



New South Wales

# Threatened Species Conservation Amendment (Biodiversity Certification) Bill 2010

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to amend the *Threatened Species Conservation Act 1995* (**the principal Act**) to establish new arrangements for the biodiversity certification of land.

Under the new arrangements, the Minister administering the *Threatened Species Conservation Act 1995* (**the Minister**) may, on application by a planning authority, confer biodiversity certification on specified land. The effect of biodiversity certification is as follows:

- (a) the environmental assessment requirements for the approval of a project, or a concept plan for a project, under Part 3A of the *Environmental Planning and Assessment Act 1979* (**the Planning Act**) do not require an assessment of the impact of the project on biodiversity values if the project is carried out or proposed to be carried out on biodiversity certified land,
- (b) development on biodiversity certified land is taken, for the purposes of Part 4 of the Planning Act, to be development that is not likely to significantly affect any threatened species, population or ecological community under the principal Act, or its habitat,

- (c) an activity to which Part 5 of the Planning Act applies which is carried out or proposed to be carried out on biodiversity certified land is taken, for the purposes of Part 5 of the Planning Act, to be an activity that is not likely to significantly affect any threatened species, population or ecological community under the principal Act, or its habitat,
- (d) the *Native Vegetation Act 2003* does not apply to the biodiversity certified land.

The Minister may confer biodiversity certification only if the planning authority has a biodiversity certification strategy, which is a policy or strategy for the implementation of conservation measures that ensure that the overall effect of biodiversity certification is to maintain or improve biodiversity values.

The Bill also makes provision for the following matters, which are explained in more detail below:

- (a) the establishment of a biodiversity certification assessment methodology (the methodology will set out the rules that are to be used as the basis for assessing whether biodiversity certification improves or maintains biodiversity values),
- (b) the enforcement of conservation measures against parties who agree to the biodiversity certification,
- (c) the suspension, revocation or modification of biodiversity certification,
- (d) biodiversity certification agreements, which are agreements entered into in connection with biodiversity certification.

The new arrangements replace existing arrangements for the biodiversity certification of environmental planning instruments. The existing arrangements will continue to have effect, with some modifications, in relation to the *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* (the **Growth Centres SEPP**) and in relation to any biodiversity certification proposals that are certified or are the subject of public consultation before the repeal of those arrangements.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

## **Schedule 1      Amendment of Threatened Species Conservation Act 1995 No 101**

### **Biodiversity certification of land**

The principal amendment is **Schedule 1 [4]**, which sets out the new arrangements relating to biodiversity certification of land (proposed new Part 7AA).

The new arrangements enable the Minister to confer biodiversity certification on specified land, by order published in the Gazette. The effect of biodiversity certification is as explained in the overview.

### **Application for biodiversity certification**

An application for biodiversity certification may be made to the Minister by a planning authority or by 2 or more planning authorities jointly. Planning authorities include the Minister for Planning and local councils.

Biodiversity certification may be conferred only if the applicant has a biodiversity certification strategy. A biodiversity certification strategy is a policy or strategy for the implementation of conservation measures to ensure that the overall effect of biodiversity certification is to improve or maintain biodiversity values. The strategy is to be used as the basis for the assessment of the application.

A biodiversity certification strategy must identify the following:

- (a) the land proposed for biodiversity certification,
- (b) the land proposed for biodiversity conservation (being any land on or in respect of which the conservation measures are to be implemented),
- (c) the proposed conservation measures,
- (d) the parties required to implement the conservation measures.

Conservation measures include:

- (a) the adoption or continuation of development controls under the Planning Act that limit or prohibit development on land or the taking of any other measures under that Act that conserve or enhance the natural environment, and
- (b) the entering into of a biodiversity certification agreement, and
- (c) the entering into of a planning agreement under the Planning Act that makes provision for development contributions to be used or applied towards the conservation or enhancement of the natural environment, and
- (d) the making of a State infrastructure contribution under the Planning Act for the conservation or enhancement of the natural environment, and
- (e) certain other measures relating to the conservation, use and management of land.

The Bill sets out further requirements applicable to an application for biodiversity certification, including public notification requirements.

### **Assessment of application for biodiversity certification**

Biodiversity certification may be conferred only if biodiversity certification will improve or maintain biodiversity values.

Biodiversity certification will improve or maintain biodiversity values only if the Minister determines, on the basis of a biodiversity certification assessment, that certification will improve or maintain biodiversity values. A biodiversity certification assessment is an assessment of the effect of biodiversity certification on

biodiversity values. The assessment is to be made in accordance with the biodiversity certification assessment methodology, and not otherwise.

The Minister may, in a particular case, permit a minor variation to be made to the biodiversity certification assessment methodology in certain circumstances.

The Minister must refuse to confer certification if the certification does not improve or maintain biodiversity values. The Bill also confers broad powers on the Minister to refuse to confer biodiversity certification in other circumstances.

### **Biodiversity certification assessment methodology**

The Bill enables the Minister, by order published in the Gazette, to make rules with respect to the circumstances in which biodiversity certification is to be regarded as improving or maintaining biodiversity values.

In particular, the rules are to establish a methodology for assessing:

- (a) the loss of biodiversity values on land proposed for biodiversity certification, and
- (b) the impact, or likely impact, of proposed conservation measures on land proposed for biodiversity conservation.

The Bill makes provision for:

- (a) publication of the proposed methodology, and of any proposed change to the methodology, including requirements for public consultation, and
- (b) the circumstances in which changes to the methodology do not require public consultation.

### **Conferral, extension and review of certification**

The Minister may, in an order conferring biodiversity certification, specify any approved measures under the biodiversity certification. The approved measures are as follows:

- (a) the proposed conservation measures on which the biodiversity certification assessment was based,
- (b) any requirements, as determined by the Minister, as to the timing of the implementation of the proposed conservation measures,
- (c) any requirements, as determined by the Minister, as to monitoring, reporting or auditing of the implementation of proposed conservation measures,
- (d) any other matters provided for by the regulations.

The Minister may require a party to the biodiversity certification to comply with the approved measures. A planning authority that applies for biodiversity certification is a party to any biodiversity certification that is conferred as a consequence of the application. Other persons or bodies may also be named as parties to the biodiversity certification, with their consent.

The Bill makes provision for the duration of biodiversity certification, extension of biodiversity certification and the periodic review of biodiversity certification.

### **Enforcement of approved measures**

The Minister may require a party to a biodiversity certification to rectify any failure to comply with the approved measures under the biodiversity certification. The Minister may require a party who fails to comply with the requirement to pay to the Minister a penalty based on the cost of implementing the approved measures or equivalent conservation measures.

A party to biodiversity certification (other than a government authority) may appeal to the Land and Environment Court against a decision of the Minister to make an order against the party. If the party concerned is a government authority (that is, a Minister or a public authority) a dispute concerning the implementation of the approved measures may be submitted to the Premier for settlement.

### **Biodiversity certification agreements**

The Bill enables the Minister to enter into an agreement with another person in connection with biodiversity certification (including a proposed conferral, extension or modification of biodiversity certification). The agreement (a ***biodiversity certification agreement***) may require a person to make monetary contributions to the Minister, to dedicate land or to carry out certain works on land owned by the person. It may also make other provision with respect to conservation measures agreed to be implemented by the person.

An agreement may be registered on the title of land so that it is binding on successors in title.

The Bill makes provision for the following:

- (a) the duration of biodiversity certification agreements,
- (b) the enforcement of biodiversity certification agreements,
- (c) variation to agreements.

The regulations may make further provision in respect of biodiversity certification agreements.

### **Suspension, revocation and modification of certification**

The Minister may, by order published in the Gazette, suspend or revoke any biodiversity certification. The Bill provides for the grounds on which this action can be taken, with the key ground being a failure to comply with the approved measures under the biodiversity certification.

The Minister may, by order published in the Gazette, modify any biodiversity certification by:

- (a) modifying the description of the land that is biodiversity certified (to extend or limit biodiversity certification), or
- (b) modifying the approved measures under the biodiversity certification.

Biodiversity certification may be modified on the Minister's own initiative on specified grounds (including a failure to comply with the approved measures).

Biodiversity certification may also be modified on the application of a party to the biodiversity certification.

A party to a biodiversity certification (other than a government authority) may appeal to the Land and Environment Court against a decision of the Minister to suspend, revoke or modify biodiversity certification. If the party concerned is a government authority, a dispute concerning the Minister's decision may be submitted to the Premier for settlement.

### **Other general matters**

The Bill makes provision for the notification of biodiversity certification and changes to biodiversity certification.

The suspension, revocation or expiry of biodiversity certification does not affect the obligations of parties to the biodiversity certification, or parties to an agreement entered into in connection with the biodiversity certification, unless the Minister otherwise directs.

The suspension, revocation, modification or expiry of biodiversity certification does not affect any consent or approval given, or activity commenced, under the Planning Act before the suspension, revocation, modification or expiry. The Minister may determine the application of the suspension, revocation or modification to matters pending under the Planning Act. The regulations may make further provision in relation to an expiry of biodiversity certification.

