastiff-bat
Muridae	
Leggadina forresti	Forrest's Mouse
Mastacornys fuscus	Broad-toothed Rat
Pseudornys gracilicaudatus	Eastern Chestnut Mouse
Pseudornys hemnnsburgensis	Sandy Inland Mouse
Pseudornys pilligaensis	Pilliga Mouse
Rattus villosissirnus	Long-haired Rat
Petauridae	
Petaurus australis	Yellow-bellied Glider
Petaurus norfolcensis	Squirrel Glider
Phascolarctidae	
Phascolarctos cinereus	Koala
Pteropodidae	
Nyctirnine robinsoni	Queensland Tube-nosed Bat
Pteropus alecto	Black Flying-fox
Syconycteris australis	Queensland Blossom Bat
Potoroidae	
Aepypryrnnus rufescens	Rufous Bettong
Potorous tridactylus	Long-nosed Potoroo

Animals

Vespertilionidae

Chalinolobus dwyeri	Large Pied Bat
Chalinolobus nigrogriseus	Hoary Bat
Chalinolobus picatus	Little Pied Bat
Eptesicus baverstocki	
Eptesicus troughtoni	
Falsistrellus tasmaniensis	Great Pipistrelle
Kerivoula papuensis	Golden-tipped Bat
Miniopterus australis	Little Bent-wing Bat
Miniopterus schreibersii	Common Bent-wing Bat
Myotis adversus	Large-footed Mouse-eared Bat
Nyctophilus bifax	Queensland Long-eared Bat
Nyctophilus timoriensis	Greater Long-eared Bat
Scoteanax rueppellii	Greater Broad-nosed Bat

Marine Mammals

Cetacea

Eubalaena australis	Southern Right Whale
Megaptera novaeangliae	Humpback Whale
Balaenoptera borealis	Sei Whale
Balaenoptera physalus	Fin Whale
Sousa chinensis	Indo-Pacific Humpback Dolphin
Stenella longirostris	Spinner Dolphin
Physeter macrocephalus	Sperm Whale

Reptiles

Boidae

Aspidites ramsayi	Woma
Liasis stimsoni	Stimson's Python

Cheloniidae

Caretta caretta	Loggerhead Turtle
Chelonia mydas	Green Turtle

Animals

Derrnochelyidae	
Dennochelys coriacea	Leathery Turtle
Elapidae	
Cacophis harriettae	White Crowned Snake
Demansia torquata	Collared Whip Snake
Echiopsis curta	
Hoplocephalus bitorquatus	Pale-headed Snake
Hoplocephalus stephensi	Stephen's Banded Snake
Simoselaps fasciolatus	Narrow-banded Snake
Suta flagellurn	
Gekkonidae	
Christinus guentheri	
Underwoodisaurus sphyrurus	
Pygopodidae	
Aprasia inuurita	
Aprasia parapulchella	
Delma impar	
Scincidae	
Coeranoscincus reticulatus	
Cyclodomorphus branchialis	
Pseudemoia lichenigera	
Eliqua multifasciata	Centralian Blue-tongued Lizard
Eliqua occipitalis	Western Blue-tongued Lizard
Varanidae	
Varanus rosenbergi	

Plants

Apocynaceae

Parsonsia dorrigoensis J.B. Williams ms

Araliaceae

Astrotricha crassifolia Blakely

Asteiiaceae

Neoastelia spectabilis J.B. Williams

Asteraceae

Arnrnobium craspedioides Benth.
Brachycome muelleroides G. Davis
Brachycome papillosa G. Davis
Calotis glandulosa F. Muell.
Euchiton nitidulus (Hook. f.) A. Anderb.
Olearia cordata Lander
Ozothamnus tesselatus (Maiden & R. Baker) Anderberg
Picris evae Lack
Rutidosis heterogama Philipson
Rutidosis leiolepis F. Muell.
Senecio garlandii F. Muell. ex Belcher

Brassicaceae

Lepidiurn aschersonii Thell.

Callitrichaceae

Callitriche cyclocarpa Hegelm.

Casuarinaceae

Allocasuarina sirnulans L. Johnson

Chenopodiaceae

Atriplex infrequens Paul G. Wilson
Maireana cheelii (R. Anderson) Paul G. Wilson
Sclerolaena napiforrnis Paul G. Wilson

Plants

Corokiaceae

Corokia whiteanu L.S. Smith

Corynocarpaceae

Corynocarpus rupestris subsp. *rupestris* Guymer

Cunoniaceae

Acrophyllum australe (Cunn.) Hoogl.

Cupressaceae

Callitris oblonga A. Rich. & Rich.

Cyperaceae

Eleocharis obicis L.A.S. Johnson & O.D. Evans

Dilleniaceae

Hibbertia marginata Conn

Epacridaceae

Budawangia gnidioides (Summerh.) Telford
Epacris sparsa R. Br.
Leucopogon exolasius (F. Muell.) F. Muell. ex Benth.
Styphelia perileuca J. Powell

Ericaceae

Gaultheria viridicarpa subsp. *merinoensis* J.B. Williams ms
Gaultheria viridicarpa subsp. *viridicarpa* J.B. Williams ms

Eriocaulaceae

Eriocaulon australasicum (F. Muell.) Kom.

Euphorbiaceae

Baloghia mannorata C. White
Bertya sp. A Cobar—Coolabah (Cunningham & Milthorpe s.n., 2/8/73)
Fontainea australis Jessup & Guymer

Plants

Fabaceae

Acacia baueri subsp. *aspera* (Maiden & E. Betche) Pedley
Acacia bynoeana Benth.
Acacia carnei Maiden
Acacia clunies-rossiae Maiden
Acacia constablei Tind.
Acacia courtii Tind. & Herscovitch
Acacia curranii Maiden
Acacia jlocktoniae Maiden
Acacia georgensis Tind.
Acacia phasmoides J.H. Wlllis
Acacia pubescens (Vent.) R. Br.
Acacia pycnostachya F. Muell.
Bossiaea oligospem A. Lee
Desmodium acanthocladum E Muell.
Dillwynia tenuifoiia Sieber ex DC.
Kennedia retrorsa Hemsley
Phyllota humifusa Benth.
Pultenaea aristata Sieber ex DC.
Pultenaea baeuerlenii F. Muell.
Pultenaea campbellii Maiden & E. Betche
Pultenaea glabra Benth.
Pultenaea parrisiae subsp. *parrisiae* J.D. Briggs & Crisp
Pultenaea stuartiana Williamson
Sophora fraseri Benth.
Swainsona murrayana Wawa
Swainsona plagiotropis E Muell.
Swainsona pyrophila J. Thompson

Gentianaceae

Gentiana bredboensis L. Adam
Gentiana wissmannii J. Williams

Goodeniaceae

Goodenia macbarronii Carolin

Plants

Haloragaceae

Haloragis exalata subsp. *exalata* F. Muell.
Haloragis exalata subsp. *velutina* Orch.

Lamiaceae

Prostanthera cineolifera R. Baker & H.G. Smith
Prostanthera cryptandroides Cunn. ex Benth.
Prostanthera densa A.A. Ham.
Prostanthera discolor R. Baker
Prostanthera staurophylla F. Muell.
Prosranthera stricta R. Baker
Prostanthera sp. Strickland State Forest (J.H. Maiden s.n., 07/1915)
Prostanthera sp. Bundjalung National Park (B.J. Conn 3471)
Westringia davidii Conn

Lauraceae

Cryptocarya foetida R. Baker
Endiandra hayesii Kosterm.

Meliaceae

Owenia cepiodora F. Muell.

Menispermaceae

Tinospora tinosporoides (F. Muell.) Forman

Myrtaceae

Angophora robur L. Johnson & K. Hill
Baeckea sp. Pyramids (W.J. McDonald 357)
Danvinia biflora (Cheel) B. Briggs
Eucalyptus alligatrix subsp. *miscella* Brooker, Slee & J.D. Briggs ms
Eucalyptus aquatica (Blakely) L. Johnson & K. Hill
Eucalyptus benthamii Maiden & Cambage
Eucalyptus caleyi subsp. *ovendenii* L. Johnson & K. Hill
Eucalyptus camfieldii Maiden
Eucalyptus cannonii R. Baker

Plants

Eucalyptus glaucina Blakely
Eucalyptus kartzoflana L. Johnson & Blaxell
Eucalyptus langleyi L. Johnson & Blaxell
Eucalyptus mckieana Blakely
Eucalyptus nicholii Maiden & Blakely
Eucalyptus parramattensis subsp. *decadens* L. Johnson & Blaxell
Eucalyptus parvula L. Johnson & K. Hill
Eucalyptus pulverulenta Sims
Eucalyptus pumila Cambage
Eucalyptus robertsonii subsp. *hemisphaerica* L. Johnson & K. Hill
Eucalyptus rubida subsp. *barbigerorum* L. Johnson & K. Hill
Eucalyptus rubida subsp. *canobolensis* L. Johnson & K. Hill
Eucalyptus sturgissiana L. Johnson & Blaxell
Eucalyptus tetrapleura L. Johnson
Homoranthus darwinioides (Maiden & E. Betche) Cheel
Homoranthus lunatus Craven & S.R. Jones
Homoranthus prolixus Craven & S.R. Jones
Kunzea cambagei Maiden & E. Betche
Leptospermum deanei J. Thompson
Leptospermum thompsonii J. Thompson
Melaleuca groveana Cheel & C. White
Micromyrtus blakelyi J. Green
Micromyrtus minutiflora (F. Muell.) Benth.
Syzygium hodgkinsoniae (F. Muell.) L. Johnson
Syzygium moorei (F. Muell.) L. Johnson
Syzygium paniculatum Gaertner

