

NEW SOUTH WALES
DRAFT GOVERNMENT BILL

Biodiversity Conservation Bill 2016

Contents

	Page
Part 1 Preliminary	
1.1 Name of Act	2
1.2 Commencement	2
1.3 Purpose and objects of Act	2
1.4 Application of Act to terrestrial environment	3
1.5 Biodiversity values for purposes of Act	3
1.6 Definitions	3
Part 2 Protection of animals and plants	
Division 1 Offences	
2.1 Harming animals	6
2.2 Picking plants	6
2.3 Damaging the biodiversity values of declared areas of outstanding biodiversity value	6
2.4 Damaging habitat of threatened species or ecological community	7
2.5 Dealing in animals or plants	7
2.6 Liberating animals	7
2.7 Protection of marine mammals	8
Division 2 Defences	
2.8 Acts authorised under other legislation etc	8

public consultation draft

Biodiversity Conservation Bill 2016 [NSW]
Contents

	Page
2.9 Acts authorised by regulations (including adopted codes of practice)	10
2.10 Acts authorised by biodiversity conservation licence	10
Division 3 Biodiversity conservation licences	
2.11 Licences to do acts that would otherwise constitute offence	10
2.12 Applications for licences	11
2.13 Grant or refusal and variation of licence	11
2.14 Conditions of licences	11
2.15 Cancellation or suspension of licences	12
2.16 Reasons for, and appeals against, licensing decisions	12
2.17 Regulations relating to licences	12
Division 4 Miscellaneous provisions	
2.18 Liability of landholder for offences relating to harming etc animals and plants	12
2.19 Protected animals (unless excluded) to be property of the Crown	13
Part 3 Areas of outstanding biodiversity value	
3.1 Declaration of areas of outstanding biodiversity value	14
3.2 Areas eligible to be declared	14
3.3 Procedural requirements before areas declared	14
3.4 Requirements following declaration of area	15
3.5 Amendment or revocation of declaration	15
3.6 Regulations with respect to declared areas	15
Part 4 Threatened species and threatened ecological communities	
Division 1 Preliminary	
4.1 Definition of "listing" threatened species or ecological communities	16
Division 2 Listing of species and ecological communities	
4.2 Lists of species and ecological communities	16
4.3 General eligibility for listing	16
4.4 Specific eligibility criteria for listing threatened species	16
4.5 Specific eligibility criteria for listing threatened ecological communities	17
4.6 Specific eligibility criteria for listing extinct species and collapsed ecological communities	17
4.7 Regulations prescribing eligibility criteria for listing	17
Division 3 Procedure for listing (other than provisional listing)	
4.8 Operation of Division	18
4.9 Scientific Committee responsible for listing	18
4.10 Who may initiate listing	18
4.11 Nomination for listing	18
4.12 Priority assessment of nominations for listing and other work of Committee	18
4.13 Consideration of nomination for listing	18
4.14 Scientific Committee's preliminary determination	19
4.15 Scientific Committee's final determination	19
4.16 Publication of final determination	19
4.17 Revision of Schedule on publication of final determination	20

public consultation draft

Biodiversity Conservation Bill 2016 [NSW]
Contents

	Page	
4.18	Lists to be kept under review	20
4.19	Minor amendments to Schedules	20
4.20	Restriction on releasing certain information relating to listing etc	20
Division 4 Procedure for provisional listing of endangered or critically endangered species on emergency basis		
4.21	Operation of Division	20
4.22	Scientific Committee responsible for provisional listing	21
4.23	Eligibility for provisional listing	21
4.24	Who may initiate provisional listing	21
4.25	Making nomination for provisional listing	21
4.26	Consideration of nomination for provisional listing by Scientific Committee	21
4.27	Publication of determination for provisional listing	21
4.28	Effect of publication of determination for provisional listing	22
4.29	Scientific Committee to review status of provisionally listed species	22
4.30	Termination of provisional listing	22
Division 5 Key threatening processes		
4.31	List of key threatening processes	22
4.32	Processes eligible for listing as key threatening processes	22
4.33	Procedure for listing key threatening processes	22
4.34	Referral of nomination to Fisheries Scientific Committee	22
Division 6 Biodiversity Conservation Program for threatened species and threatened ecological communities		
4.35	Establishment of Program	23
4.36	Content of Program	23
4.37	Review and amendment of Program	23
Division 7 Threatened Species Scientific Committee		
4.38	Establishment of Scientific Committee	24
4.39	Scientific Committee not subject to Ministerial control	24
4.40	Functions of Scientific Committee	24
4.41	Members of Scientific Committee	24
4.42	Saving provision relating to existing Scientific Committee	25
Part 5 Investment Strategy and private land conservation agreements		
Division 1 Biodiversity Conservation Investment Strategy		
5.1	Making of Strategy	26
5.2	Mapping of existing public and private biodiversity protected areas	26
5.3	Content of Strategy	26
5.4	Review and amendment of Strategy	27
Division 2 Biodiversity stewardship agreements		
5.5	Minister and land owners may enter into biodiversity stewardship agreements	27
5.6	Content of biodiversity stewardship agreements	27
5.7	Land eligible to be designated as biodiversity stewardship site	28
5.8	Applications to enter into biodiversity stewardship agreements	28

public consultation draft

Biodiversity Conservation Bill 2016 [NSW] Contents

	Page	
5.9	Requirements relating to entering into biodiversity stewardship agreements	29
5.10	Duration of biodiversity stewardship agreements	30
5.11	Variation of biodiversity stewardship agreements	31
5.12	Registration of biodiversity stewardship agreements	32
5.13	Agreements to run with land	32
5.14	Application of Planning Act	32
5.15	Agreement does not prevent creation of national parks and other reservations	33
5.16	Proposals by public authorities affecting biodiversity stewardship sites	33
5.17	Resolution of certain disputes	34
5.18	Prospecting and mining on biodiversity stewardship sites	34
5.19	Activities authorised by mining or petroleum authorities not affected by biodiversity stewardship agreement	35
Division 3 Conservation agreements		
5.20	Biodiversity Conservation Trust may enter into conservation agreements	36
5.21	General provisions relating to conservation agreements	36
5.22	Content of conservation agreements	37
5.23	Duration and variation of conservation agreements	37
5.24	Conservation agreements may be registered and run with land	38
Division 4 Wildlife refuge agreements		
5.25	Biodiversity Conservation Trust may enter into wildlife refuge agreements	38
5.26	General provisions relating to wildlife refuge agreements	39
5.27	Content of wildlife refuge agreements	39
5.28	Duration and variation of wildlife refuge agreements	40
5.29	Wildlife refuge agreements may be registered and run with land	40
Part 6	Biodiversity offsets scheme	
Division 1 General scheme provisions		
6.1	Definitions: Part 6	41
6.2	Biodiversity offsets scheme	41
6.3	Biodiversity impacts to which biodiversity offsets scheme applies	42
6.4	Biodiversity conservation offsets under scheme	42
6.5	Serious and irreversible impacts on biodiversity values	43
6.6	Minister, Agency Head, Trust and other public authorities may participate in biodiversity offsets scheme	43
Division 2 Biodiversity assessment method		
6.7	Minister may establish biodiversity assessment method	43
6.8	Matters to be dealt with by the biodiversity assessment method	44
6.9	Review of biodiversity assessment method	44
6.10	Scheme for accreditation of persons who apply method	44
Division 3 Biodiversity assessment reports		
6.11	Biodiversity stewardship site assessment report	45
6.12	Biodiversity development assessment report	45
6.13	Biodiversity certification assessment report	46