The Bill also makes provision for the following:

- (a) the arrangements for settlement of disputes under the biodiversity certification provisions between government authorities and the Minister,
- (b) the use of enforcement powers by authorised officers to investigate compliance with the approved measures under a biodiversity certification or with a biodiversity certification agreement,
- (c) the effect of a failure to comply with procedural requirements,
- (d) power to make regulations in connection with the operation of the new provisions,
- (e) other matters of a related or consequential nature.

### **Amendments relating to repeal of former biodiversity certification arrangements**

**Schedule 1 [3]** repeals the existing arrangements under which biodiversity certification can be conferred on an environmental planning instrument (*EPI*).

**Schedule 1 [14]** saves those arrangements in relation to any EPI which is certified before the repeal of those arrangements or which is the subject of a proposal to confer biodiversity certification that is advertised or publicly exhibited before the repeal of those arrangements.

The provisions largely continue the existing arrangements for those EPIs, with the following modifications:

- (a) the new provisions make it clear that an established EPI (that is, an EPI that is in force) can be certified,
- (b) the new provisions require any certification that is conferred after the repeal of the former arrangements to specify any relevant measures to be taken under the certification and any conditions of the certification,
- (c) the new provisions make it clear that a failure to comply with the relevant measures or to implement any conditions of the certification does not invalidate the certification, but is a ground for suspension or revocation of the certification,
- (d) the new provisions require the Minister to undertake periodic reviews of any biodiversity certification conferred on an EPI under the former arrangements.

The amendments also contain other provisions of a consequential nature.

**Schedule 1 [10]–[13]** make changes to the existing arrangements under Part 7A of Schedule 7 to the principal Act, which confer biodiversity certification on the Growth Centres SEPP. At present, those arrangements partly rely on provisions in the main body of the principal Act relating to the biodiversity certification of EPIs generally (that is, Division 5 of Part 7 of the Act). As those provisions are being repealed, the amendments transfer the relevant provisions to Part 7 of Schedule 7.

**Schedule 1 [9]** makes it clear that biodiversity certification applies to any development that may be carried out on the subject land, including development that may be carried out under another EPI (besides the Growth Centres SEPP) that applies to the subject land.

### **Other amendments**

**Schedule 1 [5]** removes the definitions of *consent authority* and *owner* from Part 7 of the principal Act. These definitions are transferred to the front of the principal Act by **Schedule 1 [1]**. The definition of *owner* is extended to permit the regulations to prescribe other persons who are taken to be the owner of land and is updated to remove a reference to a repealed Act.

**Schedule 1 [1]** also inserts a definition of *Planning Act* in the front of the Act. **Schedule 1 [2]** is a consequential amendment.

**Schedule 1 [6]** is an amendment that is consequential on the new biodiversity certification arrangements. The amendment enables assessors to be accredited for the purposes of the scheme.

**Schedule 1 [7]** removes a provision that requires a review to be carried out of EPIs that are granted biodiversity certification. The provisions in **Schedule 1 [14]** enable the Minister to undertake periodic reviews of biodiversity certification.

**Schedule 1 [8]** enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

## **Schedule 2     Amendment of other legislation**

**Schedule 2.1 [1], [3], [4] and [5]** insert notes in the Planning Act to alert readers to the impact of the biodiversity certification arrangements on relevant provisions of those Acts.

**Schedule 2.1 [2]** transfers a provision from the *Threatened Species Conservation Act 1995* (currently section 126N) to the Planning Act. The provision relates to the imposition of conditions on the grant of concurrence to development by the Director-General of Department of Environment, Climate Change and Water. **Schedule 2.1 [6]** is a consequential amendment.

**Schedule 2.2** amends the *Environmental Planning and Assessment Regulation 2000*:

- (a) to require an indication as to whether biodiversity certification arrangements apply in respect of development to be included in a development application, and
- (b) to make it clear that a species impact statement is not required in relation to a development application if the biodiversity certification arrangements apply, and
- (c) to require a planning certificate to include an indication that land is biodiversity certified land.

**Schedule 2.3** amends the *Land and Environment Court Act 1979* to require appeals to the Land and Environment Court under the new biodiversity certification arrangements to be heard in the class 1 jurisdiction of that Court.

**Schedule 2.4** amends the *National Parks and Wildlife Act 1974* so that:

- (a) money received in the administration of the biodiversity certification scheme is not paid into the National Parks and Wildlife Fund under that Act, and
- (b) the costs incurred by the Minister in connection with the scheme are not paid from that Fund.

**Schedule 2.5** amends the *Native Vegetation Act 2003* so that biodiversity certified land is excluded from the operation of that Act.



First print



New South Wales

# Threatened Species Conservation Amendment (Biodiversity Certification) Bill 2010

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New South Wales

# Threatened Species Conservation Amendment (Biodiversity Certification) Bill 2010

No. , 2010

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## A Bill for

An Act to amend the *Threatened Species Conservation Act 1995* to make further provision for biodiversity certification and to make related amendments to other legislation.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Threatened Species Conservation Amendment (Biodiversity Certification) Act 2010</i> .	3 4
<b>2 Commencement</b>	5
This Act commences on a day or days to be appointed by proclamation.	6

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<b>Schedule 1</b>	<b>Amendment of Threatened Species Conservation Act 1995 No 101</b>	1
		2
<b>[1] Section 4 Definitions</b>		3
	Insert in alphabetical order in section 4 (1):	4
	<i>consent authority</i> has the same meaning as in the Planning Act.	5
	<i>owner</i> , in relation to land, includes:	6
	(a) every person who, either at law or in equity:	7
	(i) is entitled to the land for any estate of freehold in possession, or	8
		9
	(ii) is a person to whom the Crown has lawfully contracted to sell the land under the <i>Crown Lands Act 1989</i> or any other Act relating to the alienation of lands of the Crown, or	10
		11
		12
		13
	(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, and	14
		15
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		18
	(b) a person who leases land under the <i>Crown Lands Act 1989</i> , the <i>Crown Lands (Continued Tenures) Act 1989</i> or the <i>Western Lands Act 1901</i> , and	19
		20
		21
	(c) any other person who, under the regulations, is taken to be the owner of land.	22
		23
	<i>Planning Act</i> means the <i>Environmental Planning and Assessment Act 1979</i> .	24
		25
<b>[2] The whole Act (except the long title and Schedule 7)</b>		26
	Omit “ <i>Environmental Planning and Assessment Act 1979</i> ” wherever occurring.	27
		28
	Insert instead “Planning Act”.	29
<b>[3] Part 7, Division 5 Biodiversity certification of environmental planning instruments</b>		30
		31
	Omit the Division.	32

<b>[4] Part 7AA</b>	1
Insert after Part 7:	2
<b>Part 7AA Biodiversity certification</b>	3
<b>Division 1 Preliminary</b>	4
<b>126G Definitions</b>	5
In this Part:	6
<i>approved measures</i> under a biodiversity certification means the approved measures as specified in an order that confers, extends or modifies the biodiversity certification.	7 8 9
<i>biodiversity certification</i> means biodiversity certification conferred on land under this Part.	10 11
<i>biodiversity certification assessment</i> —see section 126P.	12
<i>biodiversity certification assessment methodology</i> or <i>methodology</i> means the rules made under section 126S.	13 14
<i>biodiversity certified land</i> means land on which biodiversity certification has been conferred and in respect of which biodiversity certification is in force.	15 16 17
<i>government authority</i> means a Minister or a public authority, but does not include a State owned corporation.	18 19
<i>party</i> to a biodiversity certification means a person or body identified in an order under this Part as a party to the biodiversity certification.	20 21 22
<i>planning authority</i> means:	23
(a) the Minister for Planning, or	24
(b) a local council, or	25
(c) a determining authority (within the meaning of Part 5 of the Planning Act), or	26 27
(d) the Director-General of the Department of Planning, or	28
(e) any other person or body declared by the regulations to be a planning authority.	29 30
<b>Division 2 Biodiversity certification</b>	31
<b>126H Biodiversity certification</b>	32
The Minister may, by order published in the Gazette, confer biodiversity certification on specified land.	33 34

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<b>126I</b>	<b>Effect of biodiversity certification</b>	1
(1)	<b>Projects under Part 3A of the Planning Act</b>	2
	The environmental assessment requirements for the approval of a project, or a concept plan for a project, under Part 3A of the Planning Act do not require an assessment of the impact of the project on biodiversity values if the project is carried out or proposed to be carried out on biodiversity certified land.	3 4 5 6 7
(2)	<b>Development under Part 4 of the Planning Act</b>	8
	Development on biodiversity certified land is taken, for the purposes of Part 4 of the Planning Act, to be development that is not likely to significantly affect any threatened species, population or ecological community under this Act, or its habitat.	9 10 11 12
(3)	A consent authority, when determining a development application in relation to development on biodiversity certified land under Part 4 of the Planning Act, is not required to take into consideration the likely impact of the development on biodiversity values (despite any provision of the Planning Act or any regulation or instrument made under that Act).	13 14 15 16 17 18
(4)	<b>Activities under Part 5 of the Planning Act</b>	19
	An activity to which Part 5 of the Planning Act applies which is carried out or proposed to be carried out on biodiversity certified land is taken, for the purposes of Part 5 of the Planning Act, to be an activity that is not likely to significantly affect any threatened species, population or ecological community under this Act, or its habitat.	20 21 22 23 24 25
(5)	A determining authority under Part 5 of the Planning Act is not required under that Part to consider the effect on biodiversity values of an activity carried out on biodiversity certified land (despite section 111 of the Planning Act).	26 27 28 29
(6)	<b>Native Vegetation Act</b>	30
	The <i>Native Vegetation Act 2003</i> does not apply to biodiversity certified land.	31 32
<b>Division 3</b>	<b>Application for biodiversity certification</b>	33
<b>126J</b>	<b>Who may apply for biodiversity certification</b>	34
(1)	An application for biodiversity certification may be made to the Minister by any planning authority.	35 36
(2)	An application may also be made jointly by 2 or more planning authorities.	37 38

