



New South Wales

# Threatened Species Conservation Amendment (Biodiversity Banking) Act 2006 No 125

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New South Wales

# **Threatened Species Conservation Amendment (Biodiversity Banking) Act 2006 No 125**

Act No 125, 2006

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An Act to amend the *Threatened Species Conservation Act 1995* to establish a biodiversity banking and offsets scheme; and to amend other Acts consequentially.  
[Assented to 4 December 2006]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Threatened Species Conservation Amendment (Biodiversity Banking) Act 2006*.

**2 Commencement**

This Act commences on the date of assent.

**3 Amendment of Threatened Species Conservation Act 1995 No 101**

The *Threatened Species Conservation Act 1995* is amended as set out in Schedule 1.

**4 Amendment of other Acts and legislation**

The Acts and other legislation specified in Schedule 2 are amended as set out in that Schedule.

**5 Repeal of Act**

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

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## Schedule 1      Amendment of Threatened Species Conservation Act 1995

(Section 3)

**[1] Section 4 Definitions**

Insert in alphabetical order in section 4 (1):

*biodiversity values* has the meaning given by section 4A.

**[2] Section 4A**

Insert after section 4:

**4A Biodiversity values—meaning**

- (1) For the purposes of this Act, *biodiversity values* includes the composition, structure and function of ecosystems, and includes (but is not limited to) threatened species, populations and ecological communities, and their habitats.
- (2) However, a reference in this Act to biodiversity values does not extend to biodiversity values as they relate to fish, or marine vegetation, within the meaning of Part 7A of the *Fisheries Management Act 1994*, other than those that are considered to be animals or plants because of an order made under section 5A of this Act.

**[3] Section 126H**

Omit the section. Insert instead:

**126H Certification can be conditional**

- (1) Biodiversity certification of an EPI can be subject to conditions, including conditions that:
  - (a) limit the certification to specified threatened species, populations and communities or to a specified part of the land to which the EPI applies, or
  - (b) limit the certification to specified development or activities.
- (2) Unless limited by the conditions of the certification, biodiversity certification of an EPI applies:
  - (a) to the whole of the land to which the EPI applies, and
  - (b) to all development and activities that may be carried out under the EPI, and

- (c) to all threatened species, populations and ecological communities.

**[4] Section 126I Effect of biodiversity certification**

Omit section 126I (3). Insert instead:

- (3) This section applies subject to the conditions of the biodiversity certification.

**[5] Section 126O Director-General may accredit persons to prepare threatened species assessments and surveys**

Omit the section.

**[6] Part 7A**

Insert after Part 7:

## **Part 7A Biodiversity banking**

**Introductory note.** This Part provides for the establishment of a biodiversity banking and offsets scheme (referred to as *the biobanking scheme*).

The biobanking scheme has the following key elements:

- (a) the establishment of biobank sites on land by means of biobanking agreements entered into between the Minister and the owners of the lands concerned,
- (b) the creation of biodiversity credits in respect of management actions carried out or proposed to be carried out on or in respect of biobank sites that improve biodiversity values,
- (c) a system that enables those biodiversity credits, once created and registered, to be traded (including by being purchased by developers) and used as an offset against the impact of proposed development on biodiversity values,
- (d) the establishment of a biobanking assessment methodology, by order of the Minister published in the Gazette, for the purpose of determining both the number of biodiversity credits that may be created in respect of management actions or proposed management actions and the number of biodiversity credits that must be retired in connection with a development in order to ensure that it improves or maintains biodiversity values.

This Part provides for a procedure under which a person may apply to the Director-General for a biobanking statement in respect of a development proposal.

If a biobanking statement is issued, it will not be necessary for the development to be assessed in accordance with the threatened species protection measures provided for by Parts 4 and 5 of the *Environmental Planning and Assessment Act 1979*. However, the developer may be required to purchase and retire sufficient biodiversity credits to ensure that the impact of the development on biodiversity values is offset and to take other onsite measures to minimise any negative impact on biodiversity values.

Biobanking statements may also be issued in respect of projects proposed to be approved under Part 3A of the *Environmental Planning and Assessment Act 1979*.

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## Division 1 Preliminary

### 127 Definitions

(1) In this Part:

**biobank site** means land that is designated by a biobanking agreement to be a biobank site for the purposes of this Act.

**biobanking agreement** means an agreement entered into under Division 2.

**biobanking assessment methodology** means the rules established under section 127B.

**biobanking scheme** means the biodiversity banking and offsets scheme established under this Part.

**biobanking statement** means a biobanking statement issued and in force under this Part.

**Biobanking Trust Fund** means the Biobanking Trust Fund established under this Part.

**Biodiversity Banking Account** means the Biodiversity Banking Account established under this Part.

**biodiversity credit** means a biodiversity credit created under this Part.

**consent authority** has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

**credit retirement condition** has the meaning given by section 127ZN.

**deferred retirement arrangement** has the meaning given by section 127ZW.

**development** means development within the meaning of the *Environmental Planning and Assessment Act 1979*, and includes an activity within the meaning of Part 5 of that Act.

**development for which biobanking is available** has the meaning given by section 127ZJ.

**Fund Manager** means the person for the time being appointed under this Part as Fund Manager in respect of the Biobanking Trust Fund.

**holder** of a biodiversity credit means a person for the time being recorded as the holder of that credit in the register of biodiversity credits.

**management action** means an action or proposed action in respect of which a biodiversity credit may be created.

**mining authority** means an authority, mineral claim or opal prospecting licence under the *Mining Act 1992*.

**owner**, in relation to land, includes:

- (a) every person who, either at law or in equity:
  - (i) is entitled to the land for any estate of freehold in possession, or
  - (ii) is a person to whom the Crown has lawfully contracted to sell the land under the *Crown Lands Act 1989*, the *Crown Lands Consolidation Act 1913* or any other Act relating to the alienation of lands of the Crown, or
  - (iii) is entitled to receive, or is in receipt of, or if the land were let to a tenant would be entitled to receive, the rents and profits in respect of the land, whether as beneficial owner, trustee, mortgagee in possession or otherwise, or
- (b) a person who leases land under the *Crown Lands Act 1989*, the *Crown Lands Consolidation Act 1913* or the *Western Lands Act 1901*.

**petroleum title** means a petroleum title under the *Petroleum (Onshore) Act 1991*.

**register of biobank sites** means the register of biobank sites kept by the Director-General under this Part.

**register of biobanking statements** means the register of biobanking statements kept by the Director-General under this Part.

**register of biodiversity credits** means the register of biodiversity credits kept by the Director-General under this Part.

**restorative action**, in relation to a development or activity, means any rehabilitation or restoration action taken on the site of a development or activity after the development or activity has been substantially completed.

- (2) In this Part, a reference to an action, or carrying out an action, includes a reference to doing any thing or refraining from doing any thing.

#### **127A Establishment of biobanking scheme**

- (1) There is established by this Part a biodiversity banking and offsets scheme (the **biobanking scheme**).
- (2) The biobanking scheme has the following key elements:
  - (a) the establishment of biobank sites on land by means of biobanking agreements entered into between the Minister and the owners of the lands concerned,

- (b) the creation of biodiversity credits in respect of management actions carried out or proposed to be carried out on or in respect of biobank sites that improve biodiversity values,
  - (c) a system that enables those biodiversity credits, once created and registered, to be traded (including by being purchased by developers) and used as an offset against the impact of proposed development on biodiversity values,
  - (d) the establishment of a biobanking assessment methodology, by order of the Minister published in the Gazette, for the purpose of determining both the number of biodiversity credits that may be created in respect of management actions or proposed management actions and the number of biodiversity credits that must be retired in connection with a development to offset the impact of the development and ensure that it improves or maintains biodiversity values.
- (3) The biobanking scheme is not to be implemented until:
- (a) a joint committee of the Legislative Assembly and the Legislative Council has been appointed with functions that include preparing a report that sets out suggested guidelines for the operation of the scheme during a trial period and examines options for applying the scheme to the clearing of native vegetation (within the meaning of the *Native Vegetation Act 2003*), and
  - (b) the report has been provided to both Houses of Parliament, and
  - (c) the Minister has caused to be tabled in each House of Parliament a report by the Minister setting out what the Government has done or proposes to do in response to the report of the joint committee.
- (4) Despite subsection (3), the biobanking scheme may be implemented if the report of the joint committee referred to in subsection (3) (a) has not been prepared by the joint committee and provided to both Houses of Parliament by the end of the period of 6 months after the commencement of this Part.
- (5) If a House of Parliament is not sitting when the joint committee seeks to provide its report to that House, the joint committee may instead present it to the Clerk of the House of Parliament concerned.
- (6) Section 63C of the *Public Finance and Audit Act 1983* applies in respect of the presentation of the report of the joint committee to



a Clerk of a House of Parliament under this section in the same way as it applies to the presentation of documents in accordance with that Act.

- (7) For the purposes of subsections (3) and (4), each of the following actions constitutes implementation of the biobanking scheme:
- (a) the publication of the biobanking assessment methodology in the Gazette,
  - (b) the establishment of any biobank site,
  - (c) the issue of any biobanking statement.

**127B Biobanking assessment methodology**

- (1) The Minister may, by order published in the Gazette, establish rules with respect to the following:
- (a) the actions or proposed actions in respect of which biodiversity credits may be created (*management actions*), being actions that will improve biodiversity values,
  - (b) the creation of biodiversity credits or different classes of biodiversity credits in respect of management actions that have been carried out, are being carried out or are proposed to be carried out on or in respect of biobank sites,
  - (c) the circumstances in which development is to be regarded as improving or maintaining biodiversity values, including where the impact of that development is offset against the impact of management actions for which biodiversity credits are created,
  - (d) any impact on biodiversity values that cannot be offset by the retirement of biodiversity credits.
- (2) In particular, the rules are to establish a methodology for the following:
- (a) assessing the impact or likely impact of management actions or development on biodiversity values,
  - (b) determining the number and class of biodiversity credits that can be created in respect of a management action, and the times at which they may be created,
  - (c) determining the number and class of biodiversity credits that are required to be retired in respect of development, as an offset against the impact of the development on biodiversity values, pursuant to the issue of a biobanking statement.

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- (3) The Minister is to have regard to the following principles when establishing the methodology under this section:
- (a) biodiversity values should be conserved across appropriate local and regional scales,
  - (b) all types of ecological communities should be adequately conserved,
  - (c) any areas conserved under the biobanking scheme must be viable in the long term.
- (4) A methodology provided for by the rules may include provision for the use of specified computer programs or databases.
- (5) The rules must comply with any requirements set out in the regulations, including as to the types of actions or proposed actions in respect of which biodiversity credits may be created.
- (6) Subject to any requirements of the regulations, refraining from doing any thing (whether or not that thing was being done beforehand) may be treated by the rules as an action that improves biodiversity values, if refraining from doing that thing improves biodiversity values or the long term security of biodiversity values. This does not limit the generality of subsection (1) (a).
- (7) The biobanking assessment methodology must include provisions that ensure that if an environmental contribution is required in respect of a development, the number of biodiversity credits required to be retired in respect of the development is reduced (or is nil) to take account of that environmental contribution.
- (8) The biobanking assessment methodology may provide for any other matters required or authorised by this Part.
- Note.** See also Division 7, which allows the methodology to include provision for deferred retirement arrangements where restorative actions are taken in respect of a development.
- (9) A biobanking agreement cannot be entered into, and a biobanking statement cannot be issued, until the biobanking assessment methodology is published under this section.
- (10) In this section, *environmental contribution* means any of the following contributions, or a part of such a contribution, if the contribution or part is required, or is to be used or applied, for the conservation or enhancement of the natural environment:
- (a) a contribution (including a dedication of land or other material benefit) required by a planning agreement under

Subdivision 2 of Division 6 of Part 4 of the *Environmental Planning and Assessment Act 1979*,

- (b) a contribution (including a dedication of land or levy) required under Subdivision 3 or 4 of Division 6 of Part 4 of that Act.

**127C Publication, amendment and review of biobanking assessment methodology**

- (1) The Director-General is to ensure that a copy of the biobanking assessment methodology is available for public inspection:
  - (a) at the head office of the Department, and
  - (b) on the website of the Department.
- (2) Copies of the biobanking assessment methodology, or of any part of the methodology, are to be made available to the public on request, on payment of a fee (if any) fixed by the Director-General.
- (3) Subject to any requirements of the regulations, the biobanking assessment methodology may be amended, repealed or replaced by further order of the Minister published in the Gazette.
- (4) The regulations may:
  - (a) prescribe the circumstances in which the Minister is authorised to make an order that amends, repeals or replaces the biobanking assessment methodology, including by requiring consultation to be carried out before such an order is made, and
  - (b) require the Minister to undertake a periodic review of the biobanking assessment methodology and provide for consultation in respect of that review.