Olacaceae

Olax angulata A.S. George

Orchidaceae

Bulbophyllum globulifome Nicholls
Caladenia concolor Fitzg.
Caladenia tesselata Fitzg.
Cryptostylis hunteriana Nicholls

Plants

Diuris aequalis F. Muell. ex Fitzg.
Diuris praecox D.L. Jones
Diuris shaeafiana Fitzg.
Diuris venosa Rupp
Phaius australis F. Muell.
Prasophyllum fuscurn R. Br.
Prasophyllurn morganii Nicholls
Pterostylis cobarensis M.A. Clem.
Pterostylis cucullata R. Br.
Pterostylis nigricans L. Jones & M.A. Clem.
Pterostylis pulchella Messmer
Sarcochilus cfitzgeraldii F. Muell.
Sarcochilus hartmannii F. Muell.
Sarcochilus weinthalii (EM. Bailey) Dockrill

Poaceae

Arnphibmmus jluitans Kirk
Arthraxon hispidus (Thunb.) Makino
Bothriochloa biloba S.T. Blake
Dichanthium setosurn S.T. Blake
Erythranthera pumila (Kirk) Zotov
Plinthanthesis rodwayi (C.E. Hubb.) S.T. Blake
Stipa metatoris J. Everett & S.W.L. Jacobs

Polygonaceae

Persicaria elatior (R. Br.) Sojak

Proteaceae

Floydia praealta (F. Muell.) L. Johnson & B. Briggs
Grevillea banyabba P. Olde & N. Marriott
Grevillea evansiana McKee
Grevillea kennedyana F. Muell.
Grevillea quadricauda P. Olde & N. Marriott
Grevillea rhizomatosa P. Olde & N. Marriott
Grevillea scortechinii subsp. *sarmentosa* (Blakely & McKie) McCillivray

Plants

Grevillea shiressii Blakely
Hakea frasen R. Br.
Hakea trineura F. Muell.
Hakea sp. Manning River SF—Broken Bago SF (P. Hind 4662)
Hicksbeachia pinnatifolia F. Muell.
lsopogon fletcheri F. Muell.
Macadamia tetraphylla L. Johnson
Persoonia acerosa Sieber ex Schultes & Schultes f.
Persoonia bargoensis P. Weston & L. Johnson
Persoonia glaucescens Sieber ex Sprengel
Persoonia marginata Cunn. ex R. Br.

Ranunculaceae

Clematis fawcettii F. Muell.
Ranunculus anemoneus E Muell.

Restionaceae

Restio longipes L.A.S Johnson & O.D. Evans

Rhamnaceae

Pomaderns brunnea Wakef.
Pomaderris gilmourii var. *cana* N. Walsh
Pomuderris pallida Wakef.
Pomaderris parrisiae N. Walsh

Rubiaceae

Asperula asthenes Airy Shaw & Turrill

Rutaceae

Boronia deanei Maiden & E. Betche
Boronia umbellata P. Weston
Bosistoa selwynii T. Hartley
Bosistoa transversa J. Bailey & C. White
Correa baeuerlenii F. Muell.
Eriostemon ericifolius Cunn. ex Benth.

Plants

Phebalium ralstonii (F. Muell.) Bentk.
Phebaliurn rhytidophyllurn Albrecht & N. Walsh
Phebalium syrnpetalurn Paul G. Wilson
Zieria citriodora J.A. Armstrong rns
Zieria involucrata R. Br. ex Benth.
Zieria murphyi Blakely
Zieria tuberculata J.A. Armstrong unpub

Santalaceae

Thesium australe R. Br.

Sapindaceae

Dodonaea procurnbens F. Muell.

Sapotaceae

Arnorphospemum whitei Aubrev.

Scrophulaceae

Euphrasia beiia S. T. Blake
Euphrasia bowdeniae W.R. Barker

Solonaceae

Solanum kursense Symon

Sterculiaceae

Lasiopetalum longistamineurn Maiden & Betche
Rulingia procurnbens Maiden & Betche

Surianaceae

Cadellia pentastylis F. Muell.

Symplocaceae

Symplocos baeuerlenii R. Baker

Plants

Tremandraceae

Tetratheca glandulosa Smith
Tetratheca juncea Smith

Winteraceae

Tmmannia glaucifolia J. Wllliams
Tmmannia purpurascens (Vick.) A.C. Smith

Schedule 3 Key threatening processes

(Section 8)

Schedule 4 Amendment of National Parks and Wildlife Act 1974

(Section 152)

[1] Section 5 Definitions

Insert in alphabetical order in section 5 (1):

critical habitat has the same meaning as in the *Threatened Species Conservation Act 1995.*

ecological community has the same meaning as in the *Threatened Species Conservation Act 1995.*

endangered ecological community has the same meaning as in the *Threatened Species Conservation Act 1995.*

endangered population has the same meaning as in the *Threatened Species Conservation Act 1995.*

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

harm an animal (including an animal of a threatened species, population or ecological community) includes hunt, shoot, poison, net, snare, spear, pursue, capture, trap, injure or kill, but does not include harm by changing the habitat of an animal.

population has the same meaning as in the *Threatened Species Conservation Act 1995.*

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

threatened interstate fauna means protected fauna of a species named in Schedule 12.

threatened species, populations and ecological communities and ***threatened species, population or ecological community*** have the same meanings as in the *Threatened Species Conservation Act 1995.*

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

[2] Section 5 (1)

Omit the definition of ***endangered fauna.***

[3] Section 5 (1)

Omit the definition of ***marine mammal.*** Insert instead:

> ***marine mammal*** means all animals of the orders of Cetacea, Sirenia and Pinnipedia.

[4] Section 5 (1)

Omit the definition of ***pick.*** Insert instead:

> ***pick*** a native plant (including a threatened species, population or ecological community) means gather, pluck, cut, pull up, destroy, poison, take, dig up, remove or injure the plant or any part of the plant.

[5] Section 5 (1)

Omit "New South Wales" from the definition of ***native plant.*** Insert instead "Australia".

[6] Section 5 (1)

Omit the definition of ***take.***

[7] Section 5 (3)

Insert "or a licence under the *Threatened Species Conservation Act 1995*" after "under Part 9".

[8] Section 6 The Service

Insert ", the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995*" after "this Act" in section 6 (b).

[9] Section 8 Miscellaneous powers and functions of Director-General

Omit "taking or killing" from section 8 (2) (c1).
Insert instead "hunting".

[10] Section 8 (7)

Omit "animal and plant life".
Insert instead "and the need to conserve animal and plant life, including to conserve threatened species, populations and ecological communities, and their habitats".

[11] Section 10 Officers and employees

Omit "and the *Wilderness Act 1987*" from section 10.
Insert instead ", the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995*".

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

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

[13] Section 12 Powers and functions of Service

Insert "(including threatened species, populations and ecological communities, and their habitats)'' after "wildlife".

[14] Section 19 Powers and functions of ex-officio rangers

Insert ", the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995*" after "this Act" in section 19 (1).

[15] Section 20 Powers and functions of honorary rangers

Insert ", the *Wilderness Act I987* or the *Threatened Species Conservation Act 1995"* after "this Act" in section 20.

[16] Section 21 Delegation

Omit "on him by this Act, the regulations or any other instrument under this Act" from section 21 (1).
Insert instead "the Minister or the Director-General, as the case may require, by or under this or any other Act".

[17] Section 45 Provisions respecting animals in parks and sites

Omit "take or kill" from section 45 (1) (a). Insert instead "harm".

[18] Section 45 (4)

Omit "taking or killing of any animal".
Insert instead "harming of any animal (other than fauna or an animal of a threatened species)".

[19] Section 56 Provisions respecting animals in nature reserves

Omit "take or kill" from section 56 (l) (a). Insert instead "harm".

[20] Section 56 (1) (b)

Omit "taking or killing". Insert instead "harming".

[21] Section 56 (5)

Omit "taking or killing of an animal that is within those lands, other than fauna".
Insert instead "harming of an animal that is within those lands (other than fauna or an animal of a threatened species)".

[22] Section 57 Restrictions as to timber, vegetation, plants etc in state game reserves

Insert "(not being a plant of a threatened species)" after "native plant" in section 57 (5).

[23] Section 58A Dedication of state game reserves

Omit "taking or killing" wherever occurring from section 58A (3) (d) and (e).
Insert instead "hunting".

[24] Section 58A (6)

Omit "taken or killed" wherever occurring. Insert instead "hunted".

[25] Section 58H Provisions respecting animals in state game reserves

Omit "take or kill" from section 58H (1) (a). Insert instead "harm".

[26] Section 58H (1) (b)

Omit "taking or killing". Insert instead "harming".

[27] Section 58H (5)

Omit "taking or killing of an animal that is within those lands, other than fauna".
Insert instead "harming of an animal that is within those lands (other than fauna or an animal of a threatened species)".

[28] Section 58I Restrictions as to timber, vegetation, plants etc in state games reserves

Insert "(not being a plant of a threatened species)" after "native plant" in section 58I (5).

[29] Section 58Q Provisions respecting animals in karst conservation reserves

Omit "take or kill" from section 58Q (1) (a). Insert instead "harm".