public consultation draft

Biodiversity Conservation Bill 2016 [NSW]
Contents

	Page	
6.14	Modification or withdrawal of biodiversity assessment report	46
6.15	Lapsing of biodiversity assessment report	46
6.16	Miscellaneous provisions applying to biodiversity assessment reports	46
Division 4 Creation, transfer etc of biodiversity credits		
6.17	Creation of biodiversity credits	47
6.18	Duration of biodiversity credit	47
6.19	Transfers of biodiversity credits	47
6.20	Registration of transfer of biodiversity credit	47
6.21	Payment to Fund on first transfer of biodiversity credit or on retirement without first transfer	48
6.22	Other transactions relating to biodiversity credits	48
6.23	Grounds for cancellation of biodiversity credit	49
6.24	General provisions relating to cancellation of biodiversity credits	49
6.25	Suspension of biodiversity credit	50
6.26	Appeals to Land and Environment Court	50
Division 5 Retirement of biodiversity credits		
6.27	Retirement of biodiversity credits	51
6.28	Deferred credit retirement arrangements	52
6.29	Minister may require retirement of credits if not retired in accordance with credit retirement requirement	53
Division 6 Payment into Biodiversity Conservation Fund as alternative to retirement of biodiversity credits		
6.30	Payment as alternative to retirement of biodiversity credits	53
6.31	Corresponding obligation to secure required biodiversity offsets	54
6.32	Calculation of amount payable as alternative to retiring credits	54
6.33	Trust may verify payment	54
Division 7 Biodiversity Stewardship Payments Fund		
6.34	Biodiversity Stewardship Payments Fund	54
6.35	Fund Manager	55
6.36	Management and control of Fund	55
6.37	Reporting and other obligations of Fund Manager	56
Division 8 Biodiversity offsets scheme administration costs		
6.38	Scheme administration cost recovery	56
6.39	Biodiversity Stewardship Operations Account	57
Part 7	Biodiversity assessment and approvals under Planning Act	
Division 1 Preliminary		
7.1	Definitions: Part 7	59
7.2	Development or activity “likely to significantly affect threatened species”	59
7.3	Test for determining whether proposed development or activity likely to significantly affect threatened species or ecological communities, or their habitats	59
7.4	Exceeding biodiversity offsets scheme threshold	60
7.5	Relationship with Planning Act	60
7.6	Part does not apply to biodiversity certified land	60

	Page
Division 2 Biodiversity assessment requirements	
7.7 Biodiversity assessment for Part 4 development (other than State significant development or infrastructure or complying development)	60
7.8 Biodiversity assessment for Part 5 activity	61
7.9 Biodiversity assessment for State significant development or infrastructure	61
7.10 Regulations relating to amendments of lists of threatened species or ecological communities	61
Division 3 Consultation and concurrence	
7.11 Consultation with Minister for the Environment if a Minister is consent authority under Part 4 or determining authority under Part 5	62
7.12 Concurrence of or consultation with Environment Agency Head if a Minister is not consent authority under Part 4 or determining authority under Part 5	62
Division 4 Biodiversity offsets	
7.13 Planning approval- biodiversity offsets	63
7.14 Planning agreements etc - biodiversity offsets	63
7.15 Development other than State significant development or infrastructure subject to biodiversity offsets scheme	63
7.16 State significant development or infrastructure subject to biodiversity offsets scheme	64
7.17 Proposed development that has serious and irreversible impacts on biodiversity values	65
7.18 Modifications of planning approvals	65
Division 5 Preparation of species impact statements	
7.19 Form and content of species impact statement	66
7.20 Environment Agency Head's requirements for species impact statements	66
7.21 Environment Agency Head may accredit persons to prepare species impact statements	66
Part 8 Biodiversity certification of land	
Division 1 Preliminary	
8.1 Definitions: Part 8	68
Division 2 Conferral of biodiversity certification of land	
8.2 Biodiversity certification	68
8.3 Approved conservation measures under biodiversity certification	68
8.4 Effect of biodiversity certification	69
8.5 Application for biodiversity certification	69
8.6 Consultation and public notification requirements in relation to biodiversity certification application	70
8.7 Biodiversity certification to be conferred only after due assessment of impacts on biodiversity values and measures to avoid, minimise or offset those impacts	71
8.8 Biodiversity certification where serious and irreversible impacts	71
8.9 Parties to biodiversity certification	72

	Page
Division 3	Duration, extension and review of biodiversity certification
8.10	Duration of biodiversity certification 72
8.11	Extension of biodiversity certification 72
8.12	Review of biodiversity certification 73
Division 4	Enforcement of approved conservation measures
8.13	Compliance with approved conservation measures 73
8.14	Equivalent conservation measures 73
8.15	Appeals 73
Division 5	Biodiversity certification agreements
8.16	Biodiversity certification agreements 74
8.17	Registered agreements run with land 74
8.18	Minister may order party to rectify contravention of agreement 75
8.19	Court cannot extinguish obligations 75
8.20	Regulations—biodiversity certification agreements 75
Division 6	Suspension, revocation and modification of certification
8.21	Suspension and revocation of certification 76
8.22	Modification of certification 76
8.23	Appeals 77
Division 7	General provisions relating to certification
8.24	Notification of certification and changes to certification 77
8.25	Intra-government dispute resolution arrangements 77
8.26	General provisions relating to biodiversity certification 78
Part 9	Public consultation and public registers
Division 1	Public consultation
9.1	Public consultation required on documents under this Act to which Division applies 80
9.2	Minimum public exhibition periods for proposed public consultation documents 80
9.3	Submissions about proposed public consultation documents 80
9.4	Amendment of public consultation documents 81
9.5	Validity of public consultation documents 81
9.6	Regulations relating to public consultation 81
Division 2	Public registers
9.7	Registers to which Division applies 81
9.8	Registers to be available on government website 82
9.9	Providing other access to registers 82
9.10	Restriction of access to certain information in registers 82
9.11	Regulations relating to public registers 82
Part 10	Biodiversity Conservation Trust
Division 1	Establishment, functions and operation of Trust
10.1	Establishment of Trust 83