**Division 2 Biobanking agreements**

**127D Biobanking agreements**

- (1) The Minister may enter into an agreement relating to land with the owner of the land for the purpose of establishing a biobank site (a *biobanking agreement*).
- (2) Any such agreement may designate any land to which the agreement relates to be a biobank site for the purposes of this Part.
- (3) The regulations may set out criteria for land to be designated as a biobank site by a biobanking agreement.

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- (4) Without limiting subsection (3), the regulations may exclude any land, or land of a particular class, from being designated as a biobank site by a biobanking agreement.
  - (5) Land may be designated as a single biobank site even if the land consists of separate parcels of land and whether or not the parcels are adjacent (but only if the land is owned by the same person or persons).
  - (6) The regulations may prescribe a procedure for applying to the Minister to enter into a biobanking agreement, including by requiring a fee to be paid in respect of an application.
  - (7) The Minister must consult with the Minister administering the *Environmental Planning and Assessment Act 1979*, the Minister administering Part 2 of the *Mining Act 1992* and the Minister administering the *Petroleum (Onshore) Act 1991* before entering into any biobanking agreement.
  - (8) The regulations may:
    - (a) require the Minister, before entering into a biobanking agreement with a person, to consider whether the person (whether or not an individual) is a fit and proper person to enter into, and fulfil the obligations imposed by, the agreement, and
    - (b) specify the matters that may be considered by the Minister in determining whether the person is such a fit and proper person.

**127E Content of biobanking agreements**

- (1) A biobanking agreement may contain any of the following terms, binding on the owner from time to time of the land:
  - (a) requiring or authorising the owner to carry out specified management actions on the land,
  - (b) providing for the number and class of biodiversity credits that can be created in respect of any of those management actions in accordance with the biobanking assessment methodology,
  - (c) providing for the timing of the creation of biodiversity credits and their release for sale,
  - (d) requiring the owner of the land to carry out or continue to carry out any management action in perpetuity, unless otherwise specified (even if a biodiversity credit has already been created in respect of the action or has been transferred or retired),

- (e) restricting the use of the biobank site,
  - (f) requiring the owner to permit access to the biobank site by specified persons or persons of a specified class and to allow those persons to take any specified action on the land,
  - (g) providing for monitoring, reporting and audit requirements,
  - (h) providing for the entitlement of the owner to payments from the Biobanking Trust Fund,
  - (i) specifying the manner in which any money provided to the owner under the agreement is to be applied by the owner,
  - (j) requiring the owner to repay money paid to the owner under the agreement if a specified breach of the agreement occurs,
  - (k) specifying the remedial measures that must be taken in the event that any contingency that has a negative impact on the biodiversity values protected by the agreement or that prevents or disrupts the continuation of a management action in respect of which biodiversity credits are in force or have been retired,
  - (l) providing for any other matter relating to a biobank site.
- (2) A biobanking agreement may contain any of the following terms, binding on the Minister:
- (a) requiring the Minister to direct that payments be made from the Biobanking Trust Fund to the owner of the land,
  - (b) requiring the Minister to provide technical advice,
  - (c) requiring the Minister to provide other assistance,
  - (d) requiring the Minister to carry out specified activities or do specified things,
  - (e) providing for any other matter relating to a biobank site.
- (3) If the biobanking assessment methodology is amended or replaced after a biobanking agreement is entered into, the biobanking agreement prevails to the extent of any inconsistency between the agreement and the provisions of the biobanking assessment methodology as amended or replaced.

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**127F General provisions relating to biobanking agreements**

- (1) The Minister must not enter into a biobanking agreement relating to land unless:
- (a) all the owners of the land are parties to the agreement or have consented in writing to the agreement, and
  - (b) where the land (not being land referred to in subsection (5)) is subject to a residential tenancy agreement or other lease, the tenant or the lessee has consented in writing to the biobanking agreement, and
  - (c) where the land is subject to a mortgage or charge, the mortgagee or chargee has consented in writing to the agreement, and
  - (d) where the land is subject to a covenant, the Minister has consulted with the person entitled to the benefit of the covenant about the terms of the agreement, and
  - (e) where the land is the subject of a mining lease or mineral claim under the *Mining Act 1992* or a production lease under the *Petroleum (Onshore) Act 1991*, the holder of the lease or claim has consented in writing to the agreement, and
  - (f) where the land is the subject of any mining authority or petroleum title not referred to in paragraph (e), the Minister has consulted with the holder of the mining authority or petroleum title about the terms of the agreement.
- Note.** Subsection (1) (e) applies in respect of any mining lease under the *Mining Act 1992* that is granted over the land. This may include a mining lease granted over the subsoil of the land or over parts of the subsoil of the land.
- (2) The Minister may enter into a biobanking agreement relating to land that is Crown lands or lands of the Crown:
- (a) with a public authority (not being a Department of the Public Service) that owns or has the control and management of the land, or
  - (b) if the land is under the control and management of a Department of the Public Service, with the responsible Minister.
- (3) If a biobanking agreement is entered into under subsection (2) by a public authority that, or responsible Minister who, is not the owner of the land concerned:
- (a) the agreement is taken to have been entered into on behalf of the owner of the land, and

- (b) a reference in this Part to the owner of the land (however expressed) includes, while a public authority has the control and management of the land, a reference to the public authority that has that control and management and, if the public authority is a Department of the Public Service, the responsible Minister.
- (4) The Minister must not enter into a biobanking agreement relating to Crown-timber lands within the meaning of the *Forestry Act 1916* except with the consent of the Minister administering that Act.
- (5) The Minister must not enter into a biobanking agreement for Crown land (within the meaning of the *Crown Lands Act 1989*), except with the consent of the Minister administering that Act.
- (6) In this section, a reference to a person entitled to the benefit of a covenant includes, in the case of a covenant imposed under section 88D or 88E of the *Conveyancing Act 1919*, a reference to a prescribed authority (within the meaning of those sections) or a person entitled to exercise, on behalf of the Crown, the functions of a prescribed authority under those sections.

**127G Duration of agreements**

- (1) A biobanking agreement has effect from a day, or on the happening of an event, specified in the agreement.
- (2) A biobanking agreement has effect in perpetuity, unless:
  - (a) it is terminated by consent of the Minister and all the owners (for the time being) of the biobank site concerned, or
  - (b) it is terminated by the Minister (without the consent of the owners), and that termination is authorised by this Part.
- (3) The Minister must not consent to the termination of a biobanking agreement unless such measures as may be required by the Minister are taken by the owner of the biobank site to offset any negative impact of the termination on the biodiversity values protected by the agreement. This subsection does not apply if voluntary termination of the agreement is permitted under this section.
- (4) For the purposes of subsection (3), the required measures may include one or more of the following:
  - (a) the cancellation of credits created in relation to the biobank site,

- (b) the retirement of credits created in relation to another biobank site,
  - (c) entering into a biobanking agreement for the purpose of establishing another biobank site.
- (5) The Minister must consent to the termination of a biobanking agreement on the request of the owner of the biobank site if voluntary termination of the agreement is permitted under this section.
- (6) For the purposes of this section, voluntary termination of a biobanking agreement is permitted only if the owner of the biobank site requests the termination of the agreement within 3 months after it is entered into, or after the expiry of 5 years after the agreement has been entered into, and at the time of termination:
  - (a) no biodiversity credits have been created in respect of the biobank site, or
  - (b) in a case where biodiversity credits have been created, the owner of the biobank site is the holder of all credits that have been created since registration of the biobank site, none of the credits created have been retired and all the credits are cancelled by the Director-General with the consent of the owner.
- (7) The regulations may prescribe a procedure for applying for the consent of the Minister to the termination of an agreement, including by requiring a fee to be paid in respect of an application.

**127H Variation of agreements**

- (1) A biobanking agreement may be varied:
  - (a) by a subsequent agreement between the Minister and the owners (for the time being) of the biobank site concerned, or
  - (b) by the Minister, without the consent of the owners, where that variation is authorised by this Part.
- (2) The Minister must not agree to any variation of a biobanking agreement with the owners of the biobank site unless:
  - (a) if the land is subject to a mortgage or charge, the mortgagee or chargee has consented in writing to the variation, and



- (b) if the land is subject to a covenant, the Minister has consulted with the person entitled to the benefit of the covenant about the variation, and
- (c) if the land is the subject of a mining lease or mineral claim under the *Mining Act 1992* or a production lease under the *Petroleum (Onshore) Act 1991*, the holder of the lease or claim has consented in writing to the variation, and
- (d) if the land is the subject of any mining authority or petroleum title not referred to in paragraph (c), the Minister has consulted with the holder of the mining authority or petroleum title about the variation.

**Note.** Subsection (2) (c) applies in respect of any mining lease under the *Mining Act 1992* that is granted over the land. This may include a mining lease granted over the subsoil of the land or over parts of the subsoil of the land.

- (3) The Minister must not agree to any variation of a biobanking agreement unless satisfied that the variation does not have a negative impact on the biodiversity values protected by the agreement or that other measures required by the Minister have been taken by the owner of the biobank site to offset any such negative impact.
- (4) For the purposes of subsection (3), the required measures may include one or more of the following:
  - (a) the cancellation of credits created in relation to the biobank site,
  - (b) the retirement of credits created in relation to another biobank site.
- (5) If a biobank site consists of more than one parcel of land, the Minister may consent to the variation of a biobanking agreement so as to terminate its application in respect of any single parcel of land, and the provisions of this section apply in respect of any such variation.
- (6) The regulations may prescribe a procedure for applying for the consent of the Minister to a variation of an agreement, including by requiring a fee to be paid in respect of an application.
- (7) In this section, a reference to a person entitled to the benefit of a covenant includes, in the case of a covenant imposed under section 88D or 88E of the *Conveyancing Act 1919*, a reference to a prescribed authority (within the meaning of those sections) or a person entitled to exercise, on behalf of the Crown, the functions of a prescribed authority under those sections.

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**127I Registration of agreements**

- (1) On being notified by the Minister that a biobanking agreement has been entered into, or that any such agreement has been varied or terminated, the Registrar-General must:
  - (a) in the case of a biobanking agreement relating to land under the *Real Property Act 1900*—register the agreement, variation or termination by making an entry concerning the agreement, variation or termination in any folio of the Register kept under that Act that relates to that land, or
  - (b) in the case of a biobanking agreement relating to land not under the *Real Property Act 1900*:
    - (i) register the agreement, variation or termination in the General Register of Deeds kept under Division 1 of Part 23 of the *Conveyancing Act 1919*, and
    - (ii) if appropriate, make an entry concerning the agreement, variation or termination in any official record relating to Crown land that relates to that land.
- (2) A biobanking agreement relating to land under the *Real Property Act 1900* about which an entry is made in a folio and that is in force is an interest recorded in the folio for the purposes of section 42 of that Act.

**127J Agreements to run with land**

- (1) A biobanking agreement that has been registered by the Registrar-General and that is in force is binding on, and enforceable by and against, the successors in title to the owner who entered into the agreement and those successors in title are taken to have notice of the agreement.
- (2) In this section:  
*successors in title* includes a mortgagee, chargee, covenant chargee or other person, in possession of a biobank site pursuant to a mortgage, charge, positive covenant or other encumbrance entered into before or after the registration of the biobanking agreement.

**127K Management actions under biobanking agreement exempt from Environmental Planning and Assessment Act 1979**

- (1) Management actions under a biobanking agreement for which biodiversity credits may be created under this Part are taken to be exempt development for the purposes of the *Environmental Planning and Assessment Act 1979*.

- (2) For the purposes of section 76 (3) of that Act, a reference to the environmental planning instrument in respect of such exempt development is taken to be a reference to the biobanking agreement.
- (3) The regulations may exclude any management actions from the operation of this section.

**127L Enforcement of agreements**

- (1) Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of a biobanking agreement, whether or not any right of the person has been or may be infringed by or as a consequence of the breach.
- (2) If the Court is satisfied that a breach of the biobanking agreement has been committed or will, unless restrained by order of the Court, be committed, it may make such order as it thinks fit to remedy or restrain the breach.
- (3) Without limiting subsection (2), the Court may:
  - (a) in the case of proceedings brought in the Court by the Minister, award damages against the owner of a biobank site for a breach of the biobanking agreement that arose from an intentional, reckless or negligent act or omission by or on behalf of the owner or a previous owner of the land (being an act or omission of which the owner had notice) including a failure by the owner or previous owner to prevent another person from causing a breach of the biobanking agreement, and
  - (b) in any case, direct the owner of the biobank site to retire biodiversity credits of a specified number and class (if applicable) within a period specified in the order and, if the owner does not hold sufficient biodiversity credits to comply with the direction, to acquire the necessary biodiversity credits for the purpose of retiring them.
- (4) In assessing damages for breach of a biobanking agreement by an owner or previous owner, the Court may have regard to:
  - (a) any detriment to the public interest arising from the breach, and
  - (b) any financial or other benefit that the owner or previous owner gained or sought to gain by committing the breach, and
  - (c) any other matter that it considers relevant.