[30] Section 58Q (1) (b)

Omit '"taking or killing". Insert instead ''harming".

[31] Section 58Q (5)

Omit "taking or killing of an animal that is within those lands, other than fauna".
Insert instead "harming of an animal that is within those lands (other than fauna or an animal of a threatened species)".

[32] Section 58R Restrictions as to timber, vegetation, plants etc in karst conservation reserves

Insert "(not being a plant of a threatened species)" after "native plant" in section 58R (5).

[33] Section 67 Wildlife districts

Omit "taken or killed" wherever occurring in section 67 (2).
Insert instead ''harmed''.

[34] Section 69 Wildlife management areas

Omit "taking or killing as" in section 69 (2) (a).

[35] Section 69 (2) (b)

Omit "the taking or killing of". Insert instead "hunting".

[36] Section 69 (3)

Omit "taken or killed" wherever occurring.
Insert instead "hunted".

[37] Section 69C Purpose and content of agreements

Omit "or" where secondly occurring in section 69C (1) (e1).

[38] Section 69C (1) (e2)

Insert after section 69C (1) (e1):

(e2) for the purpose of the conservation of critical habitat or the conservation of threatened species, populations or ecological communities, or their habitats, or

[39] Section 69C (1) (f)

Omit "or (e)". Insert instead ", (e), (e1) or (e2)".

[40] Section 70 Fauna in ,wildlife districts, wildlife refuges, wildlife management areas, conservation areas and certain wilderness areas

Omit "take or kill" from section 70 (1) (a). Insert instead "harm".

[41] Section 70 (1) (b)

Omit "taking or killing". Insert instead "harming".

[42] Section 70 (3)

Omit "or a trapper's licence under section 123".
Insert instead " , a trapper's licence under section 123 or a licence under Part 6 of the *Threatened Species Conservation Act 1995*".

[43] Section 70 (5) and (6)

Omit ''taking or killing" wherever occurring.
Insert instead "harming".

[44] Section 70 (6AA)

Omit "taking or killing". Insert instead "harming".

[45] Section 70 (6A)

Omit "A person".
Insert instead "Subject to subsection (6B), a person".

[46] Section 70 (6B)

Insert after subsection (6A):

(6B) Subsection (6A) does not extend to the damaging of critical habitat or the harming of threatened species, populations or ecological communities.

[47] Section 71 Native plants in wildlife refuges, wildlife management areas, conservation areas and certain wilderness areas

Insert " , a licence under Part 6 of the *Threatened Species Conservation Act 1995*" after "Part 9" in section 71 (2) (a).

[48] Section 71 (3)

Insert "(not being a plant of a threatened species)" after "native plant".

[49] Section 71 (3A)

Omit "A person".
Insert "Subject to subsection (3B), a person".

[50] Section 71 (3B)

Insert after subsection (3A):

(3B) Subsection (3A) does not extend to the damaging of critical habitat or the harming of threatened species, populations or ecological communities.

[51] Section 72 Plans of management

Insert "(including the conservation of critical habitat and threatened species, populations and ecological communities, and their habitats)" after "wildlife" in section 72 (4) (a).

[52] Part 6A

Omit the heading. Insert instead:

Part 6A Stop work orders and interim protection orders

Division 1 Stop work orders

91AA Director-General may make stop work order

(1) If the Director-General is of the opinion that any action is being, or is about to be, carried out that is likely to significantly affect protected fauna or native plants or their environment, the Director-General may order that the action is to cease and that no action, other than such action as may be specified in the order, is to be carried out with respect to that environment within a period of 40 days after the date of the order.

(2) An order takes effect on and from the date on which:

(a) a copy of the order is affixed in a conspicuous place in the environment or place the subject of the order, or

(b) the person performing or about to perform the action is notified that the order has been made,

whichever is the sooner.

(3) This section does not apply in relation to anything authorised to be done by or under:

(a) a licence granted under this Act or the *Threatened Species Conservation Act 1975*, or

(b) the *Bush Fires Act 1949* or the *State Emergency and Rescue Management Act 1989* that is reasonably necessary in order to avoid a threat to life or property.

(4) This section does not apply in relation to anything that is essential for the carrying out of

(a) development in accordance with a development consent within the meaning of the *Environmental Planning and Assessment Act 1979*, or

(b) an activity whether by a determining authority or pursuant to an approval of a determining authority, within the meaning of Part 5 of that Act if the determining authority has complied with that Part.

(5) In this Division, a reference to action being, or about to be, carried out includes a reference to action that should be, but is not being, carried out and an order under this Division may be modified accordingly.

91BB Prior notification of making of stop work order not required

The Director-General is not required, before making an order under this Division, to notify any person who may be affected by the order.

91CC Appeal to Minister

(1) A person against whom an order is made under this Division may appeal to the Minister against the making of the order.

(2) After hearing an appeal, the Minister may:

(a) confirm the order, or

(b) modify or rescind the order, but only if this is consistent with the principles of ecologically sustainable development (as described in section 6 (2) of the *Protection of the Environment Administration Act 1991).*

91DD Extension of stop work order

The Director-General may extend an order under this Division for such further period or periods of 40 days as the Director-General thinks fit.

91EE Consultation about modification of proposed detrimental action

(1) After making an order under this Division, the Director-General must immediately consult with the person proposing to perform the action to determine whether any modification of the action may be sufficient to protect the environment of any protected fauna or native plants.

(2) If, in the opinion of the Director-General, satisfactory arrangements cannot be made to protect the environment that is the subject of an order under this Division, the Director-General must recommend the making of an interim protection order under Division 2.

(3) The Director-General must not recommend the making of an interim protection order in relation to anything that is authorised to be done by or under an authority referred to in section 91AA (3) or that is essential for a purpose referred to in section 91AA (4).

91FF Order prevails over other instruments

(1) If an order under this Division is in force in relation to an environment, an approval, notice or order (whether made or issued before or after the order pursuant to this Division) under any other Act that requires or permits the environment to be significantly affected is inoperative to the extent of the inconsistency with the order.

(2) This section has effect whether the approval, notice, order or other instrument concerned was made before or after the making of the order under this Division.

Division 2 Interim protection orders

[53] Section 91A Interim protection of areas having significant values

Insert "or the *Threatened Species Conservation Act 1995*" after "this Act" in section 91A (b).

[54] Section 91A (b)

Omit "fauna or native plants".
Insert instead "fauna, native plants, threatened species, populations or ecological communities or critical habitat of endangered species, populations or ecological communities".

[55] Section 91A (c)

Insert at the end of paragraph (b):

, or

(c) that is critical habitat or the habitat of a threatened species, population or ecological community.

[56] Section 91B Interim protection orders

Omit "fauna and plants".
Insert instead "fauna, plants, threatened species, populations and ecological communities and critical habitat of endangered species, populations and ecological communities".

[57] Section 91D Duration of interim protection order

Omit "12 months" from section 91C. Insert instead "2 years".

[58] Section 91D (3)

Omit the subsection.

[59] Sections 92A–92E

Omit the sections.

[60] Section 93 Amendment of Schedule 11 (unprotected fauna)

Omit " , but only on the recommendation of the Scientific Committee referred to in section 92A".

[61] Section 94 Amendment of Schedule 12 (threatened interstate fauna)

Omit ", but only on the recommendation of the Scientific Committee referred to in section 92A".

[62] Section 96 Locally unprotected fauna

Insert after section 96 (3):

(4) An order under subsection (1) does not apply to, and must not be expressed to apply to, any threatened species, population or ecological community.

[63] Section 98 Harming protected fauna, other than threatened species, populations or ecological communities

Omit "endangered fauna" from subsection (1).
Insert instead "threatened interstate fauna, threatened species, populations or ecological communities,".

[64] Section 98 (2) (a) and (a1)

Omit "take or kill" wherever occurring. Insert instead "harm".

[65] Section 98 (2) (b)

Insert "substance," after ''any" where firstly occurring.

[66] Section 98 (2) (b)

Omit "taking or killing". Insert instead "harming".

[67] Section 98 (2)

Omit "20 penalty units". Insert instead "30 penalty units".

[68] Section 98 (3) (a)

Insert "or a licence under Part 6 of the *Threatened Species Conservation Act 1995*" before "; or".

[69] Section 98 (4)

Omit the subsection.

[70] Section 99 Harming threatened interstate fauna

Omit section 99 (1) (a). Insert instead:

(a) harm any threatened interstate fauna, or

[71] Section 99 (1) (b)

Insert "substance," after "any" where firstly occurring.

[72] Section 99 (1) (b)

Omit "taking or killing". Insert instead "harming".

[73] Section 99 (1) (c), (1A), (5) and (6)

Omit the provisions.

[74] Section 99 (1)

Omit the penalty provisions. Insert instead:

Penalty: 1,000 penalty units or imprisonment for 1 year or both.

[75] Section 100 Further provisions respecting harming protected fauna (including threatened interstate fauna)

Omit "or 99 (l)". Insert instead " , 99 (l), 112G or 118A".

[76] Section 100 (2)

Insert at the end of the section:

(2) The regulations may make provision for or with respect to exempting, subject to conditions and restrictions (if any) prescribed by the regulations, any person or class or descriptionof persons from the provisions of section 98 (2).