	Page	
10.2	Status of Trust	83
10.3	Trust Board	83
10.4	Object of Trust	83
10.5	Functions of Trust	83
10.6	Powers of Trust	84
10.7	Trust to conduct activities in accordance with business plan	85
10.8	Acquisition of property by gift	85
10.9	Dealings with certain property acquired by gift, devise or bequest	85
10.10	Staff of Trust	86
10.11	Delegation by Biodiversity Conservation Trust	86
10.12	Annual reports of Trust	86
10.13	Exemption from certain State taxes	86
10.14	Recovery of money by Trust	86
10.15	Saving provision relating to existing Trust	86
Division 2 Biodiversity Conservation Fund		
10.16	Biodiversity Conservation Fund	86
10.17	Management and control of Biodiversity Conservation Fund	87
Division 3 Biodiversity Conservation Trust Public Fund		
10.18	Biodiversity Conservation Trust Public Fund	87
10.19	Distribution of outstanding property of Public Fund on dissolution of Trust	88
Part 11	Regulatory compliance mechanisms	
Division 1 Preliminary		
11.1	Definitions: Part 11	89
11.2	Purposes for which powers may be exercised under this Part	89
Division 2 Stop work orders		
11.3	Environment Agency Head may make stop work order	89
11.4	Taking effect and extension of stop work order	89
11.5	Offence—contravention of stop work order	90
11.6	Appeal against stop work order	90
11.7	Consultation about modification or licensing of proposed detrimental action	90
Division 3 Interim protection orders		
11.8	Recommendation for making of interim protection order	90
11.9	Making of interim protection orders	90
11.10	Taking effect and duration of interim protection order	91
11.11	Notice of making of interim protection order	91
11.12	Offence—contravention of interim protection order	91
11.13	Appeal against interim protection order	91
Division 4 Remediation orders		
11.14	Definition of “damage”	92
11.15	Orders for remedial work relating to damage to land, habitat and plants and animals	92
11.16	Remediation work required by order	92

	Page	
11.17	Persons to whom remediation orders may be given	93
11.18	Other person may carry out remediation work if failure to comply with order	93
11.19	Development consent not required to carry out remediation work	93
11.20	Entry to land to carry out remediation work	93
11.21	Recovery by person given remediation order	93
11.22	Offence of contravening remediation order or obstructing remediation work	94
11.23	Appeals under this Division	94
Division 5 Biodiversity offsets enforcement order		
11.24	Definitions	94
11.25	Order requiring biodiversity stewardship site owner to retire biodiversity credits	94
11.26	Order requiring owner to rectify breach of biodiversity stewardship agreement	95
11.27	Offence—contravention of biodiversity offsets enforcement order	95
11.28	Appeals under this Division	96
Division 6 Directions relating to protected animals and threatened species of animals		
11.29	Definition	96
11.30	Authorised officer who may give directions	96
11.31	Directions to stop activity distressing protected animals	96
11.32	Directions for welfare of protected animals in confinement	96
11.33	Taking effect and duration of animal protection direction	96
11.34	Appeals to Minister against animal protection direction and directions by Minister	97
11.35	Offence—contravention of animal protection direction	97
Part 12 Investigation powers		
Division 1 Preliminary		
12.1	Definitions	98
12.2	Purposes for which powers under this Part may be exercised	98
12.3	Effect on other functions	98
Division 2 Authorised officers		
12.4	Appointment of authorised officers	99
12.5	Scope of authority	99
12.6	Identification	99
Division 3 Powers to require information and records		
12.7	Application of Part	99
12.8	Requirement to provide information and records	99
12.9	Manner, time etc for compliance	99
12.10	Provisions relating to records	99
Division 4 Powers of entry and search of premises		
12.11	Powers of authorised officers to enter premises	100
12.12	Entry into residential premises only with permission or warrant	100

public consultation draft

Biodiversity Conservation Bill 2016 [NSW]
Contents

	Page
12.13 Powers of authorised officers to do things at premises	100
12.14 Search warrants	101
12.15 Authorised officers may request assistance	101
12.16 Assistance to be given to authorised officers	101
12.17 Care to be taken	102
12.18 Compensation	102
 Division 5 Powers to question and to identify persons	
12.19 Power of authorised officers to require answers	102
12.20 Recording of evidence	102
12.21 Power of authorised officers to demand name and address	102
 Division 6 General	
12.22 Offences	103
12.23 Provisions relating to requirements to furnish records, information or answer questions	104
12.24 Revocation or variation	104
12.25 Extraterritorial application	105
12.26 Extraterritorial exercise of functions	105
 Part 13 Criminal and civil proceedings	
Division 1 Criminal proceedings	
13.1 Maximum penalty—Tier 1, Tier 2, Tier 3, Tier 4 or Tier 5	106
13.2 Proceedings for offences	107
13.3 Authority to take proceedings	107
13.4 Time within which proceedings may be commenced	108
13.5 Penalty notices for certain offences	108
13.6 Liability of directors etc for offences by corporation—offences attracting executive liability	109
13.7 Liability of directors etc for offences by corporation—accessory to the commission of the offences	110
13.8 Evidence as to state of mind of corporation	111
13.9 Ancillary offences	111
13.10 Offence—false or misleading information	112
13.11 Continuing offences	112
 Division 2 Civil proceedings	
13.12 Definition of “breach”	112
13.13 Civil proceedings to remedy or restraint of breaches of this Act or regulations	112
13.14 Civil proceedings for enforcement of private land conservation agreements	113
13.15 Civil proceedings for enforcement of biodiversity certification agreements	113
13.16 Provisions relating to proceedings under this Division	114
 Division 3 Ancillary court orders	
13.17 Operation of Division	114
13.18 Orders generally	114
13.19 Orders for restoration and prevention	115

public consultation draft

Biodiversity Conservation Bill 2016 [NSW]
Contents

	Page	
13.20	Orders for costs, expenses and compensation at time offence proved	115
13.21	Recovery of costs, expenses and compensation after offence proved	115
13.22	Orders regarding costs and expenses of investigation	116
13.23	Orders regarding monetary benefits	116
13.24	Additional orders	116
13.25	Offence of failing to comply with court order	118
Division 4 Enforceable undertakings		
13.26	Enforcement of undertakings	118
Division 5 Evidentiary provisions		
13.27	Onus of proof of reasonable excuse	118
13.28	Documentary evidence generally	119
13.29	Certificate evidence of certain matters	119
Part 14 Miscellaneous		
14.1	Act to bind Crown	120
14.2	Biodiversity Conservation Advisory Panel	120
14.3	Delegation of functions by Minister or Environment Agency Head	120
14.4	Exclusion of personal liability	120
14.5	Fees and other charges payable to Environment Agency Head	121
14.6	Relationship between this Act and Part 7A of the Fisheries Management Act 1994	121
14.7	Native title rights and interests	121
14.8	Service or giving of documents	122
14.9	Regulations	122
14.10	Review of Act	123
Schedule 1	Threatened species	124
Schedule 2	Threatened ecological communities	166
Schedule 3	Extinct species and collapsed ecological communities	172
Schedule 4	Key threatening processes	177
Schedule 5	Protected animals	179
Schedule 6	Protected native plants	180
Schedule 7	Provisions relating to members and procedure of Threatened Species Scientific Committee	183
Schedule 8	Members and procedure of Board of Biodiversity Conservation Trust	186
Schedule 9	Savings, transitional and other provisions	190
Schedule 10	Repeal of Acts and regulations	192
Schedule 11	Amendment of Acts and instruments	193

NEW SOUTH WALES
DRAFT GOVERNMENT BILL

Biodiversity Conservation Bill 2016

No. , 2016

A Bill for

An Act relating to the conservation of biodiversity; to repeal the *Threatened Species Conservation Act 1995* and the animal and plant provisions of the *National Parks and Wildlife Act 1974*; and to amend other Acts and instruments.