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- (5) Proceedings under this section may be brought by a person on his or her own behalf or on behalf of himself or herself and on behalf of other persons (with their consent), or a body corporate or unincorporated body (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings.
  - (6) 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.
  - (7) Section 89 of the *Conveyancing Act 1919* does not authorise any court to modify or wholly or partially extinguish any restriction or obligation created by a biobanking agreement except with the consent of the Minister.

**127M Powers of authorised officers**

Without limiting section 156B of the *National Parks and Wildlife Act 1974*, the functions conferred on an authorised officer by that section may also be exercised for the purpose of determining whether there has been compliance with or a contravention of a biobanking agreement.

**127N Minister may order owner to rectify breach of biobanking agreement**

- (1) The Minister may, by order under this section, direct a person who is the owner of a biobank site to carry out at the person's cost, within a period specified in the order, such work or other actions as the Minister considers necessary to rectify any breach of a biobanking agreement.
- (2) If the requirements of the order are not complied with within the period specified in it, the Minister:
  - (a) may enter the land and cause the work or actions specified in the order to be carried out, and
  - (b) may, by proceedings brought in any court of competent jurisdiction, recover as a debt from the person to whom the order was given the reasonable cost of complying with those requirements.
- (3) This section does not prevent the Minister from seeking an award of damages against the owner of a biobank site for a breach of a biobanking agreement.

**1270 Transfer of land to Minister**

- (1) Where a person has contravened, whether by act or omission, a biobanking agreement, the Minister may apply to the Land and Environment Court for an order that the land be conveyed or transferred to the Minister, or to another person or body nominated by the Minister.
- (2) Notice of the application is to be served on the owner of the land by the Minister, and otherwise the application is to be made, in accordance with any rules of the Court.
- (3) An order may be made under this section only where the Court is satisfied, on the balance of probabilities:
  - (a) that there is a serious risk to the biodiversity values protected by the biobanking agreement because of the contravention by the person, or
  - (b) that there is no reasonable likelihood of the person complying with the obligations imposed by the biobanking agreement, or
  - (c) that the person has previously committed frequent contraventions of the biobanking agreement, or
  - (d) that the person has persistently and unreasonably delayed complying with the obligations imposed by the biobanking agreement.
- (4) If the Court makes the order requested, the Court may impose such conditions on the conveyance or transfer of the land as the Court thinks fit.
- (5) Where land is conveyed or transferred to the Minister, or to a person or body nominated by the Minister, in accordance with an order made under this section, the consideration payable by the Minister, person or body, is to be determined in the same way as the compensation payable under the *Land Acquisition (Just Terms Compensation) Act 1991* in respect of an acquisition of land, but is to be reduced by the amount that, in the opinion of the Court, is equivalent to any outstanding liability of the person to the Minister arising out of contravention of the biobanking agreement.
- (6) In calculating the consideration payable as referred to in subsection (5), the value of the land is to be determined having regard to the fact that it is subject to a biobanking agreement, and any increase in the value of the land attributable to anything done or omitted to be done in contravention of the biobanking agreement is to be disregarded.

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**127P Application of Environmental Planning and Assessment Act 1979**

- (1) For the purposes of section 28 of the *Environmental Planning and Assessment Act 1979*:
- (a) a biobanking agreement is taken to be a regulatory instrument, and
  - (b) the Minister is responsible for the administration of such a regulatory instrument.

**Note.** Section 28 of the *Environmental Planning and Assessment Act 1979* allows an environmental planning instrument to suspend the operation of a regulatory instrument for the purpose of enabling development to be carried out. Such a suspension cannot be given effect to without the concurrence in writing of the Minister responsible for the administration of the regulatory instrument.

- (2) The Minister is not to concur, under section 28 of the *Environmental Planning and Assessment Act 1979*, to the suspension of a biobanking agreement unless satisfied that:
- (a) the suspension, or any development the suspension of the biobanking agreement would enable to be carried out, does not have a negative impact on the biodiversity values protected by the agreement, or
  - (b) other measures are to be taken that will satisfactorily offset the negative impact of the suspension or development on the biodiversity values protected by the agreement (which may include the cancellation or retirement of biodiversity credits).
- (3) In relation to any particular biobanking agreement, a provision of an environmental planning instrument made under section 28 of the *Environmental Planning and Assessment Act 1979* and in force:
- (a) immediately before the commencement of this section, or
  - (b) immediately before the biobanking agreement takes effect, does not affect the operation of the biobanking agreement unless the provision is subsequently amended to expressly affect the operation of the biobanking agreement.

**127Q Proposals by public authorities affecting biobank sites**

- (1) A public authority must not carry out development on a biobank site unless:
- (a) it has given written notice of the proposed development to the Minister and the owner of the biobank site, and
  - (b) it has received written notice from the Minister consenting to the development.

- (2) The Minister may consent to the development only if:
  - (a) the Minister is of the opinion that the proposed development will neither adversely affect any management actions that may be carried out on the land under the biobanking agreement nor adversely affect the biodiversity values protected by the agreement, or
  - (b) the Minister is satisfied that any adverse effect of the development on biodiversity values (including any future improvement to biodiversity values that would otherwise be achieved by the management actions on the biobank site) will be offset by the retirement of biodiversity credits by the public authority, or
  - (c) the development is required for an essential public purpose or for a purpose of special significance to the State.
- (3) The Minister may, as a condition of granting consent under this section, direct the public authority to retire biodiversity credits of a number and class (if any) specified by the Minister and, if the person does not hold a sufficient number of biodiversity credits to comply with the direction, direct the public authority to acquire the necessary biodiversity credits for the purpose of retiring them.
- (4) The Minister may approve an arrangement under which:
  - (a) the retirement of some or all of the biodiversity credits is deferred pending the completion of restorative actions that will restore or improve the biodiversity values affected by the development, and
  - (b) the biodiversity credits the retirement of which is deferred pending the completion of those actions are required to be transferred to the Minister.
- (5) Division 7 applies in respect of any such arrangement as if it were a deferred retirement arrangement approved by the Director-General under that Division.
- (6) The Minister may, by order published in the Gazette, vary or terminate the biobanking agreement relating to a biobank site without the consent of the owner of the biobank site if consent to development is granted under this section and the variation or termination is necessary to enable the public authority to carry out the development.
- (7) The owner of a biobank site is not entitled to any compensation as a result of the variation or termination of an agreement under this section.

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- (8) Subsection (7) does not affect any right to compensation the owner may have under the *Land Acquisition (Just Terms Compensation) Act 1991* or any other Act in respect of the development.
- (9) This section does not apply:
- (a) to any part of a biobank site that is a wilderness area within the meaning of the *Wilderness Act 1987* or that is critical habitat, or
  - (b) in respect of development proposed to be carried out by a public authority on a biobank site if the public authority is the owner of the biobank site and the proposed development is not inconsistent with the terms of the biobanking agreement.
- (10) The consent of the Minister under this section is not an approval for the purposes of Part 5 of the *Environmental Planning and Assessment Act 1979*.

**127R Resolution of certain disputes**

- (1) If a dispute arises as to the failure of the Minister to consent to a development proposal of a public authority under section 127Q, or as to the conditions of any consent granted or proposed to be granted under that section by the Minister, a party to the dispute may submit that dispute to the Premier for settlement.
- (2) On the submission of a dispute to the Premier, the Premier may:
- (a) appoint a Commissioner of Inquiry to hold an inquiry and make a report to the Premier, or
  - (b) hold an inquiry into the dispute.
- (3) After the completion of the inquiry, and after considering any report, the Premier may make such order with respect to the dispute, having regard to the public interest and to the circumstances of the case, as the Premier thinks fit.
- (4) An order made by the Premier may direct the payment of any costs or expenses of or incidental to the holding of the inquiry.
- (5) A Minister or public authority is to comply with an order given under this section and is, despite the provisions of any Act, taken to be empowered to comply with any such order.



**127S Prospecting and mining on biobank sites**

- (1) The Minister may, by order published in the Gazette, vary or terminate a biobanking agreement without the consent of the owner of the biobank site if a mining authority or petroleum title is granted in respect of the biobank site and the Minister is of the opinion that the activity authorised by the mining authority or petroleum title:
  - (a) will adversely affect any management actions that may be carried out on the land under the biobanking agreement, or
  - (b) will adversely affect the biodiversity values protected by the biobanking agreement.
- (2) If the Minister varies or terminates the biobanking agreement under this section, the Minister may, by order in writing to the holder of the mining authority or petroleum title, direct the holder to retire biodiversity credits of a number and class (if any) specified by the Minister within a time specified in the order.
- (3) A direction may be given to a person under subsection (2) only if biodiversity credits have already been created in respect of management actions that were carried out or proposed to be carried out on the biobank site and have been transferred to any person.
- (4) The maximum number of biodiversity credits that the holder of the mining authority or petroleum title may be required to retire under the direction is the number of biodiversity credits that have been created in respect of the biobank site.
- (5) A person must not, without reasonable excuse, fail to comply with a direction under subsection (2).  
Maximum penalty: 10,000 penalty units.
- (6) It is not an excuse for a failure to comply with a direction under this section that the person who is the subject of the direction does not, at the time the direction is given, hold a sufficient number of biodiversity credits to comply with the direction.  
**Note.** If the person who is the subject of the direction does not hold a sufficient number of credits to comply with the direction, the person may obtain the required number by purchasing them.
- (7) A court that convicts a person of an offence under subsection (5) may, in addition to or in substitution for any pecuniary penalty for the offence, by order direct the person to retire, in accordance with this Part, biodiversity credits of a specified number and class

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(if applicable) within a time specified in the order and, if the person does not hold sufficient biodiversity credits to comply with the direction, to acquire the necessary biodiversity credits for the purpose of retiring them.

- (8) The owner of a biobank site is not entitled to any compensation as a result of the variation or termination of an agreement under this section.
- (9) Subsection (8) does not affect any right to compensation the owner may have under the *Mining Act 1992*, the *Petroleum (Onshore) Act 1991* or any other legislation in respect of the grant of the mining authority or petroleum title.
- (10) In this section:  
*conviction* includes the making of an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999*.

**127T General provisions relating to variation or termination of agreements without consent of owner**

- (1) This section applies if the Minister proposes to vary or terminate a biobanking agreement without the consent of the owner of the biobank site by order under section 127Q or 127S.
- (2) The Minister is not to make such an order unless:
  - (a) written notice of the Minister's intention to vary or terminate the agreement has been given to the owner of the biobank site stating that the owner may make submissions to the Minister within the period specified in the notice (being a period of not less than 28 days), and
  - (b) the Minister has considered any submissions made by the owner of the biobank site, being submissions made within that specified period.
- (3) If the order is made, a copy of the order is to be laid before each House of Parliament within 30 sitting days of that House, or such other period as may be prescribed by the regulations, after publication of the order.
- (4) If the order varies the agreement, the owner of the biobank site may, by written notice given to the Minister, terminate the agreement, but only if:
  - (a) no biodiversity credits have been created in respect of the biobank site, or
  - (b) in a case where biodiversity credits have been created, the owner of the biobank site is the holder of all credits that have been created since registration of the biobank site

(that is, none of the credits created have been retired) and all the credits are cancelled by the Director-General with the consent of the owner.

**127U Activities authorised by mining authorities and petroleum titles not affected by biobanking agreement**

Nothing in this Division:

- (a) prevents the grant of a mining authority or petroleum title in respect of a biobank site in accordance with the *Mining Act 1992* or the *Petroleum (Onshore) Act 1991*, or
- (b) prevents the carrying out, on or in respect of a biobank site, of any activity authorised by a mining authority or petroleum title in accordance with the *Mining Act 1992* or the *Petroleum (Onshore) Act 1991*.

**Division 3 Creation of biodiversity credits**

**127V Creation of biodiversity credits**

- (1) Biodiversity credits may be created by the Director-General in accordance with this Part.
- (2) A biodiversity credit is to be created in a form approved by the Director-General.

**127W Application for creation of biodiversity credit**

- (1) An owner of land that is a biobank site may apply to the Director-General for the creation of biodiversity credits.
- (2) An application for the creation of a biodiversity credit:
  - (a) is to be made in a form approved by the Director-General, and
  - (b) is to contain, or be accompanied by, such information as the Director-General requires in order to determine the application, and
  - (c) is to be accompanied by a fee (if any) approved by the Director-General.
- (3) If an application is duly made, the Director-General may determine the application by creating biodiversity credits or refusing the application.
- (4) The Director-General may create biodiversity credits in respect of a biobank site without requiring an application to be lodged under this section if it is required or permitted by the relevant biobanking agreement.