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

Omit the penalty provision. Insert instead:

Penalty:

(a) in respect of any protected fauna other than threatened interstate fauna—100 penalty units or imprisonment for 6 months or both,

(b) in respect of any threatened interstate fauna—1,000 penalty units or imprisonment for 1 year or both.

[78] Section 103 Harming fauna for sale

Omit "take or kill" from section 103 (1). Insert instead "harm".

[79] Section 103 (3)

Omit "taking or killing". Insert instead "harming".

[80] Section 103 (4)

Omit "endangered fauna".
Insert instead "threatened interstate fauna or threatened species, populations or ecological communities".

[81] Section 140 Use of certain substances for harming fauna

Omit "taking or killing" wherever occurring in section 110 (1) and (2).
Insert instead "harming".

[82] Section 111 Method of shooting fauna

Omit "taking or killing". Insert instead "harming".

[83] Section 112 Harming snakes

Omit "taking or killing". Insert instead "harming".

[84] Section 112F Restriction on issue of licences to take marine mammals for exhibition etc

Omit "take, kill". Insert instead "harm".

[85] Section 112G

Insert after section 112F:

112G Approaching marine mammal

(1) A person must not approach a marine mammal any closer than such distance as may be prescribed by the regulations or interfere with a marine mammal.

Penalty: 1,000 penalty units or imprisonment for 2 years or both.

(2) If:

(a) a person is convicted by the Land and Environment Court of an offence arising under this section, and

(b) the Court is satisfied that the person committed the offence in the course of commercial operations relating to the killing of marine mammals,

the maximum penalty that the Court may impose in respect of the offence is 2,000 penalty units.

(3) A person must not be convicted of an offence under this section if the person proves that the act constituting the offence was done under and in accordance with or by virtue of the authority conferred by a general licence under section 120 or a licence under Part 6 of the *Threatened Species Conservation Act 1995*.

(4) If the provisions of any other Act or instrument made under any other Act authorise or require anything to be done that would constitute an offence under this section:

(a) the provisions of this section prevail, except if the other Act is the *Bush Fires Act 1949* or the *State Emergency and Rescue Management Act 1989*, and

(b) a person must not to be convicted of an offence against the other Act or instrument because of the person's failure to comply with the other Act or instrument if compliance with the other Act or instrument would constitute an offence under this section.

(5) A reference in section 112F, 120, 129 or 171 to harming any fauna includes, so far as is applicable in relation to a marine mammal, approaching or interfering with the marine mammal as referred to in subsection (1).

(6) In this section, ***interfere with*** includes harass, chase, herd, tag, mark and brand.

[86] Part 8A

Insert after Part 8:

Part 8A Threatened species, populations and ecological communities, and their habitats, and critical habitat

118A Harming or picking threatened species, populations or ecological communities

(1) A person must not:

(a) harm any threatened species, population or ecological community, being an animal, or

(b) use any substance, animal, firearm, explosive, net, trap, hunting device or instrument or means whatever for the purpose of harming any such species, population or ecological community, being an animal.

Penalty:

(a) in respect of any endangered species, population or ecological community—2,000 penalty units or imprisonment for 2 years or both,

(b) in respect of any vulnerable species—500 penalty units or imprisonment for 1 year or both.

(2) A person must not pick any threatened species, population or ecological community, being a plant.

Penalty:

(a) in respect of any endangered species, population or ecological community—2,000 penalty units or imprisonment for 2 years or both,

(b) in respect of any vulnerable species—500 penalty units or imprisonment for 1 year or both.

(3) It is a defence to a prosecution for an offence against this section if the accused proves that the act constituting the alleged offence:

(a) was authorised to be done, and was done in accordance with, a general licence under section 120 or a licence granted under Part 6 of the *Threatened Species Conservation Act 1995*, or

(b) was essential for the carrying out of:

(i) development in accordance with a development consent within the meaning of the *Environmental Planning and Assessment Act 1979*, or

(ii) an activity, whether by a determining authority or pursuant to an approval of a determining authority within the meaning of Part 5 of that Act if the determining authority has complied with that Part, or

(c) was authorised to be done by or under the *Bush Fires Act 1949* or the *State Emergency and Rescue Management Act 1989* and was reasonably necessary in order to avoid a threat to life or property.

(4) If the provisions of any other Act or law or of any instrument made under any other Act or law authorise or require anything to be done that would constitute an offence under this section:

(a) this section prevails (except in relation to a matter referred to in subsection (3) (b) or (c)), and

(b) a person is not to be convicted of an offence against the other Act, law or instrument because of the person's failure to comply with the other Act, law or instrument if compliance with the other Act, law or instrument would constitute an offence under this section.

118B Buying, selling or possessing threatened species or endangered population

(1) A person must not buy, sell or have in possession or control any threatened species or endangered population.

Penalty:

(a) in respect of any endangered species or endangered population—2,000 penalty units or imprisonment for 2 years or both,

(b) in respect of any vulnerable species—500 penalty units or imprisonment for 1 year or both.

(2) The Governor may, by order published in the Gazette, exempt from subsection (1) threatened species named in the order, subject to such conditions and restrictions relating to the buying, selling or having in possession of any such threatened species as may be prescribed in the order.

(3) A person must not to be convicted of an offence against this section of having in the person's possession or control a plant of any threatened species if the plant is naturally occurring on land that the person owns or of which the person is the lessee or lawful owner.

(4) It is a defence to a prosecution for an offence against this section if the accused proves that the act constituting the alleged offence was authorised to be done, and was done in accordance with, a general licence under section 120 or a licence granted under Part 6 of the *Threatened Species Conservation Act 1995*.

(5) A person must not be convicted of an offence under this section in respect of the possession of any threatened species if the person satisfies the court that:

(a) the species, being an animal, is the progeny of any animal lawfully in the possession of the person pursuant to a licence granted under this Act or under Part 6 of the *Threatened Species Conservation Act 1995* and that progeny is less than 6 months old, or

(b) the species, being an animal:

(i) was incapable of fending for itself in its natural habitat, and

(ii) the person notified the Director-General, in the manner and within the time prescribed by the regulations, that the animal came into the person's possession, and

(iii) the person complied with any direction given to the person about the animal by the Director-General, or

(c) the species, being a plant, was propagated from a plant lawfully in the possession of a person pursuant to a licence granted under this Act or under Part 6 of the *Threatened Species Conservation Act 1995* and that propagation took place not later than 6 months previously.

(6) A reference in this section to a person's having threatened species in the person's possession includes a reference to the person having threatened species in a vehicle, building, lodging, apartment, field or other place whether belonging to or occupied by the person, and whether the species is then had or placed for the person's own use or the use of another person.

118C Damage critical habitat

(1) A person must not, by an act or an omission, do anything that causes damage to any critical habitat.

Maximum penalty: 2,000 penalty units or imprisonment for 2 years or both.

(2) If a map of the critical habitat was published in the Gazette before the act constituting the offence was done or omitted to be done, it is not necessary for the prosecution to prove that the person knew that the habitat was declared as critical habitat or that the person knew that it was habitat of an endangered species, population or ecological community.

(3) If a map of the critical habitat was not published in the Gazette before the act constituting the offence was done or omitted to be done, the prosecution must prove that the person knew that the habitat was declared as critical habitat or that the person knew, or ought to have known, that it was critical habitat.

(4) It is a defence to a prosecution for an offence against this section in relation to an area of critical habitat that the Director-General has declined to publicly notify under section 146 of the *Threatened Species Conservation Act 1995* that the accused did not know and could not reasonably be expected to have known that the area was critical habitat.

(5) It is a defence to a prosecution for an offence against this section if the accused proves that the act constituting the offence:

(a) was authorised to be done, and was done in accordance with, a licence granted under this Act or under Part 6 of the *Threatened Species Conservation Act 1995,* or

(b) was essential for the carrying out of

(i) development in accordance with a development consent within the meaning of the *Environmental Planning and Assessment Act 1979,* or

(ii) an activity, whether by a determining authority or pursuant to an approval of a determining authority within the meaning of Part 5 of that Act if the determining authority has complied with the Part, or

(c) was authorised to be done by or under the *Bush Fires Act 1949* or the *State Emergency and Rescue Management Act 1989* and was reasonably necessary in order to avoid a threat to life or property.

(6) If the provisions of any other Act or law or of any instrument made under any other Act or law authorise or require anything to be done that would constitute an offence under this section:

(a) this section prevails (except in relation to a matter referred to in subsection (5) (b) or (c), and

(b) a person is not to be convicted of an offence against the other Act, law or instrument because of the person's failure to comply with the other Act, law or instrument if compliance with the other Act, law or instrument would constitute an offence under this section.

118D Damage habitat of threatened species, population or ecological community

(1) A person must not, by an act or an omission, do anything that causes damage to any habitat (other than a critical habitat) of a threatened species, population or ecological community if the person knows that the land concerned is habitat of that kind.

Penalty: 1,000 penalty units or imprisonment for 1 year or both.

(2) It is a defence to a prosecution for an offence against this section if the accused proves that the act constituting the offence:

(a) was authorised to be done, and was done in accordance with, a licence granted under this Act or under Part 6 of the *Threatened Species Conservation Act 1995*, or

(b) was essential for the carrying out of

(i) development in accordance with a development consent within the meaning of the *Environmental Planning and Assessment Act 1979*, or

(ii) an activity, whether by a determining authority or pursuant to an approval of a determining authority within the meaning of Part 5 of that Act if the determining authority has complied with the Part, or

(c) was authorised to be done by or under the *Bush Fires Act 1949* or the *State Emergency and Rescue Management Act 1989* and was reasonably necessary in order to avoid a threat to life or property.