See also: *Local Land Services Amendment Bill 2016*.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1.1 Name of Act

This Act is the *Biodiversity Conservation Act 2016*.

1.2 Commencement

This Act commences on a day or days to be appointed by proclamation.

1.3 Purpose and objects of Act

The purpose of this Act is to maintain a healthy, productive and resilient environment for the greatest well-being of the community, now and into the future, consistent with the principles of ecologically sustainable development (described in section 6 (2) of the *Protection of the Environment Administration Act 1991*), and in particular:

- (a) to conserve biodiversity and ecological integrity at bioregional and State scales, and
- (b) to facilitate ecological sustainable development, and
- (c) to improve and share knowledge, including local and Aboriginal knowledge, about the status and values of biodiversity and of ecosystem services and the effectiveness of conservation actions.

Consultation note. The definition of “the principles of ecologically sustainable development” in the *Protection of the Environment Administration Act 1991* is to be amended by Schedule 11 to the Bill to require that social considerations (along with economic and environmental considerations) are effectively integrated in decision-making processes).

That purpose is to be achieved by:

- (a) taking conservation and threat abatement action to slow the rate of biodiversity loss, and
- (b) facilitating prioritised investment in conservation on private land to conserve biodiversity and increase ecosystem services, and
- (c) effectively regulating high-risk interactions with wildlife, and
- (d) ensuring that land management activities appropriately protect biodiversity and ecosystem services, and
- (e) establishing market-based conservation mechanisms through which environmental impacts of development and activities can be avoided, minimised or offset at landscape and site scales, and
- (f) establishing a method to assess the impacts of development on biodiversity values and conservation management actions, and
- (g) assessing the extinction risk of species and ecological communities through an independent and rigorous scientific process, and
- (h) collating and sharing data, and monitoring and reporting on the status of biodiversity and ecosystem services and the effectiveness of conservation actions, and
- (i) drawing on expert advice and knowledge to assist Ministers and officers in implementing this Act.

Consultation note. This Act, together with the *Local Land Services Amendment Act 2016*, are being enacted in response to the Final Report of the Independent Biodiversity Legislation Review Panel provided to the Minister for the Environment on 18 December 2014.

The Minister for the Environment would be allocated responsibility by the Premier under the *Constitution Act 1902* for the administration of this Act. However, joint administration may be

allocated with the Minister for Planning or the Minister for Primary Industries for some provisions of this Act that also relate to their portfolio responsibilities.

1.4 Application of Act to terrestrial environment

This Act applies in relation to animals and plants and not (unless otherwise provided) in relation to fish and marine vegetation.

Note. The *Fisheries Management Act 1994* contains provisions in relation to fish and marine vegetation.

1.5 Biodiversity values for purposes of Act

For the purposes of this Act, ***biodiversity values*** are the following terrestrial biodiversity values:

- (a) vegetation integrity—being the degree to which the composition, structure and function of vegetation at a particular site and the surrounding landscape has been altered from a near natural state,
- (b) habitat suitability—being the degree to which the habitat needs of threatened species are present at a particular site,
- (c) biodiversity values, or biodiversity-related values, prescribed by the regulations.

Consultation note. Values that might be prescribed include soil health (to enable assessment of the degree to which proposed development impacts on soil salinity or soil degradation).

1.6 Definitions

- (1) In this Act:

accredited biodiversity assessor means a person accredited under Part 6 to prepare biodiversity assessment reports in accordance with the biodiversity assessment method.

animal means any animal, whether vertebrate or invertebrate and in any stage of biological development, but does not include:

- (a) humans, or
- (b) fish within the meaning of the *Fisheries Management Act 1994*.

Note. Some types of fish may be included in the definition of ***animal*** and some types of animal may be included in the definition of ***fish***. See section 14.6.

biodiversity assessment method means the biodiversity assessment method established under Part 6.

biodiversity assessment report means a biodiversity stewardship site assessment report, a biodiversity development assessment report or a biodiversity certification assessment report prepared by an accredited biodiversity assessor.

biodiversity certification means biodiversity certification conferred on land under Part 8 and ***biodiversity certified land*** means land on which biodiversity certification has been conferred and is in force under Part 8.

biodiversity conservation licence means a biodiversity conservation licence issued under Division 3 of Part 2 and in force.

Biodiversity Conservation Trust or ***Trust*** means the Biodiversity Conservation Trust of New South Wales established under Part 10.

biodiversity credit means a biodiversity credit created by (and in accordance with) a biodiversity stewardship agreement.

biodiversity offsets scheme—see section 6.2.

biodiversity stewardship agreement means a biodiversity stewardship agreement made under Division 2 of Part 5.

Biodiversity Stewardship Payments Fund means the Biodiversity Stewardship Payments Fund established by Division 7 of Part 6.

biodiversity stewardship site means the land that is designated by a biodiversity stewardship agreement to be a biodiversity stewardship site for the purposes of this Act.

Crown land means Crown land within the meaning of the *Crown Lands Act 1989*, including Crown land dedicated for a public purpose under that Act.

damage includes remove or relocate.

declared area of outstanding biodiversity value means an area declared under Part 3.

development has the same meaning it has in the *Environmental Planning and Assessment Act 1979*.

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

Environment Agency Head means the Chief Executive of the Office of Environment and Heritage.

function includes a power, authority or duty, and ***exercise*** a function includes perform a duty.

habitat of animals includes habitat that is periodically or occasionally occupied by the animals.

harm an animal includes kill, injure or capture the animal, but does not include harm by changing the habitat of the animal, and ***attempt to harm*** an animal includes hunting or pursuing, or using anything, for the purpose of harming the animal.

key threatening process means a threatening process listed in Schedule 4.

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

management action for a biodiversity stewardship site, means an action (or refraining from an action) on the site in respect of which a biodiversity credit may be created.

marine vegetation means mangroves, seagrasses or any other species of plant that at any time in its life cycle must inhabit water (other than fresh water).

native vegetation and ***clearing*** vegetation have the same meaning they have in Part 5A of the *Local Land Services Act 2013*.