<b>126K</b>	<b>Certification not to be conferred without biodiversity certification strategy</b>	1 2
(1)	Biodiversity certification may be conferred on land only if the applicant has a biodiversity certification strategy.	3 4
(2)	A <i>biodiversity certification strategy</i> is a policy or strategy for the implementation of conservation measures to ensure that the overall effect of biodiversity certification is to improve or maintain biodiversity values.	5 6 7 8
(3)	The biodiversity certification strategy is to be used as the basis for the assessment of the application for biodiversity certification.	9 10 11
(4)	A biodiversity certification strategy is to identify the following:	12
(a)	the land proposed for biodiversity certification,	13
(b)	the land proposed for biodiversity conservation (being any land on or in respect of which conservation measures are to be implemented),	14 15 16
(c)	the proposed conservation measures,	17
(d)	any person or body proposed as a party to the biodiversity certification.	18 19
	<b>Note.</b> Parties to a biodiversity certification are responsible for the implementation of the proposed conservation measures.	20 21
(5)	The land proposed for biodiversity conservation must comply with any requirements (whether geographic or scientific) provided for by the biodiversity certification assessment methodology.	22 23 24 25
(6)	The Minister may issue guidelines for the preparation of biodiversity certification strategies.	26 27
<b>126L</b>	<b>Conservation measures</b>	28
(1)	Each of the following measures is a <i>conservation measure</i> for the purposes of this Part:	29 30
(a)	the adoption or continuation of development controls under the Planning Act that limit or prohibit development on land or the taking of any other measures under that Act that conserve or enhance the natural environment,	31 32 33 34
(b)	the entering into of a biodiversity certification agreement under this Part,	35 36



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(c)	the entering into of a planning agreement under the Planning Act that makes provision for development contributions to be used or applied towards the conservation or enhancement of the natural environment,	1 2 3 4
(d)	the making of a State infrastructure contribution under the Planning Act for the conservation or enhancement of the natural environment,	5 6 7
(e)	the entering into of a conservation agreement under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> of the Commonwealth,	8 9 10
(f)	the reservation of land under Part 4 of the NPW Act,	11
(g)	the entering into of a conservation agreement under the NPW Act in relation to land,	12 13
(h)	the entering into of a trust agreement under the <i>Nature Conservation Trust Act 2001</i> ,	14 15
(i)	the entering into of a biobanking agreement under Part 7A of this Act,	16 17
(j)	the acquisition or retirement of biodiversity credits under Part 7A of this Act,	18 19
(k)	the adoption of a plan of management for a reserve under Division 6 of Part 5 of the <i>Crown Lands Act 1989</i> ,	20 21
(l)	the adoption of a plan of management for land under Division 2 of Part 2 of Chapter 6 of the <i>Local Government Act 1993</i> ,	22 23 24
(m)	the dedication or setting apart of any land as a flora reserve under section 25A of the <i>Forestry Act 1916</i> ,	25 26
(n)	consent to a property vegetation plan for land under the <i>Native Vegetation Act 2003</i> (not being a plan that proposes broadscale clearing of native vegetation within the meaning of that Act),	27 28 29 30
(o)	any other measure that the Minister determines to be a conservation measure.	31 32
(2)	This section is subject to any requirements of the biodiversity certification assessment methodology.	33 34
<b>126M</b>	<b>Biodiversity certification application</b>	35
(1)	An application for biodiversity certification must be made to the Minister.	36 37
(2)	The application must be made in a form approved by the Minister.	38 39

(3)	The application must include particulars of the applicant's biodiversity certification strategy.	1 2
(4)	The Minister may require an applicant to submit evidence that any person or body identified in the biodiversity certification strategy as a proposed party to the biodiversity certification consents to being made a party to the biodiversity certification.	3 4 5 6
(5)	The regulations may require other things to be submitted with the application.	7 8
(6)	A planning authority may enter into an agreement with a person who requests the authority to make an application for biodiversity certification for the payment of any costs and expenses incurred by the authority in undertaking studies and other matters required in relation to the application.	9 10 11 12 13
<b>126N</b>	<b>Public notification requirements in relation to application</b>	14
(1)	Land cannot be biodiversity certified unless the applicant has complied with the public notification requirements in relation to the application for biodiversity certification.	15 16 17
(2)	The public notification requirements in relation to an application for biodiversity certification are as follows:	18 19
(a)	an applicant must publish notice of the application for biodiversity certification in a newspaper circulating generally throughout the State and on the applicant's website,	20 21 22 23
(b)	the notice must invite the public to make submissions relating to the application before a closing date for submissions specified in the notice (being a date that is not less than 30 days after the date the notice is first published in a newspaper under this section),	24 25 26 27 28
(c)	until the closing date for submissions, an applicant is to cause copies of the application to be exhibited at its principal office in New South Wales and on its website,	29 30 31
(d)	an applicant must provide a report to the Minister that indicates the applicant's response to any submissions relating to the application that were received before the closing date.	32 33 34 35
(3)	A planning authority may vary its application for biodiversity certification (including its biodiversity certification strategy) as a consequence of any submission received following public notification of the application or for any other reason.	36 37 38 39

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(4)	Further public notification of the application, as varied, is not required unless the Minister otherwise directs.	1 2
<b>Division 4</b>	<b>Assessment of application for biodiversity certification</b>	3 4
<b>126O</b>	<b>Biodiversity certification to be conferred only if biodiversity values are improved or maintained</b>	5 6
	The Minister may confer biodiversity certification only if biodiversity certification improves or maintains biodiversity values.	7 8 9
<b>126P</b>	<b>When does biodiversity certification improve or maintain biodiversity values</b>	10 11
(1)	For the purposes of this Part, biodiversity certification improves or maintains biodiversity values only if the Minister determines, on the basis of a biodiversity certification assessment, that the overall effect of biodiversity certification is to improve or maintain biodiversity values.	12 13 14 15 16
(2)	A <i>biodiversity certification assessment</i> is an assessment of the effect of biodiversity certification on biodiversity values.	17 18
(3)	A biodiversity certification assessment is to be made in accordance with the biodiversity certification assessment methodology, and not otherwise.	19 20 21
(4)	This section applies to biodiversity certification as extended or modified under this Part in the same way as it applies to the conferral of biodiversity certification.	22 23 24
<b>126Q</b>	<b>Minor variations to methodology permitted</b>	25
(1)	The Minister may, for the purpose of a biodiversity certification assessment, permit a variation to be made to the biodiversity certification assessment methodology if the Minister is of the opinion that:	26 27 28 29
(a)	the variation to the methodology is minor, and	30
(b)	the variation would result in a determination that the overall effect of biodiversity certification is to improve or maintain biodiversity values, and	31 32 33
(c)	strict adherence to the methodology is in the particular case unreasonable and unnecessary.	34 35

(2)	A variation to the biodiversity certification assessment methodology is not to be permitted if the Minister is of the opinion that the variation is inconsistent with the classification of a plant species as a threatened species or as a component of an endangered ecological community.	1 2 3 4 5
(3)	The Minister must cause his or her reasons for permitting a variation to be made to the biodiversity certification assessment methodology to be published on the website of the Department.	6 7 8
(4)	The regulations may make further provision for the circumstances in which the Minister may permit a variation to be made to the biodiversity certification assessment methodology under this section.	9 10 11 12
<b>126R</b>	<b>Refusal to confer certification</b>	13
(1)	The Minister must refuse to confer biodiversity certification if biodiversity certification does not improve or maintain biodiversity values.	14 15 16
(2)	In addition, the Minister may refuse to confer biodiversity certification:	17 18
(a)	if the application for certification does not comply with this Part or the regulations, or	19 20
(b)	if, in the opinion of the Minister, insufficient information is provided to enable biodiversity certification to be conferred, or	21 22 23
(c)	if, in the opinion of the Minister, the certification application does not sufficiently address the biodiversity certification assessment methodology, or	24 25 26
(d)	for any other reason the Minister considers sufficient.	27
<b>Division 5</b>	<b>Biodiversity certification assessment methodology</b>	28 29
<b>126S</b>	<b>Biodiversity certification assessment methodology</b>	30
(1)	The Minister may, by order published in the Gazette, make rules with respect to the circumstances in which biodiversity certification is to be regarded as improving or maintaining biodiversity values.	31 32 33 34
(2)	In particular, the rules are to establish a methodology for assessing:	35 36
(a)	the loss of biodiversity values on land proposed for biodiversity certification, and	37 38