(3) If the provisions of any other Act or law or of any instrument made under any other Act or law authorise or require anything to be done that would constitute an offence under this section:

(a) this section prevails (except in relation to a matter referred to in subsection (2) (b) or (c)), and

(b) a person is not to be convicted of an offence against the other Act, law or instrument because of the person's failure to comply with the other Act, law or instrument if compliance with the other Act, law or instrument would constitute an offence under this section.

118E Court may order offender to restore critical habitat or habitat of threatened species, populations or ecological communities

(1) If a court convicts a person of an offence under this Part involving damage to any critical habitat or habitat of a threatened species, population or ecological community, the court may, in addition to or in substitution for any pecuniary penalty for the offence, direct the person to take any action to mitigate the damage or to restore that critical habitat or habitat of a threatened species, population or ecological community.

(2) The court may specify the actions to be taken to mitigate the damage or restore the habitat and may order the person to maintain the habitat until the actions ordered to be done to mitigate the damage or restore the habitat have been fully performed.

(3) The court may order the person to provide security for the performance of any obligation imposed under this section.

(4) For the purposes of this section, a ***conviction*** includes the making of an order under section 556A of the *Crimes Act 1900.*

[87] Section 120 General licence

Omit "take or kill" from section 120 (1) (a). Insert instead "harm".

[88] Section 120 (1) (c) and (4) (a)

Omit "taken or killed" wherever occurring
Insert instead "harmed".

[89] Section 120 (1) (e)

Omit the paragraph. Insert instead:

(e) to harm any protected fauna (other than a threatened species, population or ecological community) in the course of carrying out specified development or specified activities.

[90] Section 120 (2)

Omit "taking or killing". Insert instead "harming".

[91] Section 120 (2A)

Omit "taking or killing". Insert instead "harming".

[92] Section 120 (2A)

Omit "take or kill". Insert instead ''harm''.

[93] Section 121 Occupier's licence

Omit "take or kill" wherever occurring from section 121 (l). Insert instead "harm".

[94] Section 121 (1) and (2)

Omit "taken or killed" wherever occurring. Insert instead "harmed".

[95] Section 121 (3)

Omit "endangered fauna". Insert instead "threatened species, populations or ecological communities".

[96] Section 121 (3)

Omit "taken or killed". Insert instead "harmed".

[97] Section 121 (3)

Omit "take or kill". Insert instead "harm".

[98] Section 122 Game licence

Omit "take or kill" wherever occurring.

[99] Section 122 (2) (a)

Omit "endangered fauna".
Insert instead "threatened species, population or ecological community".

[100] Section 122 (2) (d)

Omit "take or kill". Insert instead "harm".

[101] Section 123 Trapper's licence

Omit "take or kill" from section 123 (1). Insert instead "harm".

[102] Section 123 (2)

Omit "taking or killing". Insert instead "harming".

[103] Section 123 (3)

Insert after subsection (2):

(3) A trapper's licence must not be issued with respect to threatened species, populations or ecological communities.

[104] Section 129 Certain licences authorising shooting, etc in national parks etc

Omit "take or kill" wherever occurring. Insert instead "harm".

[105] Section 129

Omit "taking or killing" wherever occurring.
Insert instead "harming".

[106] Section 130 Certain licences and certificates deemed to authorise possession

Omit "take or kill" from section 130. Insert instead "harm".

[107] Section 131 Licence to pick native plants

Omit "for scientific or commercial purposes".

[108] Section 132 Licence to grow native plants for sale

Insert "or plants of a threatened species" after "protected native plants" in section 132.

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

Insert "under this Act or Part 6 of the *Threatened Species Conservation Act 1995"* after "certificate" where secondly occurring in section 133 (4).

[110] Section 138 Payments into the Fund

Insert ", the .*Wilderness Act 1987* or the *Threatened Species Consewation Act 1995"* after "this Act" in section 138 (1) (a) and (g).

[111] Section 138 (1) (b) (iii)

Insert ", the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995* or the regulations made under those Acts" after "the regulations".

[112] Section 139 Payments out of the Fund

Insert ", the *Wilderness Act 1987 or the Threatened Species Consewation Act 1995"* after "this Act" in section 139 (2) (a), (c) and (d).

[113] Section 143 Charges and fees

Insert ", the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995* or the regulations under those Acts" after "the regulations" in section 143.

[114] Section 144A Overdue community service contributions, charges, fees etc

Insert ", the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995"* after "this Act" in section 144A (1) (c).

[115] Section 145 Acquisition of land for reservation or other purposes

Insert ", of conserving threatened species, populations or ecological communities, or their habitats" after "Part 4" in section 145.

[116] Section 146 Acquisition or occupation of lands for certain purposes

Insert "or acquired" after "dedicated" in section 146 (1) (a).

[117] Section 146 (2)

Insert ", the *Wilderness Act 1987* or the *Threatened Species Consewation Act 1995"* after "this Act".

[118] Section 148 Power of Minister to accept gifts, devises or bequests

Omit "or the *Wilderness Act 1987"* in section 148 (1).

Insert instead ", the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995"*.

[119] Section 149 Disposal of lands, gifts etc

Insert "or the *Threatened Species Conservation Act 1995*" after "this Act" in section 149 (1) (b).

[120] Section 164 Powers of entry and seizure

Insert "or is being" after "has been" wherever occurring in section 164 (1) (a).

[121] Section 164 (1) (b1)

Insert after paragraph (b):

(b1) may, at all times, on production of the prescribed evidence of authority, enter any premises for the purposes of:

(i) identifying and mapping critical habitat, and

(ii) inspecting any lands that are the subject of an application for a licence under Part 6 of the *Threatened Species Conservation Act 1995*, and

(iii) inspecting any lands that are the subject of proposed development or an activity (within the meaning of the *Environmental Planning and Assessment Act 1979)* and in respect of the grant of development consent or approval to which the Minister or the Director-General has been consulted or is (or is acting as) a concurrence authority in accordance with that Act, and

(iv) inspecting any lands for the purpose of investigating the presence or condition of threatened species, populations or ecological communities, and their habitats, for the purposes of the *Threatened Species Conservation Act 1995* or this Act.

[122] Section 169 Impersonating, assaulting, resisting or obstructing an officer etc

Insert "or the *Threatened Species Act 1995* or the regulations under that Act" after "that Act" wherever occurring in section 169 (2) and (3).

[123] Section 171 Authority to harm or pick

Omit "take or kill" from section 171 (1) (a). Insert instead "harm".

[124] Section 171 (4)

Omit "taking and killing". Insert instead "harming".

[125] Section 176 Proceedings for offences

Omit section 176 (1AA) and (1BB). Insert instead:

(1AA) Proceedings for an offence under section 98, 99, 101, 112G or Part 8A may be taken:

(a) before the Land and Environment Court in its summary jurisdiction, or

(b) before a Local Court constituted by a Magistrate sitting alone.

[126] Section 176 (1A)

Omit "50 penalty units". Insert instead "100 penalty units".

[127] Section 176A Restraint etc of breaches of Act

Insert at the end of the section:

(4) Proceedings under this section may not be brought in connection with development, or an activity, carried out by, for or on behalf of the Olympic Co-ordination Authority in accordance with the *Olympic Co-ordination Authority Act 1995*.

[128] Section 179 Authority to take proceedings

Insert "or the *Threatened Species Conservation Act 1995* or the regulations under that Act" after "the regulations'' in section 179 (1).

[129] Section 181 Evidentiary provisions etc

Insert after section 181 (2):

(2A) An allegation, in an information in respect of an offence against this Act or the regulations, that an animal or plant is a member of a species, population or ecological community specified in that information is sufficient proof of the matter so alleged unless the defendant proves to the contrary.

[130] Section 181 (9)

Insert after subsection (8):

(9) A copy of any declaration or map of critical habitat published in the Gazette, being a copy purporting to be certified by the Director-General or an officer of the Service authorised by the Director-General, as being a true copy of the declaration or map so published, is admissible in any legal proceedings and is evidence of the matter or matters contained in the declaration or map.

[131] Schedule 3 Savings, transitional and other provisions

Insert before clause 1:

Part 1 General

1 Regulations

(1) The Governor may make regulations containing provisions of a saving or transitional nature consequent on the enactment of the following Acts:

Threatened Species Conservation Act 1995

(2) A provision referred to in subsection (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or at a later date.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Special provisions

[132] Schedule 3, clause 1A

Re-number clause 1 as 1A.

[133] Schedule 8B

Omit the Schedule.

[134] Schedule 12 Threatened interstate fauna

Omit the Part headings and other matter from the Schedule. Insert instead (Sec. 94).

[135] Schedule 13 Protected native plants

Insert "except *Boronia repanda, Boronia deanei* and *Boronia umbellata''* after "Boronia, all native species" in the list headed "SEED PLANTS".

[136] Schedule 13

Insert "except *Bulbophyllum globuliforme*" after "Bulbophyllum, all native species" in the list headed "SEED PLANTS".

[137] Schedule 13

Insert "except *Eriostemon ericofolius*" after "Eriostemon, all native species" in the list headed "SEED PLANTS".

[138] Schedule 13

Omit from the list headed "SEED PLANTS":

Grevillea caleyi.....Caley's Grevillea.

Microstrobos jitzgeraldii .....