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- (5) The Director-General may create a biodiversity credit only if satisfied that the management action or actions in respect of which the credit is to be created has been carried out, is being carried out or will be carried out in accordance with the biobanking agreement.
  - (6) The Director-General is to determine the number and class of credits to be created in accordance with the biobanking assessment methodology and any relevant provisions of the biobanking agreement.
  - (7) If the Director-General creates a biodiversity credit, the Director-General must:
    - (a) register the creation of the credit by making an entry in relation to the credit in the register of biodiversity credits, and
    - (b) record the owner of the land as the holder of the credit.
  - (8) A biodiversity credit has no force or effect until it is so registered.
  - (9) The Director-General may refuse an application for the creation of a biodiversity credit:
    - (a) if the Director-General is not satisfied that the relevant management actions have been carried out, are being carried out or will be carried out, in accordance with the biobanking agreement, or
    - (b) if the creation of the credit would not comply with the biobanking agreement or the biobanking assessment methodology, or
    - (c) if any provision of the biobanking agreement has not been complied with (whether or not the relevant management actions have been carried out or are being carried out), or
    - (d) for any other reason specified in the regulations.
  - (10) The Director-General must refuse an application for the creation of a biodiversity credit if the biobank site concerned is not a registered biobank site.
  - (11) The regulations may prescribe a period after making an application for the creation of a biodiversity credit at the end of which, if the Director-General fails to either create or refuse to create the credit, the Director-General is taken to have refused to create the credit.

**127X Registration of biobank sites**

- (1) The Director-General must register land as a biobank site if the Minister enters into a biobanking agreement under which the land is designated as a biobank site for the purposes of this Act.
- (2) The Director-General registers land as a biobank site by creating an entry in relation to the land in the register of biobank sites and recording in the register a description of the land and a copy of the biobanking agreement relating to that land.
- (3) Registration of land as a biobank site remains in force unless it is suspended or cancelled by the Director-General, by notice in writing to the owner of the land.
- (4) The Director-General must cancel the registration of land as a biobank site if there ceases to be any biobanking agreement in force that designates the land as a biobank site for the purposes of this Act.
- (5) The Director-General may suspend or cancel the registration of land as a biobank site if the owner of the land breaches any conditions of the biobanking agreement or contravenes a provision of this Part or the regulations under this Part.
- (6) The cancellation or suspension of registration of a biobank site does not affect any obligations of the owner of a biobank site under a biobanking agreement. In particular, it does not affect any requirement that the owner carry out, or continue to carry out, management actions in respect of the land, even though the owner ceases to be entitled (as a result of the cancellation or suspension) to create biodiversity credits.

**127Y Duration of biodiversity credit**

A biodiversity credit, when registered in the register of biodiversity credits, remains in force unless it is cancelled or retired under this Part.

**Note.** A biodiversity credit cannot be transferred after it has been cancelled or retired, or during any suspension period.

**Division 4 Trading in biodiversity credits**

**127Z Transfers of biodiversity credits**

- (1) The holder of a biodiversity credit that is in force may transfer the credit to any person, subject to this section and the regulations.
- (2) A biodiversity credit cannot be transferred if it has been suspended by the Director-General and the suspension is in force.

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- (3) The regulations may make further provision with respect to the transfer of biodiversity credits (including by prohibiting certain transfers of biodiversity credits).
  - (4) The transfer of a biodiversity credit does not affect any requirement imposed on the owner of a biobank site under a biobanking agreement. In particular, it does not affect any requirement that the owner carry out, or continue to carry out, management actions in respect of the land in relation to which the credit was created.

**127ZA Payment of amount into Biobanking Trust Fund on first transfer of credit**

- (1) The regulations may require a specified amount to be paid into the Biobanking Trust Fund before a first transfer of a biodiversity credit is registered under this Division.
- (2) The amount to be paid into the Biobanking Trust Fund, or the manner of its calculation, is to be as specified in the regulations.
- (3) The regulations may specify exemptions from the requirement to pay an amount into the Biobanking Trust Fund on the first transfer of the credit. If, because of such an exemption, no amount is payable to the Biobanking Trust Fund in respect of a first transfer of a credit, the regulations may require the amount to be paid into the Biobanking Trust Fund in respect of any subsequent transfer of the credit before the transfer is registered.
- (4) If a biodiversity credit is retired or proposed to be retired without having been transferred by the owner of a biobank site, the regulations may require any amount that would have been payable if the biodiversity credit had been transferred to be paid into the Biobanking Trust Fund before the credit is retired.

**127ZB Registration of transfer of biodiversity credit**

- (1) The transfer of a biodiversity credit does not have effect until the transfer is registered by the Director-General under this Part.
- (2) An application for registration of a transfer of a biodiversity credit may be made to the Director-General by the parties to the transfer.
- (3) The application:
  - (a) is to be made in a form approved by the Director-General, and

- (b) is to be accompanied by:
  - (i) the fee (if any) for registration of the transfer approved by the Director-General, and
  - (ii) such other information as the Director-General requires in relation to the transfer.
- (4) The Director-General registers a transfer by making a recording in the register of biodiversity credits in relation to the credit to indicate that the person to whom the credit has been transferred is the holder of the biodiversity credit.
- (5) If an application for the transfer of a biodiversity credit is duly made, the Director-General must register the transfer unless authorised or required to refuse to register the transfer by this Act or the regulations.
- (6) The Director-General must refuse to register a transfer of a biodiversity credit in respect of which an amount is required to be paid to the Biobanking Trust Fund unless satisfied that the amount required to be paid to that Fund has been so paid.
- (7) If the Director-General refuses to register a transfer of a biodiversity credit in respect of which an amount has been paid to the Biobanking Trust Fund, the Director-General may direct the Fund Manager to repay that amount to the person who paid it, and the Fund Manager is authorised to comply with that direction.

**127ZC Other transactions involving biodiversity credits**

A biodiversity credit cannot be mortgaged, assigned, leased, charged or otherwise encumbered, except as authorised by the regulations.

**Division 5 Cancellation, suspension and retirement of biodiversity credits**

**127ZD Grounds for cancellation of biodiversity credit**

- (1) The Director-General may cancel a biodiversity credit that is in force, or that has been suspended under this Part:
  - (a) if the Director-General is of the opinion that any management action in respect of which the biodiversity credit was created has not been carried out or completed, or is not being carried out, in accordance with the biobanking agreement, or

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- (b) if the person who applied for the creation of the credit provided any information to the Director-General in, or in connection with, the application that was false or misleading in a material particular, or
  - (c) if the credit was created in error, or
  - (d) if the holder of the credit has requested or agreed to the cancellation, or
  - (e) if authorised to do so by any other provision of this Act or the regulations.
- (2) Without limiting subsection (1), if the Minister varies or terminates a biobanking agreement because of activities authorised by a mining authority or petroleum title granted in respect of a biobank site, the Director-General may cancel any biodiversity credits created in respect of the biobank site that have not been transferred by the biobank site owner.
- (3) The Director-General must not cancel a biodiversity credit unless before doing so the Director-General:
- (a) gives notice to the holder of the credit that he or she intends to do so, and
  - (b) specifies in that notice the reasons for his or her intention to do so, and
  - (c) gives the holder of the credit a reasonable opportunity to make submissions in relation to the proposed cancellation, and
  - (d) takes into consideration any such submissions by the holder of the credit.
- (4) The Director-General is not to cancel a credit if the Director-General is satisfied that the holder of the credit is a bona fide purchaser of the credit without notice of the circumstances that are grounds for the cancellation of the credit.
- Note.** However, the Director-General may require a wrongdoer to retire a specified number or class of credits under section 127ZL.
- (5) Subsections (3) and (4) do not apply if the holder of a biodiversity credit has requested or agreed to the cancellation of the credit.

**127ZE General provisions relating to cancellation of biodiversity credits**

- (1) The Director-General cancels a biodiversity credit by making a recording in the register of biodiversity credits, in relation to the biodiversity credit concerned, that indicates that the credit is cancelled.



- (2) The Director-General must give the holder of the credit notice in writing of the cancellation.
- (3) No compensation is payable for the cancellation of a biodiversity credit.
- (4) However, if a biodiversity credit is cancelled because of activities authorised by a mining authority or petroleum title granted in respect of a biobank site, the reasonable costs incurred by the biobank site owner in carrying out, before the cancellation, the management actions in respect of which the biodiversity credits were created are taken, for purposes of the *Mining Act 1992* or the *Petroleum (Onshore) Act 1991*, to be a loss caused by deprivation of the possession or of the use of the surface of the land concerned as a result of the exercise of the rights conferred by the mining authority or petroleum title.
- (5) If a biodiversity credit is cancelled, the Minister may vary or terminate the relevant biobanking agreement (with or without the consent of the owner of the biobank site) to make it clear that any obligation to carry out, or to continue to carry out, a management action that arises only because of the creation of that credit ceases to have effect.
- (6) If the variation or termination is made without the consent of the owner:
  - (a) the variation or termination is to be made by the Minister by order published in the Gazette, and
  - (b) a copy of the order is to be laid before each House of Parliament within 30 sitting days of that House, or such other period as may be prescribed by the regulations, after publication of the order.
- (7) The Minister is not to make an order referred to in subsection (6) unless:
  - (a) written notice of the Minister's intention to vary or terminate the agreement has been given to the owner of the biobank site stating that the owner may make submissions to the Minister within the period specified in the notice (being a period of not less than 28 days), and
  - (b) the Minister has considered any submissions made by the owner of the biobank site, being submissions made within that specified period.
- (8) The cancellation of a biodiversity credit does not prevent the Minister from seeking an award of damages against the owner of a biobank site for a breach of a biobanking agreement.

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**127ZF Suspension of biodiversity credit**

- (1) If the Director-General considers that there may be reasons for cancelling a biodiversity credit, the Director-General may suspend the biodiversity credit for a period of up to 2 months pending an investigation into the matter.
- (2) The Director-General suspends a biodiversity credit by making a recording in the register of biodiversity credits, in relation to the biodiversity credit concerned, that indicates that the credit is suspended.
- (3) The Director-General must give the holder of the credit notice in writing of the suspension.
- (4) No compensation is payable for the suspension of a biodiversity credit.

**127ZG Application for retirement of biodiversity credits**

- (1) The holder of a biodiversity credit that is in force may, by application in writing to the Director-General, retire the credit.  
**Note.** Once the creation of a biodiversity credit is registered, it remains in force unless it is cancelled or retired—see section 127Y.
- (2) Any application to retire a biodiversity credit may be made by the holder of the credit:
  - (a) for the purpose of complying with a credit retirement condition specified in a biobanking statement, or
  - (b) for the purpose of complying with a direction made by the Minister or a court under this Part or under the *National Parks and Wildlife Act 1974*, or
  - (c) for the purpose of complying with a condition of an approval granted by the Minister under Part 3A of the *Environmental Planning and Assessment Act 1979* in respect of a project to which that Part applies, or
  - (d) on a voluntary basis.
- (3) If the Director-General accepts the application, the Director-General is to retire the biodiversity credit.  
**Note.** Biodiversity credits may also be retired under Division 7.

**127ZH General provisions relating to retirement of biodiversity credits**

- (1) The Director-General retires a biodiversity credit by making a recording in the entry relating to the credit in the register of biodiversity credits to indicate that the credit has been retired.

- (2) The retirement of a biodiversity credit does not affect any requirement imposed on the owner of a biobank site under a biobanking agreement. In particular, it does not affect any requirement that the owner carry out, or continue to carry out, management actions in respect of the land in relation to which the credit was created.
- (3) A biodiversity credit that has been suspended by the Director-General may not be retired during any period in which the suspension has effect.
- (4) The regulations may make further provision for the retirement of biodiversity credits, including the procedure for retiring a credit and the circumstances in which the Director-General may refuse an application to retire a credit.