Note. Under that Part of that Act, the clearing of dead or non-native plants on certain vulnerable land is taken to be the clearing of native vegetation.

owner of land, includes:

- (a) every person who, either at law or in equity:
 - (i) is entitled to the land for any estate of freehold in possession, or
 - (ii) is a person to whom the Crown has lawfully contracted to sell the land under the *Crown Lands Act 1989* or any other Act relating to the alienation of lands of the Crown, or
 - (iii) is entitled to receive, or is in receipt of, or if the land were let to a tenant would be entitled to receive, the rents and profits in respect of the land, whether as beneficial owner, trustee, mortgagee in possession or otherwise, and
- (b) a person who leases land under the *Crown Lands Act 1989*, the *Crown Lands (Continued Tenures) Act 1989* or the *Western Lands Act 1901*, and
- (c) in the case of community title land under the *Community Land Management Act 1989*—the community association in relation to association property or the proprietor of a lot in relation to development lots, and
- (d) any other person who, under the regulations, is taken to be the owner of land.

pick a plant includes gather, take, cut, remove from the ground, destroy, poison, crush or injure the plant or any part of the plant.

plant means any plant, whether vascular or non-vascular and in any stage of biological development, and includes fungi and lichens, but does not include marine vegetation.

Note. Some types of marine vegetation may be included in the definition of ***plant*** and some types of plant may be included in the definition of ***marine vegetation***. See section 14.6.

private land conservation agreement means a biodiversity stewardship agreement, a conservation agreement or a wildlife refuge agreement under Part 5.

protected animal means an animal of a species listed or referred to in Schedule 5.

Note. Some protected animals may also be threatened species of animals, but not all threatened species of animals are protected animals.

protected native plant means a plant of a species listed or referred to in Schedule 6.

Note. Some protected native plants may also be threatened species of plants, but not all threatened species of plants are protected native plants.

public authority means any public or local authority constituted by or under an Act, a Public Service agency, a NSW government agency or a State owned corporation, and includes a person exercising any function on behalf of the authority, agency or corporation and any person or body declared by the regulations to be a public authority.

species includes:

- (a) a defined sub-species, and
- (b) a taxon below a sub-species, and
- (c) a recognisable variant of a sub-species or taxon, and
- (d) a population of a particular species (being a group of organisms, all of the same species, occupying a particular area).

threatened ecological community means a critically endangered ecological community, an endangered ecological community or a vulnerable ecological community listed in Schedule 2.

threatened species means a critically endangered species, an endangered species or a vulnerable species listed in Schedule 1.

Threatened Species Scientific Committee or ***Scientific Committee*** means the Threatened Species Scientific Committee established under Division 7 of Part 4.

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

Tier 1, Tier 2, Tier 3, Tier 4 or ***Tier 5 penalty***, in relation to an offence, indicates the maximum penalty that a court may impose for the offence—see section 13.1 for the relevant maximum amounts.

- (2) In this Act, a reference to a person entitled to the benefit of a covenant includes, in the case of a covenant imposed under section 88D or 88E of the *Conveyancing Act 1919*, a reference to a prescribed authority (within the meaning of those sections) or a person entitled to exercise, on behalf of the Crown, the functions of a prescribed authority under those sections.

Part 2 Protection of animals and plants

Division 1 Offences

Notes.

1. Division 2 provides defences in any proceedings for an offence under this Division.
2. For civil enforcement—see Part 13.

2.1 Harming animals

- (1) A person who harms or attempts to harm:
- (a) an animal that is of a threatened species, or
 - (b) an animal that is part of a threatened ecological community, or
 - (c) a protected animal,
- is guilty of an offence.

Maximum penalty (includes additional penalty for each animal):

- (a) in the case of an animal that is (or is part of) a threatened species or threatened ecological community (other than a vulnerable species or community)—Tier 1 penalty or imprisonment for 2 years, or both, or
 - (b) in the case of an animal that is (or is part of) a vulnerable species or vulnerable ecological community—Tier 3 penalty, or
 - (c) in any other case—Tier 4 penalty.
- (2) If the act that harms an animal is the clearing of native vegetation by or on behalf of a landholder on category 1—exempt land under Part 5A of the *Local Land Services Act 2013*, the person does not commit an offence under this section unless it is established that the person knew that the act would be likely to harm the animal.

2.2 Picking plants

- (1) A person who picks:
- (a) a plant that is of a threatened species, or
 - (b) a plant that is part of a threatened ecological community, or
 - (c) a protected native plant,
- is guilty of an offence.

Maximum penalty (includes additional penalty for each plant):

- (a) in the case of a plant that is (or is part of) a threatened species or threatened ecological community (other than a vulnerable species or community)—Tier 1 penalty or imprisonment for 2 years, or both, or
 - (b) in the case of a plant that is (or is part of) a vulnerable species or vulnerable ecological community—Tier 3 penalty, or
 - (c) in any other case—Tier 4 penalty.
- (2) In any prosecution for an offence under this section, proof that a plant was found in the possession of the person charged is prima facie evidence that the person picked the plant.

2.3 Damaging the biodiversity values of declared areas of outstanding biodiversity value

A person who damages the biodiversity values of a declared area of outstanding biodiversity value is guilty of an offence.

Maximum penalty: Tier 1 penalty or imprisonment for 2 years, or both.

2.4 Damaging habitat of threatened species or ecological community

- (1) A person:
- (a) who damages any habitat of a threatened species or threatened ecological community, and
 - (b) who knows that it is the habitat of any such species or community,
- is guilty of an offence.
Maximum penalty: Tier 1 penalty or imprisonment for 2 years, or both.
- (2) A person who damages habitat of a threatened species or threatened ecological community in the course of carrying out any unlawful activity is taken to know that it was habitat of that kind unless the person establishes that the person did not know it was habitat of that kind.

2.5 Dealing in animals or plants

- (1) A person who deals in or attempts to deal in:
- (a) an animal or plant that is of a threatened species, or
 - (b) an animal or plant that is part of a threatened ecological community, or
 - (c) a protected animal or protected native plant,
- is guilty of an offence.
Maximum penalty (includes additional penalty for each animal or plant):
- (a) in the case of an animal that is (or is part of) a threatened species or threatened ecological community (other than vulnerable species or community)—Tier 1 penalty or imprisonment for 2 years or both, or
 - (b) in the case of a plant that is (or is part of) a vulnerable species or vulnerable ecological community—Tier 3 penalty, or
 - (c) in any other case—Tier 4 penalty.
- (2) For the purposes of this section, a person *deals in* animals or plants if the person:
- (a) sells or buys the animals or plants, or
 - (b) trades in animals or plants, or
 - (c) imports into, or exports from, New South Wales the animals or plants, or
 - (d) possesses the animals or plants.
- (3) This section applies to an animal or plant, whether or not it is a living animal or plant, and extends to a part of an animal or plant.
- (4) The regulations may exclude a dealing of a kind described in the regulations from the application of this section.
- (5) In this section:
- buy, sell, trade, import or export* includes:
- (a) advertise or hold out as being prepared to buy, sell, trade, import or export animals or plants, and
 - (b) deliver or receive animals or plants for the purpose of their sale, purchase, trade, import or export.
- possess* includes having custody or control.

2.6 Liberating animals

- (1) A person who, without authority, liberates in New South Wales any animal (other than a protected animal) is guilty of an offence.

- (2) A person who, without authority, liberates a captured protected animal in a place other than the place of its capture is guilty of an offence.
- (3) In this section, ***without authority*** means without the authority conferred by a biodiversity conservation licence under Division 3 or by the regulations.
Maximum penalty: Tier 3 penalty.