Phaius tancapvilliae ..... Orchid.

Wollemia nobilis (proposed name) ..... Wollemi Pine

[139] Schedule 13

Insert "except *Sarcochilus fitzgeraldii, Sarcochilus hartmannii and Sarcochilus weinthalii*" after "Sarcochilus, all native species" in the list headed "SEED PLANTS".

Schedule 5 Amendment of Environmental Planning and Assessment Act 1979

(Section 153)

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

critical habitat has the same meaning as in the *Threatened Species Conservation Act 1995,*

ecological community has the same meaning as in the *Threatened Species Conservation Act 1995,*

endangered ecological community means an endangered ecological community within the meaning of the *Threatened Species Conservation Act 1995,*

endangered population means an endangered population within the meaning of the Threatened Species *Conservation Act 1995,*

endangered species means an endangered species within the meaning of the *Threatened Species Conservation Act 1995,*

habitat has the same meaning as in the *Threatened Species Conservation Act 1995,*

population has the same meaning as in the *Threatened Species Conservation Act 1995,*

recovery plan has the same meaning as in the *Threatened Species Conservation Act 1995,*

species has the same meaning as in the *Threatened Species Conservation Act 1995,*

species impact statement has the same meaning as in the *Threatened Species Conservation Act 1995,*

threat abatement plan has the same meaning as in the *Threatened Species Conservation Act 1995,*

threatened species, populations and ecological communities and threatened species, population or ecological community have the same meaning as in the *Threatened Species Conservation Act 1995,*

threatening process has the same meaning as in the *Threatened Species Conservation Act 1995,*

vulnerable species has the same meaning as in the *Threatened Species Conservation Act 1995,*

[2] Section 4 (1)

Omit the definition of ***endangered fauna.***

[3] Section 4 (1), definition of "region"

Insert ", except as provided by subsection (6A)" after "a region".

[4] Section 4 (6A)

Insert after section 4 (6):

(6A) However, for the purposes of sections 5A, 77C and 112D, a region is a bioregion defined in a national system of bioregionalisation, being a system that is determined (by the Director-General of National Parks and .Wildlife by order published in the Gazette) to be appropriate for those purposes. If the bioregion occurs partly within and partly outside New South Wales, the region consists only of so much of the bioregions as occurs within New South Wales.

[5] Section 4A

Omit the section.

[6] Section 5 Objects

Insert **",** including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats" after "environment" in section 5 (a) (vi).

[7] Section 5A

Insert after section 5:

5A Significant effect on threatened species, populations or ecological communities, or their habitats

For the purposes of this Act and, in particular, in the administration of sections 77, 90 and 112, the following factors must be taken into account in deciding whether there is likely to be a significant effect on threatened species, populations or ecological communities, or their habitats:

(a) in the case of a threatened species, whether the life cycle of the species is likely to be disrupted such that a viable local population of the species is likely to be placed at risk of extinction,

(b) in the case of an endangered population, whether the life cycle of the species that constitutes the endangered population is likely to be disrupted such that the viability of the population is likely to be significantly compromised,

(c) in relation to the regional distribution of the habitat of a threatened species, population or ecological community, whether a significant area of known habitat is to be modified or removed,

(d) whether an area of known habitat is likely to become isolated from currently interconnecting or proximate areas of habitat for a threatened species, population or ecological community,

(e) whether critical habitat will be affected,

(f) whether a threatened species, population or ecological community, or their habitats, are adequately represented in conservation reserves (or other similar protected areas) in the region,

(g) whether the development or activity proposed is of a class of development or activity that is recognised as a threatening process,

(h) whether any threatened species, population or ecological community is at the limit of its known distribution.

[8] Section 26 Contents of environmental planning instruments

Insert after section 26 (e):

(e1) protecting and conserving native animals and plants, including threatened species, populations and ecological communities, and their habitats,

[9] Section 26 (2) and (3)

Insert at the end of section 26:

(2) If land declared to be critical habitat is land to which an environmental planning instrument described in subsection (3) applies, the instrument must be amended as soon as practicable after the declaration to identify the land that is critical habitat.

(3) The environmental planning instruments described in this subsection are regional environmental plans and local environmental plans that:

(a) are principal instruments, as distinct from amending instruments (that is, principal instruments contain provisions apart from citation, commencement, a statement of their relationship with other instruments, a description, by reference or otherwise, of the land to which they apply and savings and transitional provisions), and

(b) make provision for the development of land that is identified by a map or a description, and

(c) are prepared or made before or after the commencement of Part 3 of the *Threatened Species Conservation Act 1995*.

[10] Section 34A

Insert after section 34:

34A Consultation with Director-General of National Parks and Wildlife about preparation of studies or instruments

(1) The Director must consult with the Director-General of National Parks and Wildlife before preparing:

(a) a draft State environmental planning policy, or

(b) an environmental study or a draft regional environmental plan,

if, in the opinion of the Director, critical habitat or threatened species, populations or ecological communities, or their habitats, will or may be affected by the draft policy, environmental study or draft plan.

(2) A council must consult with the Director-General of National Parks and Wildlife before preparing:

(a) an environmental study, or

(b) a draft local environmental plan,

if, in the opinion of the council, critical habitat or threatened species, populations or ecological communities, or their habitats, will or may be affected by the environmental study or draft plan.

(3) For the purpose of the consultation, the Director or council must provide the following information to the Director-General of National Parks and Wildlife:

(a) the reasons for deciding to prepare the draft environmental planning instrument or the environmental study,

(b) the proposed aims, objectives, policies and strategies whereby the draft instrument is designed to achieve any of the objects of this Act,

(c) a description of the land to which the draft instrument or the study is intended to apply,

(d) the types of matters to be dealt with in the draft instrument or the study.

(4) For the purposes of the consultation, the Director or council may provide any other information that, in the Director's or council's opinion, would assist in understanding the draft environmental planning instrument or the environmental study.

(5) The Director-General of National Parks and Wildlife may comment to the Director or council on the preparation of the draft environmental planning instrument or the environmental study within 40 days after the information required to be provided under subsection (3) is provided.

(6) The consultation required by this section is completed when the Director or council has considered any comments so made.

[11] Section 76A

Insert after section 76:

76A Consent authorities to have regard to register of critical habitat

Each consent authority must have regard to the register of critical habitat kept by the Director-General of National Parks and Wildlife under the *Threatened Species Conservation Act 1995* when exercising its functions under this Act.

[12] Section 77 Making of development applications

Omit section 77 (3) (d1). Insert instead:

(d1) if the application is in respect of development on land that is, or is a part of, critical habitat or is likely to significantly affect threatened species, populations or ecological communities, or their habitats, be accompanied by a species impact statement prepared in accordance with Division 2 of Part 6 of the *Threatened Species Conservation Act 1995*,

[13] Section 77 (4A)

Omit the subsection.

[14] Sections 77A–77C

Insert after section 77:

77A Concurrence of or consultation with Director-General of National Parks and Wildlife in certain cases

(1) If development consent is required for development on land that is, or is a part of, critical habitat, development consent must not be granted without the concurrence of the Director-General of National Parks and Wildlife.

(2) If development consent is required for development and that development is likely to significantly affect a threatened species, population or ecological community, or its habitat, consent must not be granted without the concurrence of the Director-General of National Parks and Wildlife.

(3) Despite subsections (1) and (2), if the Minister administering the *Threatened Species Conservation Act 1995* considers that it is appropriate, that Minister may:

(a) elect to act in the place of the Director-Genera1 of National Parks and Wildlife for the purposes of those subsections, or

(b) review and amend any recommendations that the Director-General proposes to make, or any advice that the Director-General proposes to offer, for the purposes of those subsections.

(4) Sections 78 (subsection (2) excepted), 79 (subsection (4) excepted), 80, 81 and 82 apply (with such modifications as may be necessary) to and in respect of the granting of concurrence under this section in the same way as they apply to and in respect of the granting of concurrence required by an environmental planning instrument.

(5) Despite subsections (1) and (2), if a Minister is the consent authority, development consent must not be granted unless the Minister has consulted with the Minister administering the *Threatened Species Conservation Act 1995.*

(6) The Minister administering the *Threatened Species Conservation Act 1995* must provide the Minister who is the consent authority with any recommendations made by the Director-General of National Parks and Wildlife concerning determination of such a development application and, if that Minister does not accept any one or more of the recommendations, that Minister must include in the determination the recommendations not accepted and that Minister's reasons for not accepting them.

(7) A decision with respect to a development consent or concurrence referred to in this section, by whoever made, must include the reasons for which it was made.

(8) A copy of the reasons referred to in this section must be available for public inspection, during ordinary office hours, at the head office of the National Parks and Wildlife Service.

(9) Despite any inconsistent provisions in sections 102 and 103, but without otherwise affecting those sections, development consent of the kind referred to in subsection (1) or (2) is not to be modified (except in the case of a minor modification) unless the requirements of this section and section 77C concerning concurrence have been complied with in relation to the proposed modification as if that proposed modification were an application for development consent.

77B Determination by Minister without concurrence of or consultation with Director-General of National Parks and Wildlife

(1) Despite section 77A, if the Minister is of the opinion that it is expedient in the public interest to do so, having regard to matters that in the opinion of the Minister are of significance for State or regional environmental

planning, the Minister may determine a development application in accordance with section 101 and without the concurrence of, or consultation with, the Director-Genera1 of National Parks and Wildlife (or the concurrence of, or consultation with, the Minister administering the *Threatened Species Conservation Act 1995* if that Minister acts under section 77A).