**127ZI Order requiring biobank site owner to retire biodiversity credits**

- (1) The Minister may, by order in writing to a person, direct the person to retire biodiversity credits of a specified number and class (if applicable) within a time specified in the order.
- (2) A direction may be given to a person under this section only if:
  - (a) the person is the owner of a biobank site (or a former owner), and
  - (b) the Minister is satisfied that, because of any act or omission by the person, one or more biodiversity credits were created in respect of a management action that was not carried out or completed, or that is not being carried out, in accordance with the relevant biobanking agreement, and
  - (c) the biodiversity credit or credits created have been transferred to another person or retired.
- (3) The number of biodiversity credits, and class (if applicable), that are required to be retired is to be equivalent to the number and class of biodiversity credits that, in the opinion of the Minister, were created in respect of management actions not carried out or completed, or not being carried out, in accordance with the biobanking agreement and which have been transferred or retired.
- (4) A direction may be given to a person under this section only if before doing so the Minister:
  - (a) gives notice to the person that he or she intends to make the direction, and

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- (b) specifies in that notice the reasons for his or her intention to do so, and
- (c) gives the person a reasonable opportunity to make submissions in relation to the proposed direction, and
- (d) takes into consideration any such submissions by the person.
- (5) A person must not, without reasonable excuse, fail to comply with an order under this section.  
Maximum penalty: 5,000 penalty units.  
**Note.** If the owner of a biobank site fails to comply with the order, that failure is also grounds for the cancellation or suspension of registration of a biobank site.
- (6) It is not an excuse for a failure to comply with an order under this section that the person who is the subject of the order does not, at the time the order is made, hold a sufficient number of biodiversity credits to comply with the order.  
**Note.** If the person who is the subject of the order does not hold a sufficient number of credits to comply with the order, the person may obtain the required number by purchasing them or carrying out the necessary management actions to create them.
- (7) A court that convicts a person of an offence under subsection (5) may, in addition to or in substitution for any pecuniary penalty for the offence, by order direct the person to retire, in accordance with this Part, biodiversity credits of a specified number and class (if applicable) within a time specified in the order and, if the person does not hold sufficient biodiversity credits to comply with the direction, to acquire the necessary biodiversity credits for the purpose of retiring them.
- (8) Any action taken under this section does not prevent the Minister from seeking an award of damages against the owner or former owner of a biobank site for a breach of a biobanking agreement.
- (9) In this section:  
**conviction** includes the making of an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999*.

## Division 6 Biobanking statements

### 127ZJ Development for which biobanking is available

For the purposes of this Part, **development for which biobanking is available** means any development (whether or not development that is a project to which Part 3A of the *Environmental Planning and Assessment Act 1979* applies,

development that requires development consent under Part 4 of that Act or development that is an activity to which Part 5 of that Act applies) other than the following:

- (a) any clearing of native vegetation that must not be carried out except in accordance with a development consent granted in accordance with the *Native Vegetation Act 2003* or a property vegetation plan under that Act,
- (b) development declared by the regulations to be development in respect of which biobanking is not available.

**Note.** A biobanking statement may be issued in respect of any development that is development for which biobanking is available. However, participation in the scheme is voluntary (that is, it is not necessary to obtain a biobanking statement in respect of the development). If a statement is obtained, the proponent of the development obtains the benefit of the statement (as set out in sections 127ZO and 127ZP). The conditions of the statement will be incorporated into the conditions of the development consent or approval for the activity given under the *Environmental Planning and Assessment Act 1979*.

**127ZK Application for biobanking statement in respect of development**

- (1) A person who proposes to carry out any development for which biobanking is available may apply to the Director-General for a biobanking statement in respect of the development.
- (2) The application must be made in an approved form and be accompanied by such fee, if any, as may be approved by the Director-General.
- (3) An application for a biobanking statement must be accompanied by:
  - (a) a description of the development to which the application relates, and
  - (b) a statement of any onsite measures that are proposed to be taken in connection with the development to minimise the impact of the development on biodiversity values, and
  - (c) an assessment of the impact or likely impact of the development on biodiversity values, prepared in accordance with the biobanking assessment methodology, and
  - (d) a statement of the number and class (if applicable) of biodiversity credits proposed to be retired to offset the impact or likely impact of the development on biodiversity values, prepared in accordance with the biobanking assessment methodology.

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- (4) The regulations may prescribe other things that are required to be submitted with the application.

**127ZL Circumstances in which biobanking statement may be issued**

- (1) The Director-General may, on application made in accordance with this Part, issue a biobanking statement in respect of a proposed development if the development will improve or maintain biodiversity values.
- (2) For the purposes of this Division, a development will improve or maintain biodiversity values only if a determination is made by the Director-General, on the basis of an assessment of the development in accordance with the biobanking assessment methodology (including the number and class of biodiversity credits to be retired as an offset against the negative impact of the development on biodiversity values), that the development will improve or maintain biodiversity values.
- (3) The Director-General must refuse to issue a biobanking statement in respect of a development that does not improve or maintain biodiversity values.
- (4) In addition, the Director-General may refuse an application for the issue of a biobanking statement:
- (a) if the application does not comply with this Part or the regulations, or
  - (b) if, in the opinion of the Director-General, insufficient information is provided to enable a biobanking statement to be issued, or
  - (c) if, in the opinion of the Director-General, the application does not sufficiently address the biobanking assessment methodology, or
  - (d) if, in the opinion of the Director-General, the applicant has not demonstrated that all cost effective onsite measures to minimise any negative impact of the development on biodiversity values are being or will be carried out, or
  - (e) for any other reason specified in the regulations.
- (5) The Director-General must refuse an application for the issue of a biobanking statement if:
- (a) the application relates to development that is not development for which biobanking is available, or

- (b) the application relates to development that requires planning concurrence under section 127ZM and the Director-General of the Department of Planning does not concur with the issue of the statement.
- (6) A biobanking statement may apply generally to the proposed development or may be limited by reference to one or more of the following:
  - (a) the impact or potential impact of the proposed development on specified biodiversity values,
  - (b) a specified aspect of the proposed development,
  - (c) a specified part of the land on which the development is to be carried out.
- (7) The regulations may prescribe a period after making an application for a biobanking statement at the end of which, if the Director-General fails to either issue or refuse to issue a biobanking statement, the Director-General is taken to have refused to issue the biobanking statement.
- (8) A refusal by the Director-General to issue a biobanking statement in respect of development does not prevent the development being evaluated or assessed in accordance with the provisions of the *Environmental Planning and Assessment Act 1979* that would apply in respect of the development, but for this Part.

**Note.** Participation in the biobanking scheme is voluntary. If a biobanking statement is not obtained in respect of a development (including because it is refused by the Director-General) the development may still be evaluated or assessed in accordance with the relevant provisions of the *Environmental Planning and Assessment Act 1979*. These provisions may require (among other things) the preparation of a species impact statement and the concurrence of, or consultation with, the Minister for the Environment and the Director-General.
- (9) A consent authority or determining authority cannot refuse to consent to or approve a development or activity under Part 4 or 5 of the *Environmental Planning and Assessment Act 1979* on the ground that an application for a biobanking statement in respect of the development or activity was refused.
- (10) A biobanking statement is not an approval for the purposes of Part 5 of the *Environmental Planning and Assessment Act 1979*.

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**127ZM Concurrence of Director-General of Department of Planning required in certain cases**

- (1) If the Director-General is of the opinion that a proposed development requires planning concurrence, the Director-General must not issue a biobanking statement in relation to the development unless:
  - (a) the Director-General has given the Director-General of the Department of Planning notice of the proposal to issue the biobanking statement, and
  - (b) the Director-General of the Department of Planning concurs with the issue of the biobanking statement.
- (2) For the purposes of this section, development requires planning concurrence if the development is of a kind declared by a State environmental planning policy made under the *Environmental Planning and Assessment Act 1979* to be development requiring planning concurrence.
- (3) The Director-General of the Department of Planning may concur, or refuse to concur, with the issue of a biobanking statement by the Director-General of the Department of Environment and Conservation.
- (4) The Director-General of the Department of Planning may refuse to concur with the issue of a biobanking statement on any grounds specified in a State environmental planning policy made under the *Environmental Planning and Assessment Act 1979*.
- (5) If the Director-General of the Department of Planning fails to notify the Director-General of the Department of Environment and Conservation whether the Director-General concurs, or refuses to concur, with the issue of a biobanking statement by the end of the relevant consultation period, the Director-General of the Department of Planning is taken to have concurred with the issue of the biobanking statement.
- (6) For the purposes of this section, the ***relevant consultation period*** means the period of 21 days after the Director-General of the Department of Environment and Conservation gives the Director-General of the Department of Planning notice of the proposal to issue a biobanking statement or such other period as may be agreed (either generally or in a particular case) by the Director-General of the Department of Environment and Conservation and the Director-General of the Department of Planning.
- (7) For the purposes of the *Environmental Planning and Assessment Act 1979*, the kinds of development for which planning



concurrence is required under this section, and the grounds on which the Director-General of the Department of Planning may refuse to concur to the issue of a biobanking statement, are taken to be matters of State environmental planning significance.

**127ZN Form and conditions of biobanking statement**

- (1) A biobanking statement must:
  - (a) describe the development to which the statement relates, and
  - (b) specify any conditions applicable to the statement, being conditions of the following kind:
    - (i) a condition or conditions relating to the onsite measures that must be taken in connection with the development to minimise any negative impact on biodiversity values,
    - (ii) a credit retirement condition, being a condition that specifies the number and class of biodiversity credits (if any) that are to be retired to ensure that the development improves or maintains biodiversity values, and the timing of that retirement.
- (2) If the biobanking statement specifies a credit retirement condition, it must also describe any deferred retirement arrangement that applies in respect of the credit retirement condition.
- (3) A biobanking statement is to be issued in a form approved by the Director-General.
- (4) The Director-General may, before issuing a biobanking statement, provide a draft of the statement proposed to be issued to the applicant.
- (5) The Director-General may provide a copy of a biobanking statement, or a draft of a statement proposed to be issued by the Director-General, to the Minister administering the *Environmental Planning and Assessment Act 1979*, a consent authority, a determining authority (within the meaning of Part 5 of that Act), or to any other person prescribed by the regulations.

**127ZO Effect of issue of biobanking statement—development requiring development consent**

- (1) If development described in a biobanking statement supplied to a consent authority is development for which consent is required under Part 4 of the *Environmental Planning and Assessment Act 1979*, the development is taken, for the purposes of that Part, to

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be development that is not likely to significantly affect any threatened species, population or ecological community under this Act, or its habitat.

- (2) If a consent authority grants consent, under Part 4 of the *Environmental Planning and Assessment Act 1979*, to the carrying out of development in respect of which a biobanking statement has been issued and supplied to the consent authority, being a statement that specifies conditions, the consent authority must impose (and is taken to be authorised under that Act to impose) a condition on the grant of that consent that requires those conditions to be complied with.

**Note.** The carrying out of development in contravention of the conditions of a development consent is an offence under section 126 of the *Environmental Planning and Assessment Act 1979*.

- (3) A person cannot appeal to the Land and Environment Court under the *Environmental Planning and Assessment Act 1979* in respect of a condition imposed by a consent authority under subsection (2).
- (4) Subsection (2) does not affect the right of a consent authority to impose conditions under section 80A of the *Environmental Planning and Assessment Act 1979* not inconsistent with the conditions of a biobanking statement or to refuse consent.
- (5) Despite section 79C of the *Environmental Planning and Assessment Act 1979*, if a biobanking statement has been issued in respect of a development, a consent authority is not required to take into consideration the likely impact of the development on biodiversity values.
- (6) An applicant for development consent under Part 4 of the *Environmental Planning and Assessment Act 1979* may request the consent authority to review its determination to impose any conditions on the consent (not being an environmental contribution condition) that are additional to the conditions of a biobanking statement on the ground that the condition is inconsistent with the conditions of the biobanking statement. In particular, a review may be requested because the additional condition relates to impacts that were assessed by the Director-General, in accordance with the biobanking assessment methodology, prior to the issue of the biobanking statement.
- (7) Section 82A of the *Environmental Planning and Assessment Act 1979* applies in respect of any such review, with any necessary modifications, whether or not the consent authority is a council, and whether or not the determination is a determination to which that section would otherwise apply.

- (8) This section applies subject to any terms of the biobanking statement that limit the statement to:
- (a) a particular aspect of the development, or
  - (b) a particular part of the land on which the development is to be carried out, or
  - (c) the impact of the development on particular biodiversity values.
- (9) Nothing in this section affects the operation of Part 4 of the *Environmental Planning and Assessment Act 1979* in respect of any development that is likely to significantly affect any threatened species, population or ecological community within the meaning of Part 7A of the *Fisheries Management Act 1994*.
- (10) In this section:  
***environmental contribution condition*** means a condition that requires an environmental contribution (within the meaning of section 127B).

**127ZP Effect of issue of biobanking statement—activities under Part 5 of Environmental Planning and Assessment Act 1979**

- (1) If development described in a biobanking statement supplied to a determining authority is an activity to which Part 5 of the *Environmental Planning and Assessment Act 1979* applies, the activity is taken, for the purposes of that Part, to be an activity that is not likely to significantly affect any threatened species, population or ecological community under this Act, or its habitat.
- (2) If a determining authority approves an activity under Part 5 of the *Environmental Planning and Assessment Act 1979* in respect of which a biobanking statement has been issued and supplied to the determining authority, being a statement that specifies conditions, the determining authority must impose (and is taken to be authorised to impose) a condition on the approval of the activity that requires those conditions to be complied with.
- (3) Subsection (2) does not affect the right of a determining authority to impose conditions on the approval of the activity under section 112 of the *Environmental Planning and Assessment Act 1979* not inconsistent with the conditions of a biobanking statement or to refuse to approve the activity.
- (4) If there is a right of appeal under any Act in respect of conditions imposed on the approval, that right does not apply in respect of a condition imposed by the determining authority under subsection (2).

