



New South Wales

# Threatened Species Conservation Amendment (Wollemi Pine) Regulation 2007

under the

Threatened Species Conservation Act 1995

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Threatened Species Conservation Act 1995*.

BOB DEBUS, M.P.,  
Minister for the Environment

## Explanatory note

The objects of this Regulation are as follows:

- (a) to prohibit a person from entering or remaining in the Wollemi Pine critical habitat, or any part of it, if the area is closed by the Director-General by means of a public notice,
- (b) to allow the Director-General to also close the Wollemi Pine critical habitat, or any part of it, by written order (this being an alternative means of closing the critical habitat without disclosing the location of the critical habitat to the public),
- (c) to allow a designated officer to direct a person to leave the Wollemi Pine critical habitat if it has been closed by public notice or by a written order,
- (d) to allow a designated officer to direct a person to leave the Wollemi Pine critical habitat or to cease or modify a particular activity within the Wollemi Pine critical habitat if he or she is of the opinion that the person is contravening the new provisions of the Regulation or causing damage to the Wollemi Pine critical habitat, or is likely to do so,
- (e) to give a designated officer the power to remove a person from the Little Penguin and Wollemi Pine critical habitats if the person fails to comply with a direction,
- (f) to prescribe all offences under the *Threatened Species Conservation Regulation 2002* as penalty notice offences and to prescribe a penalty of \$500 for each of those offences if dealt with by penalty notice,
- (g) to make other minor amendments by way of law revision.

This Regulation is made under the *Threatened Species Conservation Act 1995*, including sections 51 and 150 (the general regulation-making power) and under section 160 of the *National Parks and Wildlife Act 1974*.

## **Threatened Species Conservation Amendment (Wollemi Pine) Regulation 2007**

under the

Threatened Species Conservation Act 1995

### **1 Name of Regulation**

This Regulation is the *Threatened Species Conservation Amendment (Wollemi Pine) Regulation 2007*.

### **2 Amendment of Threatened Species Conservation Regulation 2002**

The *Threatened Species Conservation Regulation 2002* is amended as set out in Schedule 1.

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## Schedule 1 Amendments

(Clause 2)

### [1] Clause 3 Definitions

Omit the definition of *authorised officer*. Insert in alphabetical order:

*designated officer* means:

- (a) an officer or employee of the Department of Environment and Conservation, or
- (b) a person who is authorised by the Director-General to exercise the powers conferred on a designated officer by this Regulation, or
- (c) a police officer.

### [2] Clause 3 (2)

Insert at the end of clause 3:

- (2) A person who, immediately before the commencement of the *Threatened Species Conservation Amendment (Wollemi Pine) Regulation 2007*, was authorised by the Director-General to exercise the powers conferred on an authorised officer by this Regulation is taken, on that commencement, to be authorised to exercise the powers conferred on a designated officer by this Regulation.

### [3] Clause 11 Directions given by a designated officer

Omit “an authorised officer” wherever occurring from clause 11 (1) and (3) (b).

Insert instead “a designated officer”.

### [4] Clause 11 (1)

Omit “Regulation”. Insert instead “Part”.

### [5] Clause 11 (3)

Omit “the authorised officer”. Insert instead “the designated officer”.

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### [6] Clause 11A

Insert after clause 11:

#### 11A Removal of persons who fail to comply with a direction

A designated officer may remove from the Little Penguin critical habitat, or any part of it, any person who fails to comply with a direction under clause 11 and any vehicle, vessel, animal or other property in the possession of the person.

### [7] Clause 12 Defences

Omit “this Regulation”. Insert instead “this Part”.

### [8] Clause 12 (e) (i)

Omit “National Parks and Wildlife Service”.

Insert instead “Department of Environment and Conservation”.

### [9] Clause 12 (e) (ii)

Omit “an authorised officer”. Insert instead “a designated officer”.

### [10] Clause 12 (e) (iii)

Omit “NSW Fisheries, the Waterways Authority or the Environment Protection Authority”.

Insert instead “the Department of Primary Industries or the Maritime Authority of NSW”.

### [11] Clause 12 (e) (iv)

Insert “(either unconditionally or subject to conditions)” after “given”.

### [12] Part 2A

Insert after Part 2:

## Part 2A Wollemi Pine critical habitat

### 12A Definitions

In this Part:

*damage* to the Wollemi Pine critical habitat includes:

- (a) picking any plant within the Wollemi Pine critical habitat, and
- (b) clearing or removing any vegetation (whether or not living) within the Wollemi Pine critical habitat, and

(c) harming any animal within the Wollemi Pine critical habitat, and

(d) introducing, or causing the spread of, *Phytophthora cinnamomi* within the Wollemi Pine critical habitat.

**harm** an animal includes hunt, shoot, poison, net, snare, spear, pursue, capture, trap, injure or kill, but does not include harm by changing the habitat of an animal.

**pick** a plant means gather, pluck, cut, pull up, destroy, poison, take, dig up, remove or injure the plant or any part of the plant.

**Wollemi Pine critical habitat** means any area of land declared by the Minister to be the critical habitat of the endangered species *Wollemia nobilis* (Wollemi Pine), by notification published in the Gazette under section 47 of the Act (as amended from time to time under section 49 of the Act).

#### 12B Application and operation of Part

(1) This Part does not have effect until the notification referred to in the definition of **Wollemi Pine critical habitat** is published in the Gazette.

(2) Nothing in this Part affects the operation of Part 2 of the *National Parks and Wildlife Regulation 2002*.

**Note.** For example, under Divisions 1 and 3 of Part 2 of the *National Parks and Wildlife Regulation 2002*, a park authority may regulate the use and closure of a national park by means of a public notice, a written notice or an oral direction and an authorised officer may remove a person from a national park in certain circumstances.