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(b)	the impact, or likely impact, of proposed conservation measures on land proposed for biodiversity conservation (including conservation measures that are proposed to be implemented in the future).	1 2 3 4
(3)	The rules may make provision for any loss of biodiversity values that cannot be offset by conservation measures.	5 6
(4)	The rules must comply with any requirements of the regulations.	7
(5)	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.	8 9 10 11 12 13
(6)	A methodology provided for by the rules may include provision for the use of specified computer programs or databases.	14 15
(7)	A decision of the Director-General made under the rules is final and not subject to appeal.	16 17
<b>126T</b>	<b>Establishment of methodology</b>	18
	The biodiversity certification assessment methodology is not to be made unless:	19 20
(a)	notice of the proposed methodology has been given, in accordance with the public consultation requirements applicable to the methodology, and	21 22 23
(b)	the Director-General has provided a report to the Minister on the public consultation, and	24 25
(c)	the Minister has considered the report.	26
<b>126U</b>	<b>Changes to methodology</b>	27
(1)	The Minister may, by order published in the Gazette, change the biodiversity certification assessment methodology by:	28 29
(a)	amending the methodology, or	30
(b)	repealing and replacing the methodology.	31
(2)	The biodiversity certification assessment methodology is not to be changed unless:	32 33
(a)	notice of the proposed change has been given, in accordance with the public consultation requirements applicable to the methodology, and	34 35 36

	(b) the Director-General has provided a report to the Minister on the public consultation, and	1 2
	(c) the Minister has considered the report.	3
<b>126V</b>	<b>Public consultation requirements applicable to methodology</b>	4
(1)	The public consultation requirements applicable to the methodology are as follows:	5 6
(a)	the Director-General is to cause notice of the proposed methodology or change to the methodology (as the case requires) to be published in a newspaper circulating generally throughout the State and on the website of the Department,	7 8 9 10 11
(b)	the notice must invite the public to make written submissions to the Director-General on the proposal before a closing date for submissions specified in the notice (being a date that is not less than 30 days after the date the notice is first published in a newspaper under this section),	12 13 14 15 16 17
(c)	until the closing date for submissions, the Director-General is to cause copies of the proposed methodology or change to the methodology, and any other explanatory material or information the Director-General considers appropriate, to be exhibited at the head office of the Department and on the website of the Department.	18 19 20 21 22 23
(2)	After the closing date for submissions, the Director-General is to provide a report to the Minister on the public consultation that:	24 25
(a)	summarises the main issues raised in any submissions received before the closing date for submissions, and	26 27
(b)	makes such recommendations as the Director-General considers appropriate in relation to those submissions.	28 29
<b>126W</b>	<b>Minor changes to methodology not requiring public consultation</b>	30
(1)	The Minister may make an order that amends the biodiversity certification assessment methodology without complying with the public consultation requirements applicable to the methodology if:	31 32 33 34
(a)	the Minister is of the opinion that the amendment is of a minor nature, and	35 36
(b)	the Minister certifies in writing that the amendment is of a minor nature.	37 38

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(2)	Without limiting the circumstances in which an amendment can be regarded as being of a minor nature, amendments of a minor nature include amendments that:	1 2 3
(a)	correct any minor error or omission in the biodiversity certification assessment methodology, such as a spelling or grammatical error, a redundant or obsolete reference, obviously missing words, or wrong cross-references, or	4 5 6 7
(b)	make any other change necessary to address matters that are of a consequential, transitional, machinery or other minor nature.	8 9 10
<b>126X</b>	<b>Publication of methodology</b>	11
(1)	The Director-General is to ensure that a copy of the biodiversity certification assessment methodology is available for public inspection:	12 13 14
(a)	at the head office of the Department, and	15
(b)	on the website of the Department.	16
(2)	Copies of the biodiversity certification 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 Minister.	17 18 19 20
<b>Division 6</b>	<b>Conferral, extension and review of biodiversity certification</b>	21 22
<b>126Y</b>	<b>Approved measures under biodiversity certification</b>	23
(1)	The Minister may, in an order conferring biodiversity certification, specify any approved measures under the biodiversity certification.	24 25 26
(2)	The following matters may be specified as approved measures under a biodiversity certification:	27 28
(a)	the proposed conservation measures on which the relevant biodiversity certification assessment was based,	29 30
(b)	any requirements, as determined by the Minister, as to the timing of the implementation of the proposed conservation measures,	31 32 33
(c)	any requirements, as determined by the Minister, as to monitoring, reporting or auditing of the implementation of proposed conservation measures,	34 35 36
(d)	any other matters provided for by the regulations.	37

(3)	This section applies to an order extending or modifying biodiversity certification in the same way as it applies to an order conferring biodiversity certification.	1 2 3
<b>126Z</b>	<b>Parties to biodiversity certification</b>	4
(1)	The Minister may, in an order conferring biodiversity certification, identify the party or parties to the biodiversity certification.	5 6 7
(2)	The following persons or body may be identified as parties to a biodiversity certification:	8 9
(a)	the planning authority, or planning authorities, that applied for the biodiversity certification,	10 11
(b)	any person or body proposed by the applicant as a party to the biodiversity certification who consents to being made a party to the biodiversity certification.	12 13 14
(3)	After biodiversity certification is conferred, the Minister may, by further order published in the Gazette, identify a person or body as a party to the biodiversity certification (in addition to, or in substitution for, any person or body previously identified as a party), but only if the person or body to be identified as a party consents to being made a party to the biodiversity certification.	15 16 17 18 19 20
(4)	The regulations may make further provision for the circumstances in which a person or body may be identified as a party to a biodiversity certification in addition to, or in substitution for, another person or body.	21 22 23 24
(5)	Subject to the regulations, this section applies to an order extending or modifying biodiversity certification in the same way as it applies to an order conferring biodiversity certification.	25 26 27
(6)	Consent to being made a party to a biodiversity certification cannot be withdrawn by a person or body after the person or body has been made a party to the biodiversity certification.	28 29 30
<b>126ZA</b>	<b>Duration of biodiversity certification</b>	31
(1)	Biodiversity certification remains in force indefinitely or for such period as the Minister determines and specifies in the order conferring certification.	32 33 34
(2)	This section does not prevent the extension of biodiversity certification or the further biodiversity certification of land.	35 36



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<b>126ZB</b>	<b>Extension of biodiversity certification</b>	1
(1)	The Minister may, by order published in the Gazette, extend the period for which any biodiversity certification remains in force.	2 3
(2)	Biodiversity certification may be extended at any time before it expires.	4 5
(3)	Biodiversity certification may be extended only if biodiversity certification, as extended, improves or maintains biodiversity values.	6 7 8
	<b>Note.</b> See Division 4 for the circumstances in which biodiversity certification improves or maintains biodiversity values.	9 10
(4)	A biodiversity certification assessment in relation to the proposed extension is to take account of any proposed modifications to the description of the land proposed for biodiversity certification and the approved measures under the biodiversity certification (whether the modifications are proposed as a result of changes to the relevant biodiversity certification strategy or otherwise).	11 12 13 14 15 16
(5)	A biodiversity certification assessment in relation to the proposed extension may take account of the impact of conservation measures that have already been implemented in connection with the biodiversity certification.	17 18 19 20
(6)	The regulations may make further provision for or with respect to the extension of biodiversity certification.	21 22
<b>126ZC</b>	<b>Review of biodiversity certification</b>	23
(1)	The Minister is to undertake periodic reviews of any biodiversity certification.	24 25
(2)	A review is not required if less than 15 years has elapsed since the biodiversity certification was conferred or the most recent review was completed.	26 27 28
<b>Division 7</b>	<b>Enforcement of approved measures</b>	29
<b>126ZD</b>	<b>Compliance with approved measures</b>	30
(1)	The Minister may, by order in writing, require a party to a biodiversity certification to rectify any failure to comply with the approved measures under the biodiversity certification:	31 32 33
(a)	by implementing any of the approved measures within a time specified in the order, or	34 35
(b)	by implementing any equivalent conservation measures within a time specified in the order.	36 37