2.7 Protection of marine mammals

- (1) In this section:
marine mammal means an animal of the order of Cetacea, Sirenia or Pinnipedia.
- (2) The regulations may make provision for or with respect to the protection, care or preservation of marine mammals, including prohibiting or regulating:
 - (a) approaching a marine mammal any closer than the distance prescribed by the regulations, or
 - (b) interfering with or doing any other thing in relation to a marine mammal.
- (3) Any such regulation may impose a tier 2 penalty for an offence against any such regulation, and may impose a tier 1 penalty or imprisonment for 2 years, or both, for any such offence if the offence is committed in the course of commercial operations relating to the killing of marine mammals.
- (4) Any such regulation may provide that any action prohibited by the regulation in relation to marine mammals constitutes harming a marine mammal for the purposes of this Act.
- (5) A biodiversity conservation licence is not to be issued under Division 3 to authorise a person to harm or obtain a marine mammal for exhibition or other purposes unless the person issuing the licence is satisfied that the marine mammal is required for genuine scientific or educational purposes or any other purpose connected with the conservation or protection of marine mammals.

Division 2 Defences

2.8 Acts authorised under other legislation etc

- (1) It is a defence to a prosecution for an offence under Division 1 if the person charged establishes any of the following in relation to the act that constitutes the offence:
 - (a) **Planning approval etc**
The act was necessary for the carrying out of:
 - (i) development in accordance with a development consent within the meaning of the *Environmental Planning and Assessment Act 1979*, or
 - (ii) development that is exempt development under that Act, or
Note. Section 76 (3) of that Act provides that development carried out in an area of outstanding biodiversity value or in a wilderness area is not authorised exempt development.
 - (iii) an activity by a determining authority within the meaning of Part 5 of that Act that was carried out after compliance with that Part, or
 - (iv) an activity authorised by an approval granted by a determining authority within the meaning of Part 5 of that Act after compliance with that Part, or
 - (v) an approved transitional Part 3A project under Schedule 6A to that Act, or
 - (vi) State significant infrastructure approved under Part 5.1 of that Act.

(b) **Authorised clearing of native vegetation—rural areas**

The act was necessary for the purpose of clearing native vegetation authorised under Part 5A of the *Local Land Services Act 2013* or was picking plants in category 1-exempt land within the meaning of that Part.

(c) **Authorised removal of trees etc—urban areas**

The act was picking plants and was necessary for the purpose of removing a tree or other plant authorised by a permit or other authorisation under an environmental planning instrument made under section 26 (4) of the *Environmental Planning and Assessment Act 1979*.

(d) **Rural fires authorisation**

The act was:

- (i) an emergency fire fighting act or emergency bush fire hazard reduction work within the meaning of *Rural Fires Act 1997*, or
- (ii) bush fire hazard reduction work to which section 100C (4) of the *Rural Fires Act 1997* applies or vegetation clearing work under section 100R of that Act.

(e) **Electricity network operator bush fire risk mitigation direction on private bush fire prone lands**

The act was picking plants and was required to be done to give effect to a direction of a network operator under Division 2A of Part 5 of the *Electricity Supply Act 1995*.

(f) **State emergency authorisation**

The act was authorised to be done by or under the *State Emergency and Rescue Management Act 1989* or the *State Emergency Service Act 1989* and was reasonably necessary in order to avoid a threat to life or property.

(g) **Plantation operations authorisation**

The act was reasonably connected with the carrying out of a plantation operation on an authorised plantation in accordance with the *Plantations and Reafforestation Act 1999*, the conditions of the authorisation and the provisions of the Plantations and Reafforestation Code applying to the plantation.

Consultation note. Exempt farm forestry under that Act (small scale plantation operations) is exempt from the planning legislation (s 47) but is not exempt from NPW Act/Threatened Species Conservation Act (s 48). However, while exempt farm forestry does not require authorisation under the Plantations and Reafforestation Act it can be authorised, and accordingly authorisation and compliance with the Code under that Act would then provide exemption from threatened species/native plant offences.

(h) **Forestry operations authorisation**

The act was reasonably connected with:

- (i) the carrying out of a forestry operation in a State forest or other Crown-timber land to which an integrated forestry operations approval under Part 5B of the *Forestry Act 2012* applies, being a forestry operation that is carried out in accordance with the approval, or
- (ii) the carrying out of private native forestry in an area under and in accordance with the Private Native Forestry Code under the *Native Vegetation Regulation 2013*, as in force before the repeal of that Regulation.

(i) **Private land conservation agreements**

The act was authorised by, and done in accordance with, a private land conservation agreement.

- (j) **Non-commercial hobby activities**
The act was not done for commercial purposes and was picking plants that were cultivated by the person as a hobby or were cultivated by another person as a hobby.
 - (k) **Plants obtained from commercial plant growers**
The act was picking plants that were obtained from a person who was authorised to grow and sell them by a licence issued under this Act.
 - (l) **Officials enforcing Act**
The act was done by a person engaged in the administration of this Act for the purposes only of determining whether this Act or the regulations have been contravened or of exercising any other official function of the person.
- (2) In the case of an act done in a declared area of outstanding biodiversity value,
- (a) the defences under subsection (1) (c), (h), (j) and (k) do not apply, and
 - (b) the defence under subsection (1) (b) only applies to an act that was necessary for the purpose of clearing of native vegetation authorised by an approval granted by the Minister for Primary Industries under Division 6 of Part 5A of the *Local Land Services Act 2013*.

Note. Other Acts authorise particular activities despite harm to animals or picking plants eg section 6A of the *Game and Feral Animal Control Act 2002* with respect to hunting game animals authorised by a game hunting licence, or native game birds under a native game bird management licence.

2.9 Acts authorised by regulations (including adopted codes of practice)

It is a defence to a prosecution for an offence under Division 1 if the person charged establishes that the act that constitutes the offence was authorised by the regulations made for the purposes of this Division, including any code of practice adopted by the regulations.

Consultation note. The following exemptions from offences relating to harm to animals are to be included in the regulations:

- (a) Purple swamphens—(during 1 January to 30 April and 1 December to 31 December in the local government areas of Berrigan, Carrathool (south of the Mid Western Highway), Conargo, Corowa (limited to the Berriquin and West Cororgan irrigation districts), Deniliquin, Griffith, Hay, Leeton, Murray, Murrumbidgee, Narrandera, Urana and Wakool, except areas reserved under the National Parks and Wildlife Act.
- (b) Australian raven, forest raven, little raven, Australian crow, little crow—all areas except the counties of Camden, Cumberland and Northumberland or areas reserved under the National Parks and Wildlife Act.
- (c) Sulphur crested cockatoo, Galah—all areas within the Central or Western Divisions under the Crown Lands Act except areas reserved under the National Parks and Wildlife Act.

2.10 Acts authorised by biodiversity conservation licence

It is a defence to a prosecution for an offence under Division 1 if the person charged establishes that the act that constitutes the offence was authorised by, and done in accordance with, a biodiversity conservation licence under Division 3.