#### 12C Closure of Wollemi Pine critical habitat by public notice

(1) The Director-General may close the Wollemi Pine critical habitat, or any part of it, to the public by means of a notice displayed in, or at the boundary of, the Wollemi Pine critical habitat or the part of it to which the notice relates.

(2) The notice may close the Wollemi Pine critical habitat, or any part of it, to the public at all times or during specified times.

(3) A person must not:

(a) enter the Wollemi Pine critical habitat, or the part of it, when it is closed to the public in accordance with this clause, or

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- (b) remain, or leave a vehicle parked, in the Wollemi Pine critical habitat or any part of it when it is closed to the public in accordance with this clause.

Maximum penalty: 50 penalty units.

### 12D Closure of Wollemi Pine critical habitat by order

- (1) The Director-General may, by order in writing, close to the public the Wollemi Pine critical habitat or any part of it.
- (2) The order may close the Wollemi Pine critical habitat, or any part of it, to the public at all times or during specified times.

**Note.** The Director-General may decide not to disclose the location of critical habitat to the public under section 146 of the *Threatened Species Conservation Act 1995*. This clause gives the Director-General an alternative means of closing the critical habitat without disclosing the location of the critical habitat to the public.

### 12E Directions given by a designated officer

- (1) If the Wollemi Pine critical habitat, or any part of it, is closed to the public in accordance with clause 12C or 12D, a designated officer may direct a person to leave the area that is closed to the public.
- (2) If a designated officer is of the opinion that a person is contravening this Part or causing damage to the Wollemi Pine critical habitat, or is likely to do so, the officer may make one or more of the following directions:
  - (a) direct the person to cease a particular activity within the Wollemi Pine critical habitat,
  - (b) direct the person to modify a particular activity within the Wollemi Pine critical habitat so as to avoid any damage or likelihood of damage to the Wollemi Pine critical habitat,
  - (c) direct the person to leave the Wollemi Pine critical habitat.
- (3) A person must not, without reasonable excuse, fail or refuse to comply with a direction given under subclause (1) or (2).  
Maximum penalty: 50 penalty units.
- (4) A person is not guilty of an offence of failing or refusing to comply with a direction given under subclause (1) or (2) unless it is established that the designated officer:
  - (a) warned the person that a failure or refusal to comply with the direction is an offence, and
  - (b) identified himself or herself to the person as a designated officer.

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**12F Removal of persons who fail to comply with a direction**

A designated officer may remove from the Wollemi Pine critical habitat, or any part of it, any person who fails or refuses to comply with a direction under clause 12E and any vehicle, animal or other property in the possession of the person.

**12G Defences**

It is a defence to a prosecution for an offence against this Part if the defendant proves that the act constituting the offence:

- (a) was authorised to be done, and was done in accordance with, a licence granted under the *National Parks and Wildlife Act 1974* or under Part 6 of the *Threatened Species Conservation Act 1995*, or
- (b) was the subject of a certificate issued under section 95 (2) of the *Threatened Species Conservation Act 1995*, or
- (c) was authorised to be done by or under Part 2 of the *Rural Fires Act 1997*, the *State Emergency and Rescue Management Act 1989* or the *State Emergency Service Act 1989* and was reasonably necessary in order to avoid a threat to life or property, or
- (d) was carried out:
  - (i) by an officer or employee of the Department of Environment and Conservation in the exercise of his or her functions as such an officer or employee, or
  - (ii) by a designated officer in the exercise of his or her functions as such an officer, or
  - (iii) with the consent of the Director-General given (either unconditionally or subject to conditions) in the form of a licence, permit, approval or other form of written authorisation.

**[13] Part 4 and Schedule 1**

Insert after Part 3:

**Part 4 Penalty notices**

**34 Penalty notice offences**

- (1) For the purposes of section 160 of the *National Parks and Wildlife Act 1974*:
  - (a) each offence created by a provision specified in Column 1 of Schedule 1 is a prescribed offence, and

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- (b) the prescribed penalty for such an offence is the amount specified in Column 2 of Schedule 1, and
  - (c) each person referred to in subclause (3) is a prescribed person.
- (2) If the reference to a provision in Column 1 of Schedule 1 is qualified by words that restrict its operation to specified kinds of offences or to offences committed in specified circumstances, an offence created by the provision is a prescribed offence only if it is an offence of a kind so specified or is committed in the circumstances so specified.
- (3) For the purposes of section 160 of the *National Parks and Wildlife Act 1974*, the following persons are prescribed persons for all offences referred to in Schedule 1:
- (a) the Director-General,
  - (b) any officer or employee of the Department of Environment and Conservation,
  - (c) any person who is authorised by the Director-General to exercise the powers conferred on a designated officer by this Regulation,
  - (d) any police officer,
  - (e) any officer or employee of a government department in respect of which an arrangement has been made under section 11 (1) of the *National Parks and Wildlife Act 1974*,
  - (f) any officer, employee or servant of a statutory corporation or council, or of trustees, in respect of whom or which an arrangement has been made under section 11 (2) or (4) of the *National Parks and Wildlife Act 1974*.

**Schedule 1 Penalty notice offences**

(Clause 34)

<b>Column 1</b>	<b>Column 2</b>
<b>Provision</b>	<b>Penalty \$</b>
<b>Offences under this Regulation</b>	
Clause 7 (1)	\$500
Clause 7 (2)	\$500
Clause 7A (1)	\$500



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<b>Column 1</b>	<b>Column 2</b>
<b>Provision</b>	<b>Penalty \$</b>
Clause 8 (1)	\$500
Clause 9	\$500
Clause 10 (1)	\$500
Clause 10 (2)	\$500
Clause 11 (2)	\$500
Clause 12C (3)	\$500
Clause 12E (3)	\$500

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