(2) However, in making such a determination, the Minister is to consult with the Minister administering the *Threatened Species Conservation Act 1995* if the development the subject of the development application is on land that is, or is a part of, critical habitat or is likely to significantly affect an endangered species, population or ecological community, or its habitat.

(3) The Minister administering the *Threatened Species Conservation Act 1995* must provide the Minister with any recommendations made by the Director-Genera1 of National Parks and Wildlife concerning the determination of the development application and, if the Minister does not accept any one or more of the recommendations, the Minister must include in the determination the recommendations not accepted and the Minister's reasons for not accepting them.

(4) A copy of the reasons referred to in this section must be available for public inspection, during ordinary office hours, at the head office of the National Parks and Wildlife Service.

77C Matters to be considered by Director-General of National Parks and Wildlife as concurrence authority

In deciding whether or not concurrence should be granted under section 77A, the Director-General of National Parks and Wildlife (or the Minister administering the *Threatened Species Conservation Act 1995,* if that Minister acts under that section) must take the following matters into consideration:

(a) any species impact statement that accompanied the development application,

(b) any assessment report prepared by the consent authority,

(c) any submissions or objections received concerning the development application,

(d) any relevant recovery plan or threat abatement plan,

(e) whether the development proposed is likely to reduce the long-term viability of the species, population or ecological community in the region,

(f) whether the development is likely to accelerate the extinction of the species, population or ecological community or place it at risk of extinction,

(g) the principles of ecologically sustainable development (as described by section 6 (2) of the Protection of the *Environment Administration Act 1991),*

(h) the likely social and economic consequences of granting or of not granting concurrence.

[15] Section 78 Seeking concurrence of Minister or public authority

Insert "or section 77A" after "instrument" wherever occurring in section 78 (1).

[16] Section 79 Granting or refusal of concurrence by Minister or public authority

Insert "(other than the Minister and the public authority referred to in section 77A)" after "section 78" in section 79 (2).

[17] Section 81 Circumstances in which concurrence may be assumed

Insert "or section 77A" after "instrument" wherever occurring in section 81.

[18] Section 83 Avoidance of consents

Insert "or section 77A" after "instrument" in section 83.

[19] Section 90 (1) Matters for consideration

Omit section 90 (1) (c2). Insert instead:

(c2) the effect of that development on critical habitat,

(c3) whether there is likely to be a significant effect on threatened species, populations or ecological communities, or their habitats,

(c4) any relevant recovery plan or threat abatement plan,

(c5) the effect of that development on any other protected fauna or protected native plants within the meaning of the *National Parks and Wildlife Act 1974*,

[20] Section 110C

Insert after section 110B:

110C Determining authorities to have regard to register of critical habitat

Each determining authority must, for the purpose of exercising functions under this Part, have regard to the register of critical habitat kept by the Director-General of National Parks and Wildlife under the *Threatened Species Conservation Act 1995*.

[21] Section 111 Duty to consider environmental impact

Insert at the end of section 111 (2) (b):

, and

(c) any joint management agreement entered into under the *Threatened Species Consewation Act 1995*.

[22] Section 111 (4)

Insert after section 111 (3):

(4) Without limiting subsection (l), a determining authority must consider the effect of an activity on:

(a) critical habitat, and

(b) in the case of threatened species, populations and ecological communities, and their habitats, whether there is likely to be a significant effect on those species, populations or ecological communities, or those habitats, and

(c) any other protected fauna or protected native plants within the meaning of the *National Parks and Wildlife Act 1974*.

[23] Section 112 Decision of determining authority in relation to certain activities

Insert "(including critical habitat) or threatened species, populations or ecological communities, or their habitats," after "environment" in section 112 (1).

[24] Section 112 (1B)

Omit section 112 (1B)–(1D). Insert instead:

(1B) Without limiting subsection (l), a determining authority must not carry out an activity, or grant an approval in relation to an activity, being an activity that is in respect of land that is, or is a part of, critical habitat or is likely to significantly affect threatened species, populations or ecological communities, or their habitats, unless a species impact statement, or an environmental impact statement that includes a species impact statement, has been prepared (in each case) in accordance with Division 2 of Part 6 the *Threatened Species Conservation Act 1995*.

[25] Section 112 (4)

Insert "(including critical habitat) or threatened species, populations or ecological communities, or their habitats" after "environment" wherever occurring.

[26] Sections 112A–112E

Insert after section 112:

112A Determining authorities to have regard to recovery plans and threat abatement plans

A determining authority, in considering a species impact statement, must have regard to the terms of any recovery plan or threat abatement plan relating to the land referred to in the species impact statement for the purposes of assessing any effect on a threatened species, population or ecological community, or its habitat.

112B Consultation with Minister for the Environment if Minister is determining authority

(1) A Minister who is a determining authority must not carry out, or grant an approval to carry out, an activity in respect of land that is, or is a part of, critical habitat or is likely to significantly affect threatened species, populations or ecological communities, or their habitats, unless that Minister has consulted with the Minister administering the *Threatened Species Conservation Act 1995*.

(2) In so consulting, the Minister administering the *Threatened Species Conservation Act 1995* must provide the Minister who is the determining authority with any recommendations made by the Director-General of National Parks and Wildlife concerning the determination of the activity. If that Minister does not accept any one or more of the recommendations, that Minister must include the recommendations not accepted and the Minister's reasons for not accepting them in the determination.

112C Concurrence of or consultation with Director-General of National Parks and Wildlife if Minister is not determing authority

(1) A determining authority (not being a Minister) must not carry out, or grant an approval to carry out, an activity:

(a) that is to be carried out in respect of land that is, or is part of, critical habitat, or

(b) that is likely to significantly affect a threatened species, population or ecologicaI community or its habitat,

without the concurrence of the Director-General of National Parks and Wildlife.

(2) Despite subsection (l), if the Minister administering the *Threatened Species Conservation Act 1995* considers that it is appropriate, that Minister may elect to act in the place of the Director-General of National Parks and Wildlife for the purpose of that subsection. However, if the Minister so elects, the Minister must:

(a) consult the Director-General of National Barks and Wildlife and seek the Director-General's recommendations in respect of the proposed activity, and

(b) if the Minister does not accept any one or more of those recommendations—specify, in the determination as to the grant or refusal to grant concurrence under this section, the recommendations that were not accepted and the Minister's reasons for not accepting them.

(3) Sections 78 (subsection (2) excepted), 79 (subsection (4) excepted), 80, 81 and 82 apply (with such modifications as may be necessary) to and in respect of the granting of concurrence under this section in the same way as they apply to and in respect of the granting of concurrence required by an environmental planning instrument.

112D Matters to be considered by Director-General of National Parks and Wildlife as concurrence authority

In deciding whether or not concurrence should be granted under section 112C, the Director-General of National Parks and Wildlife (or the Minister administering the *Threatened Species Conservation Act 1995*, if that Minister acts under that section) must take the following matters into consideration:

(a) any species impact statement prepared in relation to the activity,

(b) any assessment report prepared by or on behalf of the proponent,

(c) any representations made under section 113 concerning the species impact statement,

(d) any relevant recovery plan or threat abatement plan,

(e) whether the activity is likely to reduce the long-term viability of the species, population or ecological community in the region,

(f) whether the activity is likely to accelerate the extinction of the species or ecological community or place it at risk of extinction,

(g) the principles of ecologically sustainable development (as described by section 6 (2) of the *Protection of the Environment Administration Act 1991),*

(h) the likely social and economic consequences of granting or of not granting concurrence.

112E Matters to be considered by Minister or Director-General of National Parks and Wildlife when consulted

The Minister administering the *Threatened Species Conservation Act 1995* (for the purposes of consultation under section 112B) or the Director-General of National Parks and Wildlife (for the purposes of consultation

under section 112C) (or the Minister administering the *Threatened Species Conservation Act 1995,* if that Minister acts under that section) must take the following matters into consideration:

(a) any species impact statement prepared in relation to the activity,

(b) any assessment report prepared by or on behalf of the proponent,

(c) any representations made under section 113 concerning the species impact statement,

(d) whether the activity is likely to reduce the long-term viability of the species in the region,

(e) whether the activity is likely to place the species at risk of becoming endangered as described in section 10 of the *Threatened Species Conservation Act 1995,*

(f) the principles of ecologically sustainable development (as described by section 6 (2) of the Protection of the *Environment Administration Act 1991),*

(g) the likely social and economic consequences if the activity is not carried out.

[27] Section 113 Publicity and examination of environmental, fauna and species impact statements

Insert after section 113 (7):

(8) In this section, ***environmental impact statement*** includes a fauna impact statement and a species impact statement.

[28] Section 1158 Provisions relating to Minister's approval

Insert at the end of section 115B (1) "The proponent must also have complied with section 112B or 112C, or both, as the case requires".

[29] Section 123 Restraint etc of breaches of this Act

Insert at the end of the section:

(4) Proceedings under this section may not be brought in connection with development, or an activity, carried out by, for or on behalf of the Olympic Co-ordination Authority in accordance with the *Olympic Co-ordination Authority Act 1995*.