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- (5) If a determining authority is the proponent of an activity under Part 5 of the *Environmental Planning and Assessment Act 1979* in respect of which a biobanking statement has been issued, being a statement that specifies conditions, the determining authority must carry out the activity in accordance with the conditions of the biobanking statement.
  - (6) Subsection (5) does not affect the right of a determining authority to refrain from carrying out the activity or to modify its activity in a manner not inconsistent with the conditions of the biobanking statement.
  - (7) Despite section 111 of the *Environmental Planning and Assessment Act 1979*, if a biobanking statement has been issued in respect of an activity, a determining authority is not required to consider the effect of the activity on biodiversity values.
  - (8) A determining authority is to make arrangements that enable a proponent of an activity to seek a review by the determining authority of any conditions imposed on an approval that are additional to the conditions of a biobanking statement, for the purpose of ensuring that the additional conditions are consistent with the conditions of the biobanking statement. In particular, the arrangements should enable a review to be obtained in relation to any additional condition that relates to impacts that were assessed by the Director-General, in accordance with the biobanking assessment methodology, prior to the issue of the biobanking statement.
  - (9) This section applies subject to any terms of the biobanking statement that limit the statement to:
    - (a) a particular aspect of the activity, or
    - (b) a particular part of the land on which the activity is to be carried out, or
    - (c) the effect of the activity on particular biodiversity values.
  - (10) For the purposes of this or any other Act, if a determining authority fails to comply with this section in relation to an activity the determining authority is taken not to have complied with Part 5 of the *Environmental Planning and Assessment Act 1979*.
  - (11) Nothing in this section affects the operation of Part 5 of the *Environmental Planning and Assessment Act 1979* in respect of any activity that is likely to significantly affect any threatened species, population or ecological community within the meaning of Part 7A of the *Fisheries Management Act 1994*.

**127ZQ Modification, revocation and lapsing of biobanking statement**

- (1) A person may apply to the Director-General for the modification or revocation of a biobanking statement.
- (2) An application may be made by:
  - (a) the person who applied for the biobanking statement, or
  - (b) any other person entitled to act on a development consent or approval under the *Environmental Planning and Assessment Act 1979* given in relation to the development described in the biobanking statement.
- (3) Subject to the regulations, this Division applies to an application to modify or revoke a biobanking statement in the same way as it applies to the original application.
- (4) A biobanking statement (unless revoked sooner) ceases to have any effect under this Part:
  - (a) at the end of the period of 2 years after it is issued by the Director-General, or
  - (b) if it is extended by the Director-General before the end of that 2-year period, at the end of the extended period.
- (5) A biobanking statement does not cease to have effect at the end of the 2-year period referred to in subsection (4) if the statement is acted on before the end of that period.
- (6) If a biobanking statement is revoked before the statement is acted on, and a new biobanking statement is not issued in respect of the development, the *Environmental Planning and Assessment Act 1979* applies in respect of the assessment and evaluation of the development to which the biobanking statement applied, and any consent or approval granted in respect of the development, as if the statement had not been issued.

**Note.** Participation in the biobanking scheme is voluntary. Accordingly, a developer who has obtained a biobanking statement may apply for the revocation of that statement and have the development evaluated, consented to or approved in accordance with the relevant provisions of the *Environmental Planning and Assessment Act 1979*. These provisions may require (among other things) the preparation of a species impact statement and the concurrence of, or consultation with, the Minister for the Environment and the Director-General.
- (7) For the purposes of this section, a biobanking statement is acted on if:
  - (a) in the case of a statement that relates to a project to which Part 3A of the *Environmental Planning and Assessment Act 1979* applies, the Minister administering that Act approves that project, or

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- (b) in the case of a statement that relates to development for which consent is required under Part 4 of the *Environmental Planning and Assessment Act 1979*—development consent is granted in respect of the development, or
  - (c) in the case of a statement that relates to an activity under Part 5 of the *Environmental Planning and Assessment Act 1979*—a determining authority approves the activity or commences carrying out the activity.

**127ZR Minister may require retirement of credits**

- (1) The Minister may, by order in writing to a person, direct the person to retire biodiversity credits of a specified number and class (if applicable) within a time specified in the order.
- (2) A direction may be given to a person under this section if:
  - (a) the person carries out development in respect of which a biobanking statement has been issued, and
  - (b) the person fails to retire biodiversity credits in accordance with a credit retirement condition specified in the biobanking statement that has effect.
- (3) For the purposes of this section, a credit retirement condition has effect if:
  - (a) in the case of a statement that relates to a project to which Part 3A of the *Environmental Planning and Assessment Act 1979* applies, the Minister administering that Act imposes the credit retirement condition as a condition of approval under that Part, or
  - (b) in the case of a statement that relates to development for which consent is required under Part 4 of the *Environmental Planning and Assessment Act 1979*—the development consent requires compliance with the credit retirement condition, or
  - (c) in the case of a statement that relates to an activity under Part 5 of the *Environmental Planning and Assessment Act 1979*—an approval of a determining authority requires compliance with the credit retirement condition or, if the activity is to be carried out by the determining authority, the determining authority commences carrying out that activity.

- (4) A person must not, without reasonable excuse, fail to comply with a direction under this section.  
Maximum penalty: 10,000 penalty units.
- (5) It is not an excuse for a failure to comply with a direction under this section that the person who is the subject of the direction does not, at the time the direction is given, hold a sufficient number of biodiversity credits to comply with the direction.  
**Note.** If the person who is the subject of the direction does not hold a sufficient number of credits to comply with the direction, the person may obtain the required number by purchasing them.
- (6) A court that convicts a person of an offence under subsection (4) may, in addition to or in substitution for any pecuniary penalty for the offence, by order direct the person to retire, in accordance with this Part, biodiversity credits of a specified number and class (if applicable) within a time specified in the order and, if the person does not hold sufficient biodiversity credits to comply with the direction, to acquire the necessary biodiversity credits for the purpose of retiring them.
- (7) In this section:  
**conviction** includes the making of an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999*.

**127ZS Director-General may verify retirement of biodiversity credits**

- (1) The Director-General may issue a statement confirming that a number and class (if applicable) of biodiversity credits specified in the statement have been retired by a person for the purpose of complying with a credit retirement condition.
- (2) The Director-General may issue such a statement at the request of the Minister administering the *Environmental Planning and Assessment Act 1979*, a consent authority, a determining authority (within the meaning of Part 5 of that Act), the person who applied for the biobanking statement concerned or in any other circumstances prescribed by the regulations.

**Division 7 Arrangements for deferral of retirement of biodiversity credits**

**127ZT Deferred retirement arrangements**

- (1) If the Director-General proposes to issue a biobanking statement subject to a credit retirement condition and is satisfied that restorative actions will be taken in relation to the development that will restore or improve the biodiversity values affected by

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the development, the Director-General may approve an arrangement (a *deferred retirement arrangement*) under which:

- (a) the retirement of some or all of the biodiversity credits under the credit retirement condition is deferred pending the completion of those actions, and
  - (b) the biodiversity credits the retirement of which is deferred pending the completion of those actions are required to be transferred to the Minister.
- (2) A credit retirement condition specified in a biobanking statement has effect subject to any such deferred retirement arrangement.
  - (3) Subject to the powers of the Director-General under this Division, the Minister is to hold biodiversity credits transferred to the Minister under a deferred retirement arrangement pending completion of the relevant restorative actions and is not permitted to transfer, retire, or otherwise deal with, the biodiversity credits.
  - (4) The biobanking assessment methodology may make provision with respect to deferred retirement arrangements, including:
    - (a) the types of restorative actions in respect of which deferred retirement arrangements are available, and
    - (b) the number and class of biodiversity credits that may be transferred back to a former holder of biodiversity credits (or to any person who acquires the rights of a former holder to apply for such a transfer) on completion of those actions.
  - (5) An application for registration of the transfer of biodiversity credits to the Minister under a deferred retirement arrangement is to be made in the manner required by Division 4. However, it is not necessary for the Minister to be a party to a transfer or application for registration of transfer.
  - (6) The provisions of Division 5 relating to the cancellation and suspension of biodiversity credits, and section 127ZZ (which relates to cost recovery), apply in respect of a biodiversity credit transferred to the Minister under a deferred retirement arrangement as if a reference to the holder of the biodiversity credit were a reference to the person who was the holder of the credit immediately before it was transferred to the Minister.

**127ZU Transfer or retirement of biodiversity credits held subject to deferred retirement arrangement**

- (1) A former holder of a biodiversity credit may, on the completion of any restorative actions the subject of a deferred retirement



arrangement, apply to the Director-General for the transfer to the former holder of any biodiversity credits held by the Minister under that deferred retirement arrangement.

- (2) An application under this section:
  - (a) is to be in a form approved by the Director-General, and
  - (b) is to be accompanied by the fee (if any) approved by the Director-General for applications under this section and such information as the Director-General requires.
- (3) The Director-General is to determine the application in accordance with any relevant requirements of the biobanking assessment methodology.
- (4) If, as a result of the application, the Director-General determines that any of the biodiversity credits held by the Minister under the deferred retirement arrangement may be transferred back to the former holder:
  - (a) the Director-General is to register a transfer, from the Minister to the former holder of biodiversity credits, of those biodiversity credits (without requiring an application for registration of transfer), and
  - (b) the Director-General may retire any remaining biodiversity credits held by the Minister under the deferred retirement arrangement.
- (5) If, as a result of the application, the Director-General determines that no biodiversity credits held by the Minister under the deferred retirement arrangement should be transferred to the former holder, the Director-General may retire all biodiversity credits held by the Minister under the arrangement.
- (6) The Director-General must, before retiring biodiversity credits under this section, give notice of the retirement to the former holder of the biodiversity credits.
- (7) The notice is to specify the date on which the biodiversity credits will be retired, being a date that is not less than 28 days after the notice is given to the former holder.
- (8) The Director-General may reject an application under this section for the transfer of biodiversity credits to a former holder of the credits if an application has already been made and determined in respect of the development concerned, or for any other reason specified in the regulations.

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- (9) In this section, a *former holder* of a biodiversity credit means:
- (a) the person who held the biodiversity credit immediately before the biodiversity credit was transferred to the Minister under a deferred retirement arrangement, or
  - (b) a person who acquires the rights of the person referred to in paragraph (a) to apply for a transfer under this section in respect of the biodiversity credit.

**127ZV Deadline for completion of restorative actions**

- (1) A deferred retirement arrangement may provide for a period at the end of which the deferred retirement arrangement ceases to have effect.
- (2) At the end of that period, the Director-General may retire any biodiversity credits transferred to the Minister under the deferred retirement arrangement that continue to be held by the Minister.
- (3) The Director-General must, before retiring biodiversity credits under this section, give notice of the retirement to the person who held those credits immediately before they were transferred to the Minister.
- (4) The notice is to specify the date on which the biodiversity credits will be retired, being a date that is not less than 28 days after the notice is given to the former holder.

**Division 8 Financial matters**

**127ZW Biobanking Trust Fund**

- (1) There is to be established by this Act a fund called the "Biobanking Trust Fund".

**Note.** The regulations may require a specified amount to be paid into the Fund when a biodiversity credit is first transferred to another person. It is intended that amounts so paid will be the principal source of revenue for the Fund.
- (2) The following amounts are to be paid into the Fund, subject to any requirements specified in the regulations:
  - (a) amounts required to be paid to the Fund under the regulations in respect of the transfer or retirement of a biodiversity credit,
  - (b) any amount paid out of the Fund to the owner of a biobank site that is repaid by or recovered from the owner,
  - (c) the proceeds of investment of money in the Fund,

- (d) any other money appropriated by Parliament for the purposes of the Fund or required by law to be paid into the Fund,
  - (e) such other amounts as are payable to the Fund under this Act or the regulations.
- (3) The following may be paid out of the Fund, subject to any requirements specified in the regulations:
- (a) such amounts as the Minister directs to be paid from the Fund to an owner of a biobank site in respect of management actions carried out, being carried out or to be carried out in accordance with a biobanking agreement,
  - (b) such amounts as the Minister directs to be paid from the Fund to the Fund Manager, in payment of the remuneration of the Fund Manager,
  - (c) any amounts payable by the Fund Manager in discharging the liabilities incurred by the Fund Manager in the exercise of its functions,
  - (d) such other amounts as are authorised to be paid out of the Fund by this Act or the regulations.

**127ZX Management and control of Fund**

- (1) The Fund Manager is to manage and control the Biobanking Trust Fund in accordance with this Act and the regulations.
- (2) The Fund Manager:
  - (a) is to act as trustee of money vested in the Biobanking Trust Fund, and
  - (b) is to invest the money vested in the Biobanking Trust Fund not immediately required for the purposes for which it is to be applied in the same way as trustees may invest trust funds under the *Trustee Act 1925*, subject to any requirements specified in the regulations, and
  - (c) is to make payments from the Biobanking Trust Fund as authorised by this Act and the regulations.
- (3) The Fund Manager has such other functions as may be conferred on the Fund Manager by the regulations.
- (4) The Fund Manager may do all things necessary or convenient to be done in connection with the exercise of the Fund Manager's functions.