- (2) If a party to biodiversity certification fails to comply with the order within the specified time, or any further time allowed by the Minister, the Minister may, by order in writing, require the party to pay to the Minister a specified penalty. 1  
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- (3) The penalty is to be the amount the Minister considers reasonable to cover the costs of implementing the relevant approved measures or equivalent conservation measures. 5  
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- (4) A penalty imposed under this section may be recovered by the Minister as a debt due to the Crown in any court of competent jurisdiction. 8  
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- (5) This section does not limit the power of the Minister to suspend, revoke or modify biodiversity certification for a failure to comply with the approved measures under a biodiversity certification. 11  
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- 126ZE Equivalent conservation measures** 14
- (1) A reference in this Part to *equivalent conservation measures*, in relation to the approved measures under a biodiversity certification, is a reference to conservation measures that are determined by the Minister to achieve the same biodiversity standard as the approved measures. 15  
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- (2) The biodiversity standard of the approved measures under a biodiversity certification is the standard by which biodiversity values are improved or maintained by the biodiversity certification, as quantified by the biodiversity certification assessment on which the conferral of biodiversity certification was based. 20  
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- 126ZF Appeals** 26
- (1) A party to a biodiversity certification who is dissatisfied with a decision of the Minister to require the party to rectify a failure to comply with the approved measures may appeal to the Land and Environment Court against the decision. 27  
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- (2) A party to a biodiversity certification who is dissatisfied with a decision of the Minister to require the party to pay a penalty under this Division may appeal to the Land and Environment Court against the decision. 31  
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- (3) An appeal may be made by a party to a biodiversity certification no later than 3 months after being notified by the Minister of the decision. 35  
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- (4) This section does not confer a right of appeal on a party to a biodiversity certification if the party is a government authority. 38  
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<b>126ZG</b>	<b>Disputes between Minister and other government authorities</b>	1
(1)	A dispute between a government authority which is a party to a biodiversity certification and the Minister as to any of the following matters may be referred to the Premier for settlement:	2
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		4
(a)	a failure by the party to comply with any of the approved measures under the biodiversity certification or to implement equivalent conservation measures,	5
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(b)	a decision of the Minister to require the party to pay a penalty under this Division.	8
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(2)	The intra-government dispute resolution arrangements apply in respect of the dispute.	10
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	<b>Note.</b> See Division 10 for intra-government dispute resolution arrangements.	12
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	<b>Division 8</b>	
	<b>Biodiversity certification agreements</b>	14
<b>126ZH</b>	<b>Biodiversity certification agreements</b>	15
(1)	The Minister may enter into an agreement with a person in connection with biodiversity certification (including a proposal to confer, modify or extend biodiversity certification).	16
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(2)	The agreement may make provision for any or all of the following:	19
		20
(a)	requiring the person to make monetary contributions to the Minister for the purpose of improving biodiversity values,	21
		22
(b)	requiring the person to dedicate land for conservation purposes,	23
		24
(c)	requiring the person to carry out specified actions, or to refrain from carrying out specified actions, on land owned by the person for the purpose of improving biodiversity values,	25
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(d)	providing for any other conservation measures that the person agrees to implement,	29
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(e)	requiring the person to provide security for the performance of any of the person's obligations in connection with biodiversity certification,	31
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(f)	providing for the timing of the implementation of any of the person's obligations in connection with biodiversity certification,	34
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(g) providing for monitoring, reporting and audit requirements,	1 2
(h) providing for any other matter relating to biodiversity certification.	3 4
(3) For the purposes of this Part, the agreement is a <b><i>biodiversity certification agreement</i></b> .	5 6
(4) The Minister must not enter into a biodiversity certification agreement relating to Crown land (within the meaning of the <i>Crown Lands Act 1989</i> ) except with the consent of the Minister administering that Act.	7 8 9 10
<b>126ZI Duration of agreements</b>	11
(1) A biodiversity certification agreement has effect from a day, or on the happening of an event, specified in the agreement.	12 13
(2) A biodiversity certification agreement has effect indefinitely, or for the period specified in the agreement.	14 15
<b>126ZJ Registered agreements run with land</b>	16
(1) A biodiversity certification agreement that is registered by the Registrar-General under this section is binding on, and is enforceable against, the owner of the land from time to time as if each owner for the time being had entered into the agreement.	17 18 19 20
(2) A biodiversity certification agreement can be registered by the Registrar-General under this section if the following persons agree to its registration:	21 22 23
(a) if the agreement relates to land under the <i>Real Property Act 1900</i> —each person who has an estate or interest in the land registered under that Act,	24 25 26
(b) if the agreement relates to land not under the <i>Real Property Act 1900</i> —each person who is seised or possessed of an estate or interest in the land.	27 28 29
(3) On lodgment by a person of an application for registration in a form approved by the Registrar-General, the Registrar-General is to register a biodiversity certification agreement:	30 31 32
(a) by making an entry in the relevant folio of the Register kept under the <i>Real Property Act 1900</i> if the agreement relates to land under that Act, or	33 34 35
(b) by registering the agreement in the General Register of Deeds if the agreement relates to land not under the <i>Real Property Act 1900</i> .	36 37 38

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(4)	This section applies to any amendment or revocation of a biodiversity certification agreement in the same way as it applies to the agreement.	1 2 3
(5)	In this Part, a reference to a <i>party</i> to a biodiversity certification agreement includes any owner of land against whom the agreement is enforceable because of this section.	4 5 6
<b>126ZK</b>	<b>Enforcement of agreements</b>	7
(1)	The Minister, or a person acting with the written consent of the Minister, may bring proceedings in the Land and Environment Court for an order to remedy or restrain a contravention of a biodiversity certification agreement.	8 9 10 11
(2)	If the Court is satisfied that a contravention of the biodiversity certification 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 contravention.	12 13 14 15
(3)	In proceedings to remedy or restrain a contravention of a biodiversity certification agreement, a consent to institute the proceedings, purporting to have been signed by the Minister, is evidence of that consent without proof of the signature of the Minister.	16 17 18 19 20
<b>126ZL</b>	<b>Minister may order party to rectify contravention of agreement</b>	21
(1)	The Minister may, by order, require a party to a biodiversity certification agreement to carry out specified work or other actions on land owned by the person to rectify a contravention of the agreement.	22 23 24 25
(2)	The order is to specify the date by which the work or other actions must be carried out.	26 27
(3)	If the requirements of the order are not complied with by that date, the Minister:	28 29
(a)	may enter the land and cause the work or actions specified in the order to be carried out, and	30 31
(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 amount certified by the Minister as the reasonable cost of complying with those requirements.	32 33 34 35
(4)	This section does not prevent the Minister from seeking an award of damages against a party to a biodiversity certification agreement for a contravention of the biodiversity certification agreement.	36 37 38 39

<b>126ZM</b>	<b>Court cannot extinguish obligations</b>	1
	Section 89 of the <i>Conveyancing Act 1919</i> does not authorise any	2
	court to modify or wholly or partially extinguish any restriction	3
	or obligation created by a biodiversity certification agreement	4
	except with the consent of the Minister.	5
<b>126ZN</b>	<b>Regulations—biodiversity certification agreements</b>	6
	The regulations may make provision for or with respect to	7
	biodiversity certification agreements, including the following:	8
	(a) the form of biodiversity certification agreements,	9
	(b) the subject-matter of biodiversity certification agreements,	10
	(c) the making, amendment and revocation of biodiversity	11
	certification agreements, including the giving of public	12
	notice and inspection by the public,	13
	(d) the public inspection of biodiversity certification	14
	agreements after they have been made.	15
<b>Division 9</b>	<b>Suspension, revocation and modification of</b>	16
	<b>certification</b>	17
<b>126ZO</b>	<b>Suspension and revocation of certification</b>	18
	(1) The Minister may, by order published in the Gazette, suspend or	19
	revoke any biodiversity certification.	20
	(2) Biodiversity certification may be suspended or revoked:	21
	(a) if the approved measures under the biodiversity	22
	certification have not been complied with to the	23
	satisfaction of the Minister, or	24
	(b) if the Minister is of the opinion that a party to the	25
	biodiversity certification has failed to comply with an	26
	order made by the Minister in respect of the party under	27
	this Part, or	28
	(c) if the Minister is of the opinion that any agreement entered	29
	into in connection with the biodiversity certification has	30
	been contravened, or	31
	(d) if the Minister is no longer of the opinion that biodiversity	32
	certification improves or maintains biodiversity values, or	33
	(e) in any other circumstances prescribed by the regulations.	34
	(3) The regulations may make further provision for or with respect to	35
	the suspension or revocation of biodiversity certification.	36