[30] Schedule 6 Savings, transitional and other provisions

Insert at the end of the list of Acts in clause I (1):

Threatened Species Conservation Act 1995

Schedule 6 Amendment of other Acts and regulations

(Section 154)

6.1 Commonwealth Powers (Poultry Processing) Act 1993 No 100

Section 3 Reference of matters relating to poultry processing

Omit "taken or killed" from the definition ofpoultry in section 3 (2). Insert instead "harmed".

6.2 Dividing Fences Act 1991 No *72*

Section 14 Orders as to fencing work

Insert after section 14 (1):

(1A) Despite subsection (l), no order may be made for the carrying out of fencing work on critical habitat within the meaning of the *Threatened Species Conservation Act 1995* without the consent of the Director-General of National Parks and Wildlife.

6.3 Environmental Planning and Assessment Regulation 1994

Omit "or endangered" wherever occurring from clauses 65 (c) (i) and (ii) and 82 (2) (f).

6.4 Impounding Act 1993 No 31

Section 41 Special power to destroy animals

Insert "a threatened species (as defined in the *Threatened Species Conservation Act 1995),"* after "that is" in section 41 (3).

6.5 Land and Environment Court Act 1979 No 204

[1] Section 17 Class 1—environmental planning and protection appeals

Omit "section 92C of the *National Parks and Wildlife Act 1974*" from paragraph (ea).
Insert instead "section 106 of the *Threatened Species Conservation Act 1995*".

[2] Section 20 Class 4—environmental planning and protection and development contract civil enforcement

Insert after subsection (1) (cj):

(ck) proceedings under section 147 of the *Threatened Species Conservation Act 1995*,

[3] Section 20 (3)

Insert in alphabetical order of Acts:

Threatened Species Conservation Act 1995,

6.6 Local Government Act 1993 No 30

Section 428, Note

Insert after subsection (2) (c):

Note. Section 70 (2) of the *Threatened Species Conservation Act 1995* requires a council that is identified in a recovery plan (within the meaning of that Act) as responsible for the implementation of measures included in the plan to report on action taken by it to implement those measures in its annual report as to the state of the environment of its area.

Section 87 (2) of that Act imposes the same requirement in relation to threat abatement plans (within the meaning of that Act).

6.7 Meat Industry Act 1978 No 54

Section 41 Offences as to sale of meat and 41A Offences as to storage of meat

Omit "taken and" wherever occurring.

6.8 National Parks and Wildlife (Administration)Regulation 1995

Schedule 2 Penalty notice offences

Omit ''take/kill" wherever occurring. Insert instead "harm".

6.9 National Parks and Wildlife (Fauna Protection) Regulation 1994

[1] Clause 8 (2) and (3)

Omit "taken or killed" wherever occurring.
Insert instead "harmed".

[2] Clause 9

Omit "take or kill" wherever occurring. Insert instead "harm".

[3] Clause 12 (2)

Omit "taken or killed". Insert instead "harmed".

[4] Clause 16 (2)

Omit "section 99 (1) (c)". Insert instead "section 112G".

[5] Clause 19(1)

Omit "taking or killing". Insert instead "harming".

6.10 National Parks and Wildlife (Land Management) Regulation 1995

[1] Clause 26 (2)

Insert "any threatened species, population or ecological community, or its habitat, (within the meaning of the *Threatened Species Conservation Act 1995)* or any" after "the land or" in clause 26 (2) (f).

[2] Clauses 37 (1) and 40

Omit "taking or killing" wherever occurring.
Insert instead "harming".

[3] Clause 37 (3)

Omit "endangered fauna".
Insert instead "threatened species, populations and ecological communities within the meaning of the *Threatened Species Conservation Act 1995"*.

6.11 Non-indigenous Animals Act 1987 No 166

Section 4 Application of Act

Insert at the end of section 4 (2):

Threatened Species Conservation Act 1995.

6.12 Rural Lands Protection Act 1989 No 197

[1] Section 3 Definitions

Insert after section 3 (2):

(2A) An order may not be made under subsection (2) (b) in respect of a species of insects that is a threatened species within the meaning of the *Threatened Species Conservation Act 1995* without the concurrence of the Director-General of National Parks and Wildlife.

[2] Section 138C Applications for control orders by boards and section 138D Control orders

Insert "threatened species within the meaning of the *Threatened Species Conservation Act 1995* or" after "other than" wherever occurring in sections 138C (3) (c) and 138D (3) (c).

6.13 Soil Conservation Act 1938 No 10

[1] Section 21B Protected land

Omit section 21B (4) (b). Insert instead:

(b) critical habitat, or land containing threatened species, populations or ecological communities, or their habitats, within the meaning of the *Threatened Species Consewation Act 1995,*

[2] Section 21D Authority to destroy timber on protected land

Omit section 21D (3A) (c). Insert instead:

(c) an adverse effect on critical habitat, or threatened species, populations or ecological communities, or their habitats, within the meaning of the *Threatened Species Conservation Act 1995,*

6.14 Timber Industry (Interim Protection) Act 1992 No 1

[1] Section 3 Objects of this Act

Insert ", section 114 of the Threatened Species Conservation Act 1995 or section 91AA of the *National Parks and Wildlife Act 1974*" after "(as inserted by the *Endangered Fauna (Interim Protection) Act 1991)*" in section 3 (g).

[2] Section 11 Stop work orders

Insert at the end of the section:

(2) In addition, during the period when the application of Part 5 of the EPA Act is suspended in respect of land specified in Schedule 4, an order under section 114 of the *Threatened Species Conservation Act 1995* or section 91AA of the *National Parks and Wildlife Act 1974* made on or after the commencement of those sections has no effect in respect of that land.

[3] Section 12 Logging operations on private land

Insert after section 12 (4) (b):

, and

(c) an order under section 114 of the *Threatened Species Conservation Act 1995* or section 91AA of the *National Parks and Wildlife Act 1974* made on or after the commencement of those sections has no effect in respect of that land.

[4] Section 12 (7)

Insert "(or species impact statements under the *Threatened Species Conservation Act 1995)*" after "fauna impact statements".

[5] Section 13

Omit the section.

Schedule 7 Savings, transitional and other provisions

(Section 156)

Part 1 Savings and transitional regulations

1 Regulations

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done before the date of its publication.

Part 2 Amendments consequent on Threatened Species Conservation Act 1995

2 Dissolution of Scientific Committee

(1) The Scientific Committee established under section 92A of the *National Parks and Wildlife Act 1974*, as inserted by the *Endangered Fauna (Interim Protection) Act 1991*, is dissolved.

(2) A person who, immediately before the dissolution of the Scientific Committee referred to in this clause, held office as a member of that Scientific Committee:

(a) ceases to hold that office, and

(b) is eligible (if otherwise qualified) to be appointed as a member of the Scientific Committee established under this Act.

(3) A person who so ceases to hold office as a member of the Scientific Committee is not entitled to any remuneration or compensation because of the loss of that office.

3 Extension of certain licences under section 120 of the National Parks and Wildlife Act l974

(1) This clause applies to a licence to which section 4 of the *Endangered Fauna (Interim Protection) Amendment Act 1992* applied immediately before the repeal or expiry of that section.

(2) A licence to which this clause applies continues in force, despite any expiry date specified in the licence, as if no such date had been so specified.

(3) A licence to which this clause applies may be varied under section 133 of the *National Parks and Wildlife Act 1974*

4 Certain licences taken to be licences under Part 6

(1) A licence to which clause 3 refers is taken to be a licence under Part 6 of this Act and is as efficacious, in relation to the action that it authorises, as a licence granted under that Part.

(2) In particular, a licence to which clause 3 refers is, in relation to the action that it authorises, taken to authorise the harming or picking of threatened species, populations or ecological communities, or the damaging of their habitats (including habitats that are critical habitats).

5 Savings in respect of planning matters

(1) The amendments made by this Act to the *Environmental Planning and Assessment Act 1979* do not affect:

(a) any development consent granted before the commencement of this clause or any development carried out in accordance with such a consent, or

(b) any activity to which Part 5 of that Act applies (or any approval for the carrying out of any such activity) if the provisions of that Part were complied with for that activity before the commencement of this clause.

(2) If an application for development consent has not been finally determined on the commencement of this clause, the amendments made by this Act to the *Environmental Planning and Assessment Act 1979* do not apply to the determination of the application or to any development carried out in accordance with a development consent granted on the determination of the application. However, the Minister for Planning may, by notice served on the consent authority, direct that all or any specified amendments apply to the determination of the application.

(3) If, in respect of any activity to which Part 5 of that Act applies (or any approval for carrying out any such activity):

(a) an environmental impact statement was duly obtained before the commencement of this clause, but the provisions of that Part had not been fully complied with before that commencement, or

(b) the Director-General of the Department of Planning had duly notified the person preparing an environmental impact statement before the commencement of this clause of requirements with respect to the form and contents of the statement, but the statement had not been obtained before that commencement,

the statement (so long as it is obtained in accordance with the provisions of that Act as in force immediately before that commencement) is taken to have been obtained in accordance with that Act, as amended by this Act.

(4) Subclause (3) does not apply to an activity that has not been carried out before the commencement of this clause if the Minister for Planning (by notice served on the person obtaining the statement concerned) so directs.

6 Savings in respect of stop work orders

A stop work order made under section 92E of the *National Parks and Wildlife Act 1974* is, if it has any force or effect immediately before the repeal of that section, taken to be a stop work order under Part 6A of that Act, as inserted by this Act.

[Minister's second reading speech made in—
Legislative Assembly on 7 December 1995
Legislative Council on 14 December 1995]