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- (5) The regulations may make further provision with respect to the Biobanking Trust Fund, including by providing for the following:
- (a) the investment of the money vested in the Fund,
  - (b) the establishment of committees to advise the Fund Manager on the exercise of the Fund Manager's functions under this Division or to oversee the exercise of those functions,
  - (c) the obligation of the Fund Manager to report to the Minister on the exercise of the Fund Manager's functions under this Division,
  - (d) the winding up of the Fund,
  - (e) the review of any complaints made against the Fund Manager.

**127ZY Fund Manager**

- (1) The Minister is to appoint a person as Fund Manager in respect of the Biobanking Trust Fund.
- (2) It is not necessary for the person appointed as Fund Manager to be a public authority.
- (3) However, if the person appointed as Fund Manager is not a public authority, the Fund Manager is not, and does not represent, the Crown. Accordingly, any such Fund Manager:
  - (a) is not an instrumentality or agency of the State, and
  - (b) is not entitled to any immunity or privilege of the State, and
  - (c) cannot render the State liable for any debts, liabilities or obligations of the Fund, and
  - (d) is not a public authority for any purpose and is taken not to have been constituted or established for a public purpose or for a purpose of the State.
- (4) The regulations may make further provision for the appointment of the Fund Manager, and make provision for the termination of the appointment of the Fund Manager and remuneration of the Fund Manager.

**127ZZ Cost recovery**

- (1) The regulations may require any participant in the biobanking scheme to pay to the Minister a contribution towards the following:
  - (a) the costs of management and administration of the scheme (including payment for services provided by any person or body exercising functions under the scheme),
  - (b) the costs of ensuring compliance with the scheme,
  - (c) any other costs relating to the scheme.
- (2) The amount of the contribution (or the manner in which it is to be calculated) and other matters concerning its payment are to be set out in the regulations.
- (3) The contribution is recoverable by the Minister as a debt in a court of competent jurisdiction.
- (4) The regulations may authorise the payment of the contribution by instalments. If an instalment is not paid by the due date, the balance then becomes due and payable (together with any interest or penalty (or both) that the regulations require to be paid in respect of a late payment).
- (5) The regulations may:
  - (a) exempt any person or class of persons from payment of a contribution referred to in this section, and
  - (b) authorise the Minister to waive payment, or extend the time for payment, of a contribution, or part of a contribution, or any interest or penalty payable under this section.
- (6) In this section:

*participant* in the biobanking scheme means any of the following persons:

  - (a) the owner of a biobank site,
  - (b) the holder of a biodiversity credit,
  - (c) a person who applies for a biobanking statement, a person who owns the land on which development described in a biobanking statement may be carried out or a person entitled to act on a development consent or approval under the *Environmental Planning and Assessment Act 1979* given in relation to a development described in a biobanking statement,

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- (d) a person accredited as a conservation broker under the regulations.
  - (7) For the purposes of this section, the Minister or Director-General is not considered to be a participant in the biobanking scheme in respect of any thing done on behalf of the Crown.

**127ZZA Biodiversity Banking Account**

- (1) There is to be established in the Special Deposits Account an account called the “Biodiversity Banking Account”.
- (2) Money in the account is under the control of the Minister and can be expended by the Minister only for the purposes authorised by this section.
- (3) There is to be paid into the account:
  - (a) all contributions paid by participants in the biobanking scheme under a regulation referred to in section 127ZZ, and
  - (b) all fees and charges paid in connection with this Part, other than any amount that is payable under this Part to the Biobanking Trust Fund, and
  - (c) all costs or damages recovered in connection with enforcement action taken against an owner of a biobank site in respect of a failure to comply with a biobanking agreement, this Part or the regulations under this Part, other than amounts payable to the Biobanking Trust Fund, and
  - (d) all money received in respect of penalties recovered pursuant to this Part or the regulations under this Part, and
  - (e) the proceeds of investment of money in the account, and
  - (f) any money acquired by the Minister under section 148 of the *National Parks and Wildlife Act 1974* for the purposes of this Part, and
  - (g) any money received by the Minister pursuant to section 149 of the *National Parks and Wildlife Act 1974* in respect of land or other property, or an interest in land or property, acquired by the Minister for the purposes of this Part, or by purchase with money from the Biodiversity Banking Account, and
  - (h) any other money provided by Parliament for the purposes of the account or required by law to be paid into the account.

- (4) There may be paid out of the account:
  - (a) the costs of management and administration of the biobanking scheme, and
  - (b) the costs of ensuring compliance with the biobanking scheme, and
  - (c) such costs as the Minister directs are to be paid from the account to an owner of a biobank site, and
  - (d) such costs as the Minister directs to be paid from the account in payment of the remuneration of the Fund Manager, and
  - (e) such other costs relating to the biobanking scheme as the Minister directs to be paid out of the account.
- (5) There may be paid out of the account to the Consolidated Fund any amount in the account that, in the opinion of the Minister, is in excess of the amounts required to meet the costs referred to in subsection (4).

## **Division 9 Registers**

### **127ZZB Register of biobank sites**

- (1) The Director-General is to keep a register of biobank sites.
- (2) The register of biobank sites is to contain the following information:
  - (a) the location of each biobank site,
  - (b) a copy of the biobanking agreement relating to each biobank site.
- (3) The register of biobank sites may also contain other information of a kind prescribed by the regulations (including in relation to a biobank site the registration of which has been suspended or cancelled).
- (4) Information on the register is to be made available for public inspection at the head office of the Department and on the website of the Department.
- (5) The regulations may prescribe a fee for the provision of copies of information on the register.
- (6) The regulations may specify information on the register that is not to be made available to the public under this section.
- (7) The register may be kept wholly or partly by electronic means.

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**127ZZC Register of biodiversity credits**

- (1) The Director-General is to keep a register of biodiversity credits.
- (2) The register of biodiversity credits is to contain the following information in relation to each biodiversity credit created under this Part:
  - (a) particulars of the biobank site and management actions in respect of which the biodiversity credit was created,
  - (b) the class of the biodiversity credit (if applicable),
  - (c) the name of the current holder, and any previous holders, of the biodiversity credit,
  - (d) any suspension, cancellation or retirement of the biodiversity credit.
- (3) The register of biodiversity credits may also contain other information of a kind prescribed by the regulations.
- (4) Subject to the regulations, information on the register is to be made available for public inspection at the head office of the Department and on the website of the Department.
- (5) The regulations may prescribe a fee for the provision of copies of information on the register.
- (6) The regulations may specify information on the register that is not to be made available to the public under this section.
- (7) The register may be kept wholly or partly by electronic means.

**127ZZD Register of biobanking statements**

- (1) The Director-General is to keep a register of biobanking statements.
- (2) The register of biobanking statements is to contain the following information in relation to each biobanking statement issued under this Part:
  - (a) a copy of the biobanking statement,
  - (b) the name of the person who applied for the biobanking statement.
- (3) The register of biobanking statements may also contain other information of a kind prescribed by the regulations.
- (4) Information on the register is to be made available for public inspection at the head office of the Department and on the website of the Department.



- (5) The regulations may prescribe a fee for the provision of copies of information on the register.
- (6) The regulations may specify information on the register that is not to be made available to the public under this section.
- (7) The register may be kept wholly or partly by electronic means.

**127ZZE Evidentiary provisions**

- (1) A register kept under this Division is evidence of any particulars registered in it.
- (2) If a register is wholly or partly kept by electronic means, a document issued by the Director-General producing in writing particulars included in the register, or the part kept by electronic means, is admissible in legal proceedings as evidence of those particulars.

**127ZZF Correction of register**

The Director-General may correct any error in or omission from a register kept under this Part, or update a register in accordance with the requirements (if any) specified in the regulations.

**Division 10 Miscellaneous**

**127ZZG Appeals**

- (1) A person who owns land that is a biobank site and who is dissatisfied with the decision of the Director-General to suspend or cancel the registration of the biobank site may appeal to the Land and Environment Court against the decision.
- (2) The holder of a biodiversity credit who is dissatisfied with a decision of the Director-General to cancel a biodiversity credit may appeal to the Land and Environment Court against the decision.
- (3) A person who applies for the registration of a transfer of a biodiversity credit and who is dissatisfied with a decision of the Director-General to refuse to register the transfer may appeal to the Land and Environment Court against the decision, but only in the circumstances (if any) authorised by the regulations.
- (4) A person who applies for the transfer to the person of a biodiversity credit held by the Minister pursuant to a deferred retirement arrangement and who is dissatisfied with a decision of the Director-General in respect of the application may appeal to the Land and Environment Court against the decision.

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- (5) A person cannot appeal under subsection (4) against the provisions of the biobanking assessment methodology or the reasonableness of any determination of the Director-General made in accordance with that methodology.
  - (6) A person who held biodiversity credits immediately before they were transferred to the Minister pursuant to a deferred retirement arrangement and who is dissatisfied with a decision of the Director-General to retire those credits (other than a decision made as a result of an application referred to in subsection (4)) may appeal to the Land and Environment Court against the decision.
  - (7) An appeal may be made by a person under this section no later than 3 months after being notified by the Director-General of the decision.

**127ZZH Special arrangements for creation of national parks and other reservations**

- (1) The fact that land is a biobank site does not prevent the land from being reserved under Part 4 or Part 4A of the *National Parks and Wildlife Act 1974*.
- (2) On the reservation of a biobank site as a national park, historic site, state conservation area, regional park, karst conservation reserve, nature reserve or Aboriginal area under the *National Parks and Wildlife Act 1974*, the land concerned ceases to be a biobank site and the biobanking agreement applicable to the land is terminated.

**127ZZI Conservation brokers**

- (1) The regulations may make provision for or with respect to conservation brokers.
- (2) For the purposes of this section, a *conservation broker* is a person who provides, or offers to provide, any of the following services (whether or not for fee or reward):
  - (a) the identification of potential biobank sites or management actions,
  - (b) the negotiation of a biobanking agreement on behalf of a land owner,
  - (c) assistance with an application for registration of a biodiversity credit or an application for a biobanking statement,
  - (d) assistance with buying or selling biodiversity credits,

- (e) any other service in connection with the biobanking scheme that is prescribed by the regulations for the purposes of this definition.
- (3) Without limiting subsection (1), the regulations may:
  - (a) provide for the accreditation of persons as conservation brokers, including by specifying matters that may be taken into consideration in determining whether a person (whether or not an individual) is a fit and proper person to be accredited as a conservation broker, and
  - (b) exempt any person or class of persons from those requirements, and
  - (c) prohibit any person from holding himself or herself out to be a conservation broker, or advertising a service of a kind referred to in subsection (2), unless accredited.

**127ZZJ Participation of Minister**

The Minister may participate in the biobanking scheme, including by purchasing, holding and transferring biodiversity credits.

**127ZZK Exemption from liability**

- (1) The Minister, the Director-General and any other persons employed in the administration of this Part are not liable in any civil proceedings for anything done or omitted to be done in good faith in the exercise or purported exercise of any function under this Part.
- (2) This section does not extend to the Fund Manager.

**127ZZL Regulations**

- (1) The regulations may make further provision for or with respect to the biobanking scheme.
- (2) In particular, the regulations may:
  - (a) require the Director-General to periodically review the operation of the scheme and report on its operation to the Minister, and
  - (b) make provision for the arrangements that may be entered into between participants in the biobanking scheme (within the meaning of section 127ZZ), or between those participants and other persons, in connection with the scheme, and

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- (c) make provision for the resolution of disputes arising in connection with the operation of the scheme.

**127ZZM Regulations not subject to staged repeal**

A regulation that contains only the following provisions is not repealed by the operation of Part 3 of the *Subordinate Legislation Act 1989*:

- (a) provisions that relate to the biobanking scheme established by this Part (including any provisions required or authorised by this Part, and any ancillary, consequential, savings or transitional provisions),
- (b) provisions that deal with the citation and commencement of the regulation, or other provisions of a machinery nature.

**127ZZN Review of operation of biobanking scheme**

- (1) The Minister is to cause a review of the operation of the biobanking scheme to be carried out as soon as possible after the period of 2 years after the biobanking assessment methodology is first published in the Gazette.
- (2) The Minister may:
- (a) determine the terms of reference of the review, and
- (b) appoint a person or persons to carry out the review.
- (3) The Minister is to ensure that the public are given an opportunity to make submissions on the review.
- (4) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 2 years.

**[7] Part 8 Scientific Committee**

Re-number sections 127 and 128 as sections 128 and 128A respectively.