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<b>126ZP</b>	<b>Modification of certification</b>	1
(1)	The Minister may, by order published in the Gazette, modify any biodiversity certification by:	2
		3
	(a) modifying the description of land that is biodiversity certified (to extend or limit biodiversity certification), or	4
		5
	(b) modifying the approved measures under the biodiversity certification.	6
		7
(2)	Biodiversity certification may be modified:	8
	(a) on application by a party to the biodiversity certification or a party to a biodiversity certification agreement entered into in connection with the biodiversity certification, or	9
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		11
	(b) on the Minister's own initiative.	12
(3)	Biodiversity certification may be modified only if biodiversity certification, as modified, improves or maintains biodiversity values.	13
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	<b>Note.</b> See Division 4 for the circumstances in which biodiversity certification improves or maintains biodiversity values.	16
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(4)	A biodiversity certification assessment in relation to the proposed modification is to take account of any proposed modifications to the description of the land that is biodiversity certified and the approved measures under the biodiversity certification (whether the modifications are proposed as a result of changes to the relevant biodiversity certification strategy or otherwise).	18
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(5)	A biodiversity certification assessment is not required in respect of a proposed modification that substitutes equivalent conservation measures for any of the approved measures under a biodiversity certification.	24
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	<b>Note.</b> Equivalent conservation measures are conservation measures that achieve the same biodiversity standard as the approved measures under a biodiversity certification.	28
		29
		30
(6)	The regulations may make further provision for or with respect to the modification of biodiversity certification.	31
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<b>126ZQ</b>	<b>Application for modification of biodiversity certification</b>	33
(1)	An application for modification of biodiversity certification must be made in a form approved by the Minister.	34
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(2)	The application must include the particulars of the proposed modification to biodiversity certification (including particulars of any changes to the biodiversity certification strategy).	36
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(3)	The regulations may require other things to be submitted with the application.	1 2
<b>126ZR</b>	<b>Grounds for unilateral modification of certification</b>	3
	Biodiversity certification may be modified on the Minister's own initiative:	4 5
(a)	if the approved measures under the biodiversity certification have not been complied with to the satisfaction of the Minister, or	6 7 8
(b)	if the Minister is of the opinion that a party to the biodiversity certification has failed to comply with an order made by the Minister in respect of the party under this Part, or	9 10 11 12
(c)	if the Minister is of the opinion that any agreement entered into in connection with the biodiversity certification has been contravened, or	13 14 15
(d)	if the Minister is of the opinion that biodiversity certification no longer improves or maintains biodiversity values, or	16 17 18
(e)	in any other circumstances prescribed by the regulations.	19
<b>126ZS</b>	<b>Appeals</b>	20
(1)	A party to a biodiversity certification, or a party to a biodiversity certification agreement entered into in connection with a biodiversity certification, who is dissatisfied with a decision of the Minister to suspend, revoke or modify the biodiversity certification may appeal to the Land and Environment Court against the decision.	21 22 23 24 25 26
(2)	An appeal may be made no later than 3 months after the order suspending, revoking or modifying biodiversity certification is published in the Gazette.	27 28 29
(3)	This section does not confer a right of appeal on a party to a biodiversity certification, or a party to a biodiversity certification agreement, if the party is a government authority.	30 31 32
<b>126ZT</b>	<b>Disputes between the Minister and other government authorities</b>	33
(1)	A dispute between a government authority which is a party to a biodiversity certification, or a party to a biodiversity certification agreement entered into in connection with a biodiversity	34 35 36



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certification, and the Minister about any of the following matters may be referred to the Premier for settlement:	1
(a) a decision of the Minister to suspend or revoke the biodiversity certification,	2
(b) a decision of the Minister to modify the biodiversity certification (otherwise than on the application of the government authority).	3
(2) The intra-government dispute resolution arrangements apply in respect of the dispute.	4
<b>Note.</b> See Division 10 for intra-government dispute resolution arrangements.	5
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<b>Division 10 General</b>	12
<b>126ZU Notification of certification and changes to certification</b>	13
(1) Notice of the conferral, extension, suspension, revocation or modification of biodiversity certification is to be given, within 21 days:	14
(a) on the website of the Department, and	15
(b) to the Director-General of the Department of Planning, and	16
(c) to each local council that is the council of an area in which the biodiversity certified land is located.	17
(2) The Minister must make reasonable endeavours to give notice of the conferral, extension, suspension, revocation or modification of biodiversity certification, within 21 days:	18
(a) to each party to the biodiversity certification, and	19
(b) to each party to a biodiversity certification agreement entered into in connection with the biodiversity certification.	20
(3) The Minister is to keep a register containing copies of any order made under this Part conferring, extending, suspending, revoking or modifying biodiversity certification.	21
(4) The register is to be open for public inspection, without charge, during ordinary business hours, and copies of or extracts from the register are to be made available to the public on request, on payment of the fee fixed by the Minister.	22
(5) The regulations may make further provision for or with respect to the notification of the conferral, extension, suspension, revocation or modification of biodiversity certification.	23
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<b>126ZV</b>	<b>Suspension, revocation or expiry of biodiversity certification does not affect obligations under certification</b>	1 2
(1)	The suspension, revocation or expiry of biodiversity certification does not, unless the Minister otherwise directs:	3 4
(a)	affect the obligations of a party to the biodiversity certification under this Part, or	5 6
(b)	affect any obligation a person has under a biodiversity certification agreement entered into in connection with the biodiversity certification.	7 8 9
(2)	The obligations of a party to the biodiversity certification under this Part include:	10 11
(a)	the obligation to comply with the approved measures under the biodiversity certification, and	12 13
(b)	the obligation to comply with any order made by the Minister in respect of the party under this Part (whether the order is made before or after the suspension, revocation or expiry).	14 15 16 17
<b>126ZW</b>	<b>Effect of changes to biodiversity certification on development and other activities</b>	18 19
(1)	The suspension, revocation, modification or expiry of biodiversity certification does not affect any of the following:	20 21
(a)	any approval of a project under Part 3A of the Planning Act granted before the suspension, revocation, modification or expiry,	22 23 24
(b)	any development consent under Part 4 of the Planning Act granted before the suspension, revocation, modification or expiry,	25 26 27
(c)	any approval of a Part 5 Planning Act activity granted before the suspension, revocation, modification or expiry,	28 29
(d)	any Part 5 Planning Act activity carried out by a determining authority that the determining authority started to carry out before the suspension, revocation, modification or expiry.	30 31 32 33
(2)	The Minister may, in an order that suspends, revokes or modifies biodiversity certification, specify the application of the suspension, revocation or modification to anything pending under the Planning Act at the time of the suspension, revocation or modification.	34 35 36 37 38

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(3)	The regulations may make provision for the application of this Part to anything pending under the Planning Act at the time of the expiry of any biodiversity certification.	1 2 3
(4)	In this section: <i>determining authority</i> has the same meaning as it has in Part 5 of the Planning Act. <i>Part 5 Planning Act activity</i> means an activity to which Part 5 of the Planning Act applies.	4 5 6 7 8
<b>126ZX</b>	<b>Intra-government dispute resolution arrangements</b>	9
(1)	For the purposes of this Part, the <i>intra-government dispute resolution arrangements</i> are the arrangements provided for by this section.	10 11 12
(2)	The Premier may, for the purpose of resolving a dispute referred to the Premier under this Part:	13 14
(a)	appoint a person or panel to hold an inquiry and make a report to the Premier, or	15 16
(b)	hold an inquiry into the dispute.	17
(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.	18 19 20 21
(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.	22 23
(5)	A government authority (including the Minister) is to comply with an order given under this section and is, despite the provisions of any Act, taken to have power to comply with any such order.	24 25 26 27
(6)	If a matter that is referred to the Premier under this Part is also the subject of proceedings before the Land and Environment Court:	28 29
(a)	the Premier may suspend or terminate action under this section pending a decision of the Land and Environment Court, and	30 31 32
(b)	a decision of the Land and Environment Court prevails.	33
<b>126ZY</b>	<b>Powers of authorised officers</b>	34
	Without limiting section 156B of the NPW Act, the functions conferred on an authorised officer by that section may also be exercised for the purpose of determining whether there has been	35 36 37

	compliance with the approved measures under a biodiversity certification or with a biodiversity certification agreement.	1 2
<b>126ZZ</b>	<b>Effect of failure to comply with procedural requirements</b>	3
	A conferral or extension of biodiversity certification, or the modification of biodiversity certification, is not open to challenge because of a failure to comply with the procedural requirements of this Part after the order conferring, extending or modifying the biodiversity certification has been published in the Gazette.	4 5 6 7 8 9
<b>126ZZA</b>	<b>Part 5 of Planning Act does not apply to biodiversity certification process</b>	10 11
	Biodiversity certification is not an approval for the purposes of Part 5 of the Planning Act.	12 13
<b>126ZZB</b>	<b>Extent of biodiversity certification</b>	14
	Biodiversity certification does not apply in respect of, and does not affect any requirements applicable to, threatened species, populations and ecological communities under Part 7A of the <i>Fisheries Management Act 1994</i> .	15 16 17 18
<b>126ZZC</b>	<b>Regulations</b>	19
	(1) The regulations may make further provision for or with respect to biodiversity certification.	20 21
	(2) In particular, the regulations may make provision for or with respect to the charging (including the waiver or reduction) of fees in connection with the operation of this Part.	22 23 24
<b>[5]</b>	<b>Section 127 Definitions</b>	25
	Omit the definitions of <i>consent authority</i> and <i>owner</i> from section 127 (1).	26
<b>[6]</b>	<b>Section 142B Director-General may accredit persons to prepare assessments and surveys</b>	27 28
	Omit section 142B (1) (a). Insert instead:	29
	(a) biodiversity certification of land under Part 7AA, or	30
<b>[7]</b>	<b>Section 157 Review of Act</b>	31
	Omit “, and any environmental planning instruments granted biodiversity certification under Part 7,” from section 157 (1).	32 33