Division 3 Biodiversity conservation licences

2.11 Licences to do acts that would otherwise constitute offence

The Environment Agency Head may grant a licence (a ***biodiversity conservation licence***) to a person that authorises the doing of an act that would otherwise constitute an offence under Division 1 or under any other provision of this Act.

2.12 Applications for licences

- (1) An application for a biodiversity conservation licence:
 - (a) is to be made to the Environment Agency Head in the form approved by that Agency Head and containing the information required by that Agency Head, and
 - (b) is to be accompanied by the standard application fee prescribed by the regulations.
- (2) If the Environment Agency Head considers that the cost of determining a particular application for a biodiversity conservation licence exceeds the standard application fee, that Agency Head may require the applicant to pay an additional amount for the determination of the application if the additional amount is calculated in accordance with a methodology published by the Environment Agency Head and does not exceed the additional reasonable costs of determining that application.

Note. See section 14.5 with respect to recovery, waiver or refund of fees.
- (3) The Environment Agency Head may require the applicant for a biodiversity conservation licence to provide such additional information as the Environment Agency Head may require to determine the application.

2.13 Grant or refusal and variation of licence

- (1) If an application for a biodiversity conservation licence is duly made, the Environment Agency Head may:
 - (a) grant the licence, or
 - (b) refuse to grant the licence.
- (2) A biodiversity conservation licence may be granted unconditionally or subject to such conditions as are specified or referred to in the licence or as are prescribed by the regulations.
- (3) A biodiversity conservation licence may be granted for the period specified in the licence.
- (4) The Environment Agency Head may, by notice served on the holder of a biodiversity conservation licence, vary the licence. A licence may be varied on the application of the holder of the licence or on the initiative of the Environment Agency Head.
- (5) The variation of a biodiversity conservation licence includes the addition, removal or amendment of a condition of the licence (other than a condition prescribed by the regulations).
- (6) To avoid doubt, the Environment Agency Head is not a determining authority for the purposes of Part 5 of the *Environmental Planning and Assessment Act 1979* when granting or varying a biodiversity conservation licence.

2.14 Conditions of licences

The conditions that may be imposed on a biodiversity conservation licence include:

- (a) minimum standards relating to the accommodation, care, rescue, rehabilitation, release or humane killing of animals, or
- (b) the places at which animals are to be kept, or
- (c) the keeping of records, or
- (d) conditions on any other matter that the Environment Agency Head considers appropriate in the circumstances.

2.15 Cancellation or suspension of licences

The Environment Agency Head may, by notice served on the holder of a biodiversity conservation licence, suspend or cancel the licence for any reason the Environment Agency Head thinks appropriate.

2.16 Reasons for, and appeals against, licensing decisions

(1) In this section:

licensing decision means a decision of the Environment Agency Head:

- (a) to refuse an application for a biodiversity conservation licence, or
- (b) to grant a biodiversity conservation licence subject to conditions, or
- (c) to vary a biodiversity conservation licence, or
- (d) to suspend or cancel a biodiversity conservation licence.

(2) The Environment Agency Head is required to provide a written statement of reasons for a licensing decision if the applicant or holder of the licence makes a written request for the statement of reasons.

(3) An applicant for, or the holder of, a biodiversity conservation licence may appeal to the Land and Environment Court against a licensing decision.

(4) The appeal is to be made within the time and in the manner prescribed by the rules of the Court.

(5) The lodging of an appeal does not, except to the extent the Court otherwise directs in relation to the appeal, operate to stay the decision appealed against.

Consultation note. Additional/consequential provisions may be required in relation to the standard provisions that apply to merit appeals to the Court.

2.17 Regulations relating to licences

(1) The regulations may make provision for or with respect to biodiversity conservation licences and, in particular, for or with respect to the following:

- (a) the assessment of applications for licences (including mandatory impact assessment requirements carried out by or behalf of the applicant),
- (b) the eligibility of persons to be granted a licence,
- (c) different classes of licences,
- (d) the conditions of licences,
- (e) the obligations of the holders of licences,
- (f) the accreditation of providers of wildlife rehabilitation services and the services to which the accreditation relates that are to be taken to be the subject of a biodiversity conservation licence.

(2) The regulations may create a separate offence in relation to a contravention of the conditions of a licence or the obligations of the holder of a licence. In that case, a defence to a prosecution for an offence under Division 1 extends to a prosecution for an offence under any such regulation.

Division 4 Miscellaneous provisions

2.18 Liability of landholder for offences relating to harming etc animals and plants

(1) In any proceedings for an offence under Division 1, the landholder of any land on which the offence is alleged to have occurred is taken to have carried out the activity constituting the alleged offence unless it is established that:

- (a) the activity was carried out by another person, and

- (b) the landholder did not cause or permit the other person to carry out the activity.
- (2) This section does not prevent proceedings being taken against the person who actually carried out the activity.
- (3) This section does not apply to an offence under section 2.5 (Dealing in animals or plants) or any other offence excluded by the regulations.

2.19 Protected animals (unless excluded) to be property of the Crown

- (1) In this section:
 - excluded protected animal* means:
 - (a) a protected animal that is, at the time of birth, in the lawful possession of any person other than the Crown, or
 - (b) a protected animal imported into New South Wales, or
 - (c) a protected animal that was, before the commencement of the *National Parks and Wildlife Act 1974* on 1 January 1975, lawfully taken or in the lawful possession of any person other than the Crown and that had not been liberated before 1 January 1975, or
 - (d) a protected animal of a class prescribed by the regulations for the purposes of this definition.
 - protected animal* includes an animal of (or part of) a threatened species or threatened ecological community.
- (2) A protected animal (other than an excluded protected animal) is, until lawfully captured or killed, deemed to be the property of the Crown.
- (3) A protected animal is, when liberated in New South Wales, deemed to be the property of the Crown.
- (4) A protected animal that is deemed by this section to be the property of the Crown does not cease to be the property of the Crown merely because a person other than the Crown:
 - (a) takes possession of it because it is incapable of fending for itself in its natural habitat, or
 - (b) takes or obtains it under and in accordance with a biodiversity conservation licence that declares that any animal so taken or obtained remains the property of the Crown.
- (5) The progeny of any protected animal that was born at a time when the protected animal was in the possession of a person in the circumstances referred to in subsection (4) is, at the time of birth, deemed to be in the lawful possession of the Crown instead of that person.

Part 3 Areas of outstanding biodiversity value

3.1 Declaration of areas of outstanding biodiversity value

- (1) The Minister for the Environment may, in accordance with this Part, declare any area in the State to be an area of outstanding biodiversity value.
- (2) An area is so declared by publication of a notice of the declaration on the NSW legislation website.

Consultation note. The savings and transitional provisions of the Bill will deem existing areas declared as critical habit under the *Threatened Species Conservation Act 1995* to be declared areas of outstanding biodiversity value. These areas currently include the critical habitat for the Little Penguin population at Manly, for the Mitchell's Rainforest Snail in Stotts Island Nature Reserve, for the Gould's Petrel on Cabbage Tree Island and for the Wollemi Pine.

