



New South Wales

Biodiversity Conservation Legislation Amendment Regulation 2020

under the

Biodiversity Conservation Act 2016

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Biodiversity Conservation Act 2016*.

MATTHEW KEAN, MP
Minister for Energy and Environment

Explanatory note

The object of this Regulation is to amend the *Biodiversity Conservation Regulation 2017* as follows—

- (a) update certain definitions relating to the protection of marine mammals,
- (b) provide for different application fees for different biodiversity conservation licences,
- (c) update the time in which a biodiversity certification assessment report must be submitted in connection with an application for an extension or modification of biodiversity certification,
- (d) make other minor amendments.

This Regulation also amends the *Biodiversity Conservation (Savings and Transitional) Regulation 2017* to make further transitional provisions in relation to the application of the *Biodiversity Conservation Act 2016* in respect of the variation and termination of existing conservation agreements under the *National Parks and Wildlife Act 1974*, trust agreements under the repealed *Nature Conservation Trust Act 2001* and property agreements under the repealed *Native Vegetation Conservation Act 1997*.

This Regulation is made under the *Biodiversity Conservation Act 2016*, including sections 2.7(2), 2.9, 2.12, 7.4, 8.26(6) and 14.10 (the general regulation-making power) and clause 1 of Schedule 9.

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1 Name of Regulation

This Regulation is the *Biodiversity Conservation Legislation Amendment Regulation 2020*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Schedule 1 Amendment of Biodiversity Conservation Regulation 2017

[1] Clause 2.1 Definitions

Omit “the family Phocoenidae” from the definition of *dolphin*.

Insert instead “Phocoenidae (other than a killer whale (*Orcinus orca*))”.

[2] Clause 2.1, definition of “marine mammal”

Omit “of Cetacea, Sirenia or Pinnipedia”.

Insert instead “Cetacea or Sirenia or the family Otariidae or Phocidae”.

[3] Clause 2.1, definition of “seal or sea lion”

Omit “Odobenidae, the family of Otariidae or the family of Phocidae”.

Insert instead “Otariidae or Phocidae”.

[4] Clause 2.1, definition of “whale”

Insert “and includes a killer whale (*Orcinus orca*)” after “dolphin”.

[5] Clause 2.3 Approaching marine mammals

Insert after clause 2.3(6)—

(7) In this clause—

law enforcement agency means—

- (a) the NSW Police Force or the police force of another State or Territory, or
- (b) the Australian Federal Police, or
- (c) the New South Wales Crime Commission, or
- (d) Transport for NSW, or
- (e) the Department of Planning, Industry and Environment.

[6] Clause 2.22 Exclusion of certain animals from offence of dealing in animals (section 2.5)

Omit “*Cacatua roseicapilla*” from clause 2.22(2).

Insert instead “*Eolophus roseicapillus*”.

[7] Clause 2.28 Standard application fee for licence (section 2.12)

Omit “of \$30.” from clause 2.28. Insert instead—

of—

- (a) in the case of a licence that authorises a person to harm kangaroos or deal in kangaroos that are harmed under the licence—\$150, or
- (b) in the case of a licence that authorises a person to deal in kangaroos only—\$300, or
- (c) in any other case—\$30.

[8] Clause 7.3 Clearing on land within Biodiversity Values Map exceeds threshold

Omit “protected” from clause 7.3(3)(e). Insert instead “biodiverse”.

[9] Clause 8.8 Currency of biodiversity certification assessment report (section 8.26(6))

Omit “for biodiversity certification, or”.

[10] Clause 8.8

Omit “28 days”. Insert instead “14 days”.

Schedule 2 Amendment of Biodiversity Conservation (Savings and Transitional) Regulation 2017

[1] Clause 17A

Insert after clause 17—

17A New Act applies to variation and termination of certain conservation agreements under NPW Act

- (1) This clause applies to a conservation agreement entered into—
 - (a) before the commencement of the new Act, or
 - (b) by the Minister, pursuant to clause 17(2), after the commencement of the new Act.
- (2) A conservation agreement to which this clause applies may be varied or terminated in accordance with section 5.23 of the new Act as if it were an agreement made on or after the commencement of the new Act between the Biodiversity Conservation Trust and the owner of the land.
- (3) In this clause—

conservation agreement means an agreement under section 69B of the *National Parks and Wildlife Act 1974* for a purpose referred to in section 69C(1)(e) or (e2) of that Act (or in section 69C(1)(e3) in relation to a purpose referred to in section 69C(1)(e) or (e2)), as those provisions were in force immediately before the commencement of the new Act.

[2] Clause 50 Continuation of existing Trust agreements etc

Omit clause 50(3). Insert instead—

- (3) For the purposes of this clause—
 - (a) the *Nature Conservation Trust Act 2001* (other than sections 34(1)(b) and (2) and 35) continues to apply to and in respect of a Trust agreement to which this clause applies as if that Act had not been repealed and as if references to the Nature Conservation Trust were references to the Biodiversity Conservation Trust, and
 - (b) section 5.23 of the new Act applies to and in respect of the variation or termination of a Trust agreement to which this clause applies.

[3] Clause 63 Continuation of existing property agreements continued under NV Act

Omit clause 63(2). Insert instead—

- (2) For that purpose—
 - (a) Part 5 (other than section 43(2) and (3)) of the *Native Vegetation Conservation Act 1997* continues to have effect in relation to a property agreement referred to in subclause (1), and
 - (b) section 5.23 of the new Act applies to and in respect of the variation or termination of the property agreement.