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<b>[8] Schedule 7 Savings, transitional and other provisions</b>	1
Insert at the end of clause 1 (1):	2
<i>Threatened Species Conservation Amendment (Biodiversity Certification) Act 2010</i>	3
	4
<b>[9] Schedule 7 Savings, transitional and other provisions</b>	5
Insert “(including development and activities that may be carried out under another EPI that applies to the subject land)” after “Growth Centres SEPP” in clause 18 (2) (b).	6
	7
	8
<b>[10] Schedule 7, clause 19</b>	9
Omit the clause. Insert instead:	10
<b>19 Effect of biodiversity certification</b>	11
(1) Development on the subject land is taken, for the purposes of Part 4 of the <i>Environmental Planning and Assessment Act 1979</i> , to be development that is not likely to significantly affect any threatened species, population or ecological community, or its habitat.	12
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(2) An activity to which Part 5 of the <i>Environmental Planning and Assessment Act 1979</i> applies which is carried out or proposed to be carried out on the subject land 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, or its habitat.	17
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<b>[11] Schedule 7, clause 20 (2)–(4)</b>	23
Omit clause 20 (2). Insert instead:	24
(2) Prior to the expiration of the biodiversity certification conferred by this Part, the Minister may, by order published in the Gazette, extend by a period of up to 10 years the period for which that certification remains in force, but only if the Minister has reviewed the Growth Centres SEPP to take account of any new listing of a species, population or ecological community or the discovery of a species, population or ecological community not previously known in an area.	25
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Schedule 1      Amendment of Threatened Species Conservation Act 1995 No 101

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- (3) The Minister must not extend the period of biodiversity certification of the Growth Centres SEPP unless, prior to granting the extension, the Minister:
- (a) by notice published in a newspaper circulating generally throughout the State, invites persons to make written submissions to the Minister on the proposed extension, and
  - (b) considers any written submissions received before the closing date specified in the notice for the making of submissions (being a date that is not less than 30 days after the date the notice is first published under this subclause).
- (4) This clause does not prevent biodiversity certification of any of the subject land under Part 7AA of this Act with effect on or after the biodiversity certification conferred by this Part ceases to be in force.
- [12] Schedule 7, clause 21**
- Omit clause 21 (1). Insert instead:
- (1) The Minister may, by order published in the Gazette, suspend or revoke the biodiversity certification conferred by this Part if the Minister is of the opinion that:
- (a) any relevant biodiversity measure has not been complied with, or
  - (b) the Growth Centres SEPP, and any other relevant biodiversity measures, fail or will fail, as a result of any proposed amendment of the Growth Centres SEPP, to make appropriate provision for the conservation of threatened species, populations and ecological communities, or
  - (c) the consent authority under the Growth Centres SEPP has failed to adequately comply with a direction by the Minister to review the Growth Centres SEPP in response to any new listing of a species, population or ecological community or the discovery of a species, population or ecological community not previously known in an area.

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<b>[13] Schedule 7, clause 21A</b>	1
Insert after clause 21:	2
<b>21A Notification of extension, suspension or revocation</b>	3
(1) Notice of the extension, suspension or revocation of the biodiversity certification conferred by this Part is to be given within 21 days:	4
(a) on the website of the Department, and	5
(b) to the Director-General of the Department of Planning, and	6
(c) to each local council that is the council of an area of which the subject land forms part.	7
(2) The Minister is to keep a register containing copies of the notice of any extension, suspension or revocation of the biodiversity certification conferred by this Part.	8
(3) The register is to be open for public inspection, without charge, during ordinary business hours, and copies of or extracts from the register are to be made available to the public on request, on payment of the fee fixed by the Minister.	9
<b>[14] Schedule 7, Part 8</b>	10
Insert after Part 7:	11
<b>Part 8 Provisions consequent on changed arrangements for biodiversity certification</b>	12
<b>23 Definitions</b>	13
(1) In this Part:	14
<b><i>biodiversity certified EPI</i></b> means:	15
(a) an EPI on which biodiversity certification was conferred by the Minister under the former biodiversity certification arrangements before the repeal of those arrangements, or	16
(b) an EPI on which biodiversity certification is conferred by the Minister under the former biodiversity certification arrangements, after the repeal of those arrangements, in accordance with this Part.	17
<b><i>established EPI</i></b> means an EPI that is in force at the time a proposal is made for its biodiversity certification.	18

<i>former biodiversity certification arrangements</i> means the provisions of Division 5 of Part 7 of this Act, as in force immediately before their repeal by the <i>Threatened Species Conservation Amendment (Biodiversity Certification) Act 2010</i> .	1 2 3 4
<i>new biodiversity certification arrangements</i> means the provisions of Part 7AA of this Act, as inserted by the <i>Threatened Species Conservation Amendment (Biodiversity Certification) Act 2010</i> .	5 6 7 8
<i>relevant measures</i> means any relevant measures, as referred to in section 126G of the former biodiversity certification arrangements, on the basis of which biodiversity certification is conferred on an EPI.	9 10 11 12
(2) In this Part, a reference to biodiversity certification conferred under the former biodiversity certification arrangements includes a reference to biodiversity certification conferred after the repeal of those arrangements in accordance with this Part.	13 14 15 16
<b>24 Continuation of existing biodiversity certification</b>	17
Any biodiversity certification conferred on an EPI (including an established EPI) by the Minister under the former biodiversity certification arrangements, before the repeal of those arrangements, continues to have effect, subject to this Part.	18 19 20 21
<b>25 Continuation of power to confer biodiversity certification on an EPI in limited cases</b>	22 23
(1) Sections 126G, 126H and 126N, as in force under the former biodiversity certifications arrangements, continue to apply in respect of an existing biodiversity certification proposal.	24 25 26
(2) Accordingly, the Minister may confer biodiversity certification on an EPI (including an established EPI) which is the subject of an existing biodiversity certification proposal under the former biodiversity certification arrangements as if those arrangements had not been repealed.	27 28 29 30 31
(3) The order conferring biodiversity certification is to specify the relevant measures to be taken and any conditions of the certification.	32 33 34
(4) An <i>existing biodiversity certification proposal</i> is a proposal to confer biodiversity certification on an EPI of which notice was given, or which was subject to public exhibition, under section 126G before the repeal of the former biodiversity certification arrangements.	35 36 37 38 39



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- (5) This clause does not prevent the Minister from conferring biodiversity certification on land to which an existing biodiversity certification proposal relates under the new biodiversity certification arrangements. 1  
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- 26 Effect of biodiversity certification** 5
- (1) Any development for which development consent is required under the provisions of a biodiversity certified EPI is, for the purposes of Part 4 of the *Environmental Planning and Assessment Act 1979*, taken to be development that is not likely to significantly affect any threatened species, population or ecological community, or its habitat. 6  
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- (2) An activity to which Part 5 of the *Environmental Planning and Assessment Act 1979* applies that a biodiversity certified EPI provides can be carried out without the need for development consent is, for the purposes of that Part, taken to be an activity that is not likely to significantly affect any threatened species, population or ecological community, or its habitat. 12  
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- (3) This clause applies subject to the conditions of the biodiversity certification. 18  
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- 27 Period of certification and extension** 20
- (1) Biodiversity certification of an EPI remains in force for such period as the Minister determines and specifies in the certification. If no period is specified, biodiversity certification remains in force for 10 years. 21  
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- (2) Prior to the expiration of biodiversity certification of an EPI, the Minister may, by order published in the Gazette, extend by a period of up to 10 years the period for which that certification remains in force, but only if the Minister has reviewed the EPI to take account of any new listing of a species, population or ecological community or the discovery of a species, population or ecological community not previously known in an area. 25  
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- (3) The Minister must not extend the period of biodiversity certification of an EPI unless, prior to granting the extension, the Minister: 32  
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- (a) by notice published in a newspaper circulating generally throughout the State, invites persons to make written submissions to the Minister on the proposed extension, and 35  
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- (b) considers any written submissions received before the closing date specified in the notice for the making of 38  
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submissions (being a date that is not less than 30 days after the date the notice is first published under this subclause).	1 2
(4) This clause does not prevent further biodiversity certification of the land to which an EPI applies under the new biodiversity certification arrangements with effect on or after the biodiversity certification conferred under the former biodiversity certification arrangements ceases to be in force.	3 4 5 6 7
<b>28 Failure to comply with certification</b>	8
Failure to take any relevant measures or to comply with a condition of biodiversity certification of an EPI does not affect the validity of the certification, but is a ground for suspension or revocation of the biodiversity certification.	9 10 11 12
<b>29 Suspension and revocation of certification</b>	13
(1) The Minister may, by order published in the Gazette, suspend or revoke the biodiversity certification of an EPI if the Minister is of the opinion that:	14 15 16
(a) any relevant measures have not been taken or conditions of the biodiversity certification have not been complied with, or	17 18 19
(b) the EPI, and any other relevant measures, fail or will fail, as a result of any proposed amendment of the EPI, to make appropriate provision for the conservation of threatened species, populations and ecological communities, or	20 21 22 23
(c) the consent authority under the EPI has failed to adequately comply with a direction by the Minister to review the EPI in response to any new listing of a species, population or ecological community or the discovery of a species, population or ecological community not previously known in an area.	24 25 26 27 28 29
(2) The suspension or revocation of biodiversity certification does not affect:	30 31
(a) any development consent granted under Part 4 of the <i>Environmental Planning and Assessment Act 1979</i> before the suspension or revocation, or	32 33 34
(b) any activity for which approval was granted, or which a determining authority started to carry out, in accordance with Part 5 of that Act before the suspension or revocation.	35 36 37
(3) If the Minister suspends or revokes biodiversity certification under this clause, the Minister may, in the order, specify the application of the suspension or revocation to anything pending	38 39 40