**[8] Section 142B**

Insert after section 142A:

**142B Director-General may accredit persons to prepare assessments and surveys**

- (1) The Director-General may institute arrangements for the accreditation of suitably qualified and experienced persons to undertake and prepare surveys and assessments for use in connection with:

- (a) biodiversity certification of EPIs under Division 5 of Part 7, or
  - (b) any assessment of the matters referred to in section 5A (Significant effect on threatened species, populations or ecological communities, or their habitats) of the *Environmental Planning and Assessment Act 1979*, or
  - (c) the biobanking scheme established under Part 7A.
- (2) An applicant for accreditation must furnish the Director-General with such information as the Director-General requires to effectively determine the application and the application 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 (not exceeding 3 years) 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) Without limiting subsection (3), an accreditation is to include conditions that require surveys and assessments to be undertaken and prepared in accordance with standards approved from time to time by the Director-General by order published in the Gazette.
  - (5) The Director-General may vary conditions or restrictions (if any) attaching to an accreditation and may suspend or cancel an accreditation.

**[9] Section 151**

Omit the section. Insert instead:

**151 Proceedings for offences**

- (1) Proceedings for an offence under this Act or the regulations may be dealt with:
  - (a) summarily before a Local Court, or
  - (b) summarily before the Land and Environment Court.
- (2) The maximum pecuniary penalty that a Local Court may impose in respect of an offence against this Act or the regulations is 200 penalty units or the maximum penalty provided by this Act or the regulations in respect of the offence, whichever is the lesser.

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**[10] Schedule 7 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Threatened Species Conservation Amendment (Biodiversity Banking) Act 2006*

**[11] Schedule 7, Part 6**

Insert after Part 5:

**Part 6 Provisions consequent on enactment of  
Threatened Species Conservation  
Amendment (Biodiversity Banking) Act  
2006**

**15 Renumbering of provisions**

Anything done or omitted to be done under a provision of this Act renumbered by the *Threatened Species Conservation Amendment (Biodiversity Banking) Act 2006* is taken to have been done or omitted to be done under the corresponding provision of this Act as so renumbered.

**16 Accreditation**

- (1) Any person accredited under section 126O to undertake and prepare surveys and assessments as referred to in section 126O (1) (a) or (b), as in force immediately before its repeal by the *Threatened Species Conservation Amendment (Biodiversity Banking) Act 2006*, is taken to have been accredited to undertake and prepare surveys and assessments as referred to in section 142B (1) (a) or (b) (as the case requires).
- (2) Any standards approved by the Director-General under section 126O by order published in the Gazette and in force immediately before the repeal of that section are taken to have been approved under section 142B.

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## Schedule 2 Amendment of other Acts and legislation

(Section 4)

### 2.1 Environmental Planning and Assessment Act 1979 No 203

#### [1] Section 75JA

Insert after section 75J:

##### 75JA Biobanking—special provisions

- (1) Without limiting section 75J, the Minister may approve a project subject to a condition that requires the proponent to acquire and retire (in accordance with Part 7A of the *Threatened Species Conservation Act 1995*) biodiversity credits of a number and class (if any) specified by the Minister in the approval. This subsection applies whether or not a biobanking statement under Part 7A of that Act was obtained in respect of the project.
- (2) The Minister may approve an arrangement under which:
  - (a) the retirement of some or all of the biodiversity credits is deferred pending the completion of any rehabilitation or restoration action proposed to be taken on the site of the project, after the project has been substantially completed, that will restore or improve the biodiversity values affected by the project, and
  - (b) the biodiversity credits the retirement of which is deferred pending the completion of those actions are required to be transferred to the Minister administering the *Threatened Species Conservation Act 1995*.
- (3) Division 7 of Part 7A of the *Threatened Species Conservation Act 1995* applies in respect of any such arrangement as if it were a deferred retirement arrangement approved by the Director-General of the Department of Environment and Conservation under that Division.
- (4) If a biobanking statement was obtained in respect of the project, the Minister may approve the project subject to a condition that requires the proponent to comply with any conditions of the biobanking statement.

**Note.** The conditions of a biobanking statement may require the proponent to retire biodiversity credits in respect of the project in order to ensure that it maintains or improves biodiversity values, or to carry out other onsite measures to minimise any negative impact of the project on biodiversity values.

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- (5) A person cannot appeal to the Court in respect of a condition imposed by the Minister under subsection (4).

**[2] Section 78A Application**

Insert after section 78A (8):

**Note.** Part 7A of the *Threatened Species Conservation Act 1995* provides for certain circumstances in which development is taken not to significantly affect threatened species, populations or ecological communities, or their habitats.

**[3] Section 79B Consultation and concurrence**

Insert after section 79B (3):

**Note.** If a biobanking statement has been issued in respect of the development under Part 7A of the *Threatened Species Conservation Act 1995*, the development is taken not to significantly affect threatened species, populations or ecological communities, or their habitats.

**[4] Section 79C Evaluation**

Insert at the end of the note to section 79C (1):

**Note.** If a biobanking statement has been issued in respect of a development under Part 7A of the *Threatened Species Conservation Act 1995*, the consent authority is not required to take into consideration the likely impact of the development on biodiversity values.

**[5] Section 96 Modification of consents—generally**

Omit section 96 (5). Insert instead:

(5) **Threatened species**

Development consent of the kind referred to in section 79B (3), or in respect of which a biobanking statement has been issued under Part 7A of the *Threatened Species Conservation Act 1995*, is not to be modified unless:

- (a) in the case of development referred to in section 79B (3)—the requirements of section 79B (3)–(7) have been complied with in relation to the proposed modification as if the application for the proposed modification were an application for development consent, or
- (b) in the case of development in respect of which a biobanking statement has been issued under Part 7A of the *Threatened Species Conservation Act 1995*—the applicant has made an application for modification of the biobanking statement in relation to the proposal and a new biobanking statement has been issued or the consent authority is satisfied that the modification will have no impact on biodiversity values (within the meaning of that Act).



**[6] Section 96AA Modification by consent authorities of consents granted by the Court**

Omit section 96AA (1B). Insert instead:

- (1B) Development consent of the kind referred to in section 79B (3), or in respect of which a biobanking statement has been issued under Part 7A of the *Threatened Species Conservation Act 1995*, is not to be modified unless:
- (a) in the case of development referred to in section 79B (3)—the requirements of section 79B (3)–(7) have been complied with in relation to the proposed modification as if the application for the proposed modification were an application for development consent, or
  - (b) in the case of development in respect of which a biobanking statement has been issued under Part 7A of the *Threatened Species Conservation Act 1995*—the applicant has made an application for modification of the biobanking statement in relation to the proposal and a new biobanking statement has been issued or the consent authority is satisfied that the modification will have no impact on biodiversity values (within the meaning of that Act).

**[7] Section 111 Duty to consider environmental impact**

Insert at the end of section 111 (2) (c):

, and

- (d) any biobanking agreement entered into under Part 7A of the *Threatened Species Conservation Act 1995* that applies to the whole or part of the land to which the activity relates.

**[8] Section 111, note**

Insert after the section:

**Note.** If a biobanking statement has been issued in respect of a development under Part 7A of the *Threatened Species Conservation Act 1995*, the determining authority is not required to consider the impact of the activity on biodiversity values.

**[9] Section 112 Decision of determining authority in relation to certain activities**

Insert after section 112 (1C):

**Note.** If a biobanking statement has been issued in respect of the activity under Part 7A of the *Threatened Species Conservation Act 1995*, the activity is taken not to significantly affect threatened species, populations or ecological communities, or their habitats.

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## **2.2 Environmental Planning and Assessment Regulation 2000**

### **[1] Schedule 1 Forms**

Insert “(unless the development is taken to be development that is not likely to have such an effect, because of the issue of a biobanking statement under Part 7A of the *Threatened Species Conservation Act 1995*, in which case it is sufficient to indicate that the statement has been issued)” after “or their habitats” in clause 1 (e).

### **[2] Schedule 1, clause 2 (5A)**

Insert after clause 2 (5):

- (5A) The species impact statement referred to in subclause (1) (f) is not required in relation to the effect of the development on any threatened species, populations or ecological communities, or their habitats, if, because of the issue of a biobanking statement under Part 7A of the *Threatened Species Conservation Act 1995*, the development is taken to be development that is not likely to significantly affect those threatened species, populations, ecological communities, or their habitats.

## **2.3 Land and Environment Court Act 1979 No 204**

### **[1] Section 17 Class 1—environmental planning and protection appeals**

Insert after section 17 (ea):

- (eb) appeals under section 127ZZG of the *Threatened Species Conservation Act 1995*, and

### **[2] Section 20 Class 4—environmental planning and protection and development contract civil enforcement**

Insert after section 20 (1) (cg):

- (cga) proceedings under sections 127L and 127O of the *Threatened Species Conservation Act 1995*,

### **[3] Section 21 Class 5—environmental planning and protection summary enforcement**

Insert after section 21 (ha):

- (hb) proceedings under sections 127S, 127ZI and 127ZR of the *Threatened Species Conservation Act 1995*, and

## **2.4 Land Tax Management Act 1956 No 26**

### **[1] Section 10 Land exempted from tax**

Insert after section 10 (1) (o):

- (p) land that is the subject of a biobanking agreement under Part 7A of the *Threatened Species Conservation Act 1995*,

### **[2] Section 10 (2C)**

Insert “or part of any land is the subject of a biobanking agreement under Part 7A of the *Threatened Species Conservation Act 1995*,” after “subsection (1) (p1),”.

## **2.5 Mining Act 1992 No 29**

### **Section 381A**

Insert after section 381:

#### **381A Biobank sites**

The Minister is to notify the Minister administering the *Threatened Species Conservation Act 1995* of the grant of any authority, mineral claim or opal prospecting licence in relation to land that is a biobank site (within the meaning of Part 7A of that Act).

## **2.6 National Parks and Wildlife Act 1974 No 80**

### **[1] Section 118E Court may order offender to restore habitat and take other actions**

Omit section 118E (1). Insert instead:

- (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, an endangered population or an endangered ecological community, the court may, in addition to or in substitution for any pecuniary penalty for the offence, make either or both of the following orders:
  - (a) an order directing the person to take any action to mitigate the damage or to restore that critical habitat or habitat,

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- (b) an order directing the person to retire, in accordance with Part 7A of the *Threatened Species Conservation Act 1995*, biodiversity credits of a specified number and class (if applicable) within a period specified in the order and, if the person does not hold sufficient biodiversity credits to comply with the direction, to acquire the necessary biodiversity credits for the purpose of retiring them.

**[2] Section 118E (5)**

Insert after section 118E (4):

- (5) In this section:

*biodiversity credit* has the same meaning as it has in Part 7A of the *Threatened Species Conservation Act 1995*.

**[3] Section 138 Payments into Fund**

Insert “(except any money provided by Parliament for the purposes of the Biodiversity Banking Account or Biobanking Trust Fund under Part 7A of the *Threatened Species Conservation Act 1995*)” after “*Act 1995*” in section 138 (1) (a).

**[4] Section 138 (1) (b) (iii)**

Insert “, except those that are required to be paid into the Biodiversity Banking Account or Biobanking Trust Fund under Part 7A of the *Threatened Species Conservation Act 1995*” after “those Acts”.

**[5] Section 138 (1) (b) (vii)**

Insert “, except penalties recovered pursuant to Part 7A of the *Threatened Species Conservation Act 1995* or the regulations under that Part” after “is trustee”.

**[6] Section 138 (1) (c)**

Insert “, except money required to be paid into the Biodiversity Banking Account under Part 7A of the *Threatened Species Conservation Act 1995*” after “section 148”.

**[7] Section 138 (1) (d)**

Insert “, except money required to be paid into the Biodiversity Banking Account under Part 7A of the *Threatened Species Conservation Act 1995*” after “section 149”.

**[8] Section 138 (1) (g)**

Insert “or money payable into the Biodiversity Banking Account or Biobanking Trust Fund under Part 7A of the *Threatened Species Conservation Act 1995*” after “(if any)”.

**[9] Section 139 Payments out of Fund**

Insert “, except those incurred under Part 7A of the *Threatened Species Conservation Act 1995*” after “*Act 1995*” in section 139 (2) (a).

**[10] Section 139 (2) (l)**

Insert “(except in relation to a dealing in land or other property, or an interest in property, the proceeds of which are payable into the Biodiversity Banking Account under Part 7A of the *Threatened Species Conservation Act 1995*)” after “149”.

## **2.7 Petroleum (Onshore) Act 1991 No 84**

### **Section 9 Grant of petroleum titles**

Insert after section 9 (5):

- (6) The Minister is to notify the Minister administering the *Threatened Species Conservation Act 1995* of the grant of any petroleum title in relation to land that is a biobank site (within the meaning of Part 7A of that Act).

[Second reading speech made in—

Legislative Assembly on 8 June 2006

Legislative Council on 24 October 2006]

BY AUTHORITY