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	under the <i>Environmental Planning and Assessment Act 1979</i> at the time of the suspension or revocation.	1 2
<b>30</b>	<b>Notification of certification, extension, suspension or revocation</b>	3
(1)	Notice of the conferral of biodiversity certification under the former biodiversity certification arrangements or of the extension, suspension or revocation of that certification is to be given within 21 days:	4 5 6 7
(a)	on the website of the Department, and	8
(b)	to the Director-General of the Department of Planning, and	9
(c)	to each local council that is the council of an area of which land to which the EPI applies forms part.	10 11
(2)	The Minister is to keep a register containing copies of any order conferring biodiversity certification under the former biodiversity certification arrangements or extending, suspending or revoking certification.	12 13 14 15
(3)	The register is to be open for public inspection, without charge, during ordinary business hours, and copies of or extracts from the register are to be made available to the public on request, on payment of the fee fixed by the Minister.	16 17 18 19
<b>31</b>	<b>Review of biodiversity certification</b>	20
	The Minister is to undertake periodic reviews of any biodiversity certification conferred by the Minister under the former biodiversity certification arrangements.	21 22 23
<b>32</b>	<b>Continuation of accreditation arrangements</b>	24
	Any arrangements made under section 142B before the repeal of the former biodiversity certification arrangements, in relation to the biodiversity certification of EPIs, continue to have effect to the extent necessary to give effect to this Part.	25 26 27 28

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<b>Schedule 2</b>	<b>Amendment of other legislation</b>	1
<b>2.1</b>	<b>Environmental Planning and Assessment Act 1979 No 203</b>	2
<b>[1]</b>	<b>Section 79B Consultation and concurrence</b>	3
	Omit the note at the end of section 79B (3). Insert instead:	4
	<b>Note.</b> The development is taken not to significantly affect threatened species, populations or ecological communities, or their habitats if:	5
	(a) the development is to be carried out on biodiversity certified land (within the meaning of Part 7AA of the <i>Threatened Species Conservation Act 1995</i> ), or	6
	(b) a biobanking statement has been issued in respect of the development under Part 7A of the <i>Threatened Species Conservation Act 1995</i> .	7
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<b>[2]</b>	<b>Section 79B (8A) and (8B)</b>	13
	Insert after section 79B (8):	14
	(8A) <b>Threatened species requirements</b>	15
	The Director-General of the Department of Environment, Climate Change and Water may grant concurrence under this section conditional on the taking of specified action ( <b>voluntary action</b> , as provided by subsection (8B)) that the Director-General considers will significantly benefit threatened species conservation, but only if the Director-General is satisfied that the person who proposes to carry out the development to which the concurrence relates has agreed to take the voluntary action and agrees to the imposition of the condition.	16
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	(8B) The voluntary action that can be required by a condition imposed under this section is any one or more of the following:	25
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	(a) the reservation of land under Part 4 of the <i>National Parks and Wildlife Act 1974</i> or the entering into of a conservation agreement relating to the land under that Act,	27
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	(b) action to secure the protection of land for conservation purposes by a method that the Director-General considers satisfactory,	30
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	(c) action to restore threatened species habitat on land referred to in paragraph (a) or (b),	33
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	(d) the contribution of money for a purpose referred to in paragraphs (a)–(c).	35
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<b>[3] Section 79C Evaluation</b>	1
Omit the second note at the end of section 79C (1). Insert instead:	2
<b>Note.</b> The consent authority is not required to take into consideration the likely impact of the development on biodiversity values if:	3
(a) the development is to be carried out on biodiversity certified land (within the meaning of Part 7AA of the <i>Threatened Species Conservation Act 1995</i> ), or	4
(b) a biobanking statement has been issued in respect of the development under Part 7A of the <i>Threatened Species Conservation Act 1995</i> .	5
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<b>[4] Section 111 Duty to consider environmental impact</b>	11
Omit the note at the end of the section. Insert instead:	12
<b>Note.</b> The determining authority is not required to consider the effect of an activity on biodiversity values if:	13
(a) the activity is to be carried out on biodiversity certified land (within the meaning of Part 7AA of the <i>Threatened Species Conservation Act 1995</i> ), or	14
(b) a biobanking statement has been issued in respect of the activity under Part 7A of the <i>Threatened Species Conservation Act 1995</i> .	15
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<b>[5] Section 112 Decision of determining authority in relation to certain activities</b>	20
Omit the note at the end of section 112 (1C). Insert instead:	21
<b>Note.</b> An activity is taken not to significantly affect threatened species, populations or ecological communities, or their habitats if:	22
(a) the activity is to be carried out on biodiversity certified land (within the meaning of Part 7AA of the <i>Threatened Species Conservation Act 1995</i> ), or	23
(b) a biobanking statement has been issued in respect of the activity under Part 7A of the <i>Threatened Species Conservation Act 1995</i> .	24
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<b>[6] Section 112C Concurrence of or consultation with Director-General of the Department of Environment, Climate Change and Water if Minister is not determining authority</b>	30
Insert “(8A), (8B),” after “Section 79B (8),” in section 112C (3).	31
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<b>2.2 Environmental Planning and Assessment Regulation 2000</b>	34
<b>[1] Schedule 1 Forms</b>	35
Omit clause 1 (e). Insert instead:	36
(e) an indication as to whether the development is likely to significantly affect threatened species, populations or ecological communities, or their habitats, unless the development is taken to be development that is not likely	37
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	to have such an effect because it is biodiversity compliant development,	1
	(ea) for biodiversity compliant development, an indication of the reason why the development is biodiversity compliant development,	2
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<b>[2]</b>	<b>Schedule 1, clause 1 (2)</b>	6
	Insert at the end of clause 1:	7
	(2) In this Schedule, <i>biodiversity compliant development</i> means:	8
	(a) development proposed to be carried out on biodiversity certified land within the meaning of Part 7AA of the <i>Threatened Species Conservation Act 1995</i> , or	9
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	(b) development in respect of which a biobanking statement has been issued in respect of the development under Part 7A of the <i>Threatened Species Conservation Act 1995</i> , or	12
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	(c) development to which the biodiversity certification conferred by Part 7 of Schedule 7 to the <i>Threatened Species Conservation Act 1995</i> applies, or	16
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	(d) development for which development consent is required under a biodiversity certified EPI (within the meaning of Part 8 of Schedule 7 to the <i>Threatened Species Conservation Act 1995</i> ).	19
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<b>[3]</b>	<b>Schedule 1, clause 2 (5A)</b>	23
	Omit the subclause. Insert instead:	24
	(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 the development is taken to be development that is not likely to significantly affect those threatened species, populations or ecological communities, or their habitats, because it is biodiversity compliant development.	25
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<b>[4]</b>	<b>Schedule 4 Planning certificates</b>	32
	Insert after clause 9:	33
	<b>9A Biodiversity certified land</b>	34
	If the land is biodiversity certified land (within the meaning of Part 7AA of the <i>Threatened Species Conservation Act 1995</i> ), a statement to that effect.	35
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<b>2.3 Land and Environment Court Act 1979 No 204</b>	1
<b>Section 17 Class 1—environmental planning and protection appeals</b>	2
Insert “126ZF, 126ZS or” after “section” in section 17 (eb).	3
<b>2.4 National Parks and Wildlife Act 1974 No 80</b>	4
<b>[1] Section 138 Payments into Fund</b>	5
Insert after section 138 (4):	6
(5) Money received in connection with the administration of the biodiversity certification scheme (including any fees paid under the scheme or any monetary contributions made for the purposes of the scheme) is not to be paid into the National Parks and Wildlife Fund.	7 8 9 10 11
(6) In this section:	12
<b><i>biodiversity certification scheme</i></b> means:	13
(a) the provisions of Part 7AA of the <i>Threatened Species Conservation Act 1995</i> and any regulations made for the purposes of that Part, and	14 15 16
(b) the provisions of Parts 7 and 8 of Schedule 7 to that Act (which relate to biodiversity certification of environmental planning instruments).	17 18 19
<b>[2] Section 139 Payments out of Fund</b>	20
Omit “except those incurred under Part 7A of the <i>Threatened Species Conservation Act 1995</i> ” from section 139 (2) (a).	21 22
Insert instead “except those incurred under the biodiversity certification scheme and the biobanking scheme”.	23 24
<b>[3] Section 139 (6)</b>	25
Insert after section 139 (5):	26
(6) In this section:	27
<b><i>biobanking scheme</i></b> means the provisions of Part 7A of the <i>Threatened Species Conservation Act 1995</i> and any regulations made for the purposes of that Part.	28 29 30
<b><i>biodiversity certification scheme</i></b> means:	31
(a) the provisions of Part 7AA of the <i>Threatened Species Conservation Act 1995</i> and any regulations made for the purposes of that Part, and	32 33 34

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Schedule 2      Amendment of other legislation

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- (b) the provisions of Parts 7 and 8 of Schedule 7 to that Act  
(which relate to biodiversity certification of environmental  
planning instruments).      1  
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**2.5 Native Vegetation Act 2003 No 103**      4

**Section 5 Land excluded from operation of Act**      5

Insert after section 5 (1) (c):      6

- (d) biodiversity certified land (within the meaning of  
Part 7AA of the *Threatened Species Conservation  
Act 1995*).      7  
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