3.2 Areas eligible to be declared

- (1) An area may be declared as an area of outstanding biodiversity value if the Minister for the Environment is of the opinion that (in accordance with any criteria prescribed by the regulations):
 - (a) the area is important at a state, national or global scale, and
 - (b) the area makes a significant contribution to the persistence of at least one of the following:
 - (i) multiple species or at least one ecological community,
 - (ii) irreplaceable biological distinctiveness,
 - (iii) ecological processes or ecological integrity,
 - (iv) outstanding ecological value for education or scientific research.

Consultation note. It is not proposed to declare, as areas of outstanding biodiversity value, areas of properties where non-commercial hobby activities are carried out or where plant activities by commercial plant growers are carried out.

- (2) The declaration of an area may relate to, but is not limited to, protecting threatened species or ecological communities, connectivity, climate refuges and migratory species.

Consultation note. The declaration of areas of outstanding biodiversity value is intended to be recognised as a priority for investment in the Biodiversity Conservation Investment Strategy under Division 1 of Part 5.

3.3 Procedural requirements before areas declared

- (1) Before an area is declared to be an area of outstanding biodiversity value:
 - (a) the Environment Agency Head must recommend the declaration of the area, and
 - (b) the Environment Agency Head must notify landholders whose land is within the proposed area, and public authorities who exercise functions in relation to land within the proposed area, of the recommendation to declare the area, and
 - (c) the Environment Agency Head must give those landholders and public authorities a reasonable opportunity to make submissions with respect to the recommendation to declare the area, and
 - (d) the public consultation required by Part 9 has been undertaken in relation to the proposed declaration of the area, and
 - (e) the Environment Agency Head must seek and consider the advice of the Threatened Species Scientific Committee and the Biodiversity Conservation Trust.

- (2) The Environment Agency Head may amend or not proceed with a recommendation following consideration of any such advice or any submissions from landholders, public authorities or others.
- (3) A declaration is not invalid because of any failure to fully comply with this section.

3.4 Requirements following declaration of area

- (1) After an area is declared to be an area of outstanding biodiversity value:
 - (a) the Environment Agency Head is to notify the making of the declaration to any landholder whose land is within the proposed area and any public authorities who exercise functions in relation to land within the proposed area, and
 - (b) the Minister for the Environment is to take reasonable steps to enter into a private land conservation agreement with any landholder whose land is within the proposed area.
- (2) The Environment Agency Head is to notify any such landholder or public authority of the amendment or revocation of the declaration.

3.5 Amendment or revocation of declaration

- (1) A declaration of an area of outstanding biodiversity value may be amended or revoked by the Minister for the Environment by notice published on the NSW legislation website.
- (2) The declaration of an area is not to be revoked (or amended to remove any part of the area from the declaration) unless the Minister for the Environment is of the opinion that the area (or part of the area) is not eligible to be declared or that the procedures of this Part for making the declaration were not complied with.
- (3) The procedure that applies under this Part to the making of a declaration applies (subject to the regulations) to the amendment or revocation of a declaration.

3.6 Regulations with respect to declared areas

The regulations may make provision for or with respect to:

- (a) the declaration (or the amendment or revocation of a declaration) of an area of outstanding biodiversity value, or
- (b) the protection of declared areas of outstanding biodiversity value.

Consultation note. The regulations will continue the existing protections in the *Threatened Species Conservation Regulation 2010*—Part 3 (the Little Penguin population at Manly) and Part 4 (the Wollemi Pine).

Part 4 Threatened species and threatened ecological communities

Division 1 Preliminary

4.1 Definition of “listing” threatened species or ecological communities

In this Part:

listing of species, ecological communities or key threatening processes includes a reference to changing the listing of species, ecological communities or key threatening processes (whether by omitting the listing or by moving the listing from one Schedule to another Schedule or to a different part of a Schedule).

Division 2 Listing of species and ecological communities

4.2 Lists of species and ecological communities

- (1) Schedule 1 contains a list of threatened species of animals and plants for the purposes of this Act, comprising the following:
 - (a) critically endangered species,
 - (b) endangered species,
 - (c) vulnerable species.
- (2) Schedule 2 contains a list of threatened ecological communities of animals and plants for the purposes of this Act, comprising the following:
 - (a) critically endangered ecological communities,
 - (b) endangered ecological communities,
 - (c) vulnerable ecological communities.
- (3) Schedule 3 contains a list of extinct species and collapsed ecological communities of animals and plants for the purposes of this Act.

Note. The schedules identify species and ecological communities that are considered to be threatened nationally under the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth.

4.3 General eligibility for listing

- (1) A species is eligible to be listed under this Part as a threatened species, or as part of a threatened ecological community, only if it is:
 - (a) a species of animal that is native to New South Wales or that is known to periodically or occasionally migrate to New South Wales, or
 - (b) a species of plant that is native to New South Wales.
- (2) An animal or plant is native to New South Wales if it was established in New South Wales before European settlement.

Note. The definition of **animal** in this Act excludes fish and the definition of **plant** excludes marine vegetation (subject to section 14.6). Listing and protection of threatened species of fish or marine vegetation is dealt with in Part 7A of the *Fisheries Management Act 1994*.

4.4 Specific eligibility criteria for listing threatened species

- (1) A species is eligible to be listed as a **critically endangered species** if, in the opinion of the Scientific Committee, it is facing an extremely high risk of extinction in New South Wales in the immediate future, as determined in accordance with criteria prescribed by the regulations.

- (2) A species is eligible to be listed as an *endangered species* if, in the opinion of the Scientific Committee:
 - (a) it is facing a very high risk of extinction in New South Wales in the near future, as determined in accordance with criteria prescribed by the regulations, and
 - (b) it is not eligible to be listed as a critically endangered species.
- (3) A species is eligible to be listed as a *vulnerable species* if, in the opinion of the Scientific Committee:
 - (a) it is facing a high risk of extinction in New South Wales in the medium-term future, as determined in accordance with criteria prescribed by the regulations, and
 - (b) it is not eligible to be listed as an endangered or critically endangered species.
- (4) A *population* is not eligible to be listed as a threatened species if the species to which the population belongs is separately listed (whether of the same or of a higher or lesser threatened category).

4.5 Specific eligibility criteria for listing threatened ecological communities

- (1) An ecological community is eligible to be listed as a *critically endangered ecological community* if, in the opinion of the Scientific Committee, it is facing an extremely high risk of extinction in New South Wales in the immediate future, as determined in accordance with criteria prescribed by the regulations.
- (2) An ecological community is eligible to be listed as an *endangered ecological community* if, in the opinion of the Scientific Committee:
 - (a) it is facing a very high risk of extinction in New South Wales in the near future, as determined in accordance with criteria prescribed by the regulations, and
 - (b) it is not eligible to be listed as a critically endangered ecological community.
- (3) An ecological community is eligible to be listed as a *vulnerable ecological community* if, in the opinion of the Scientific Committee:
 - (a) it is facing a high risk of extinction in New South Wales in the medium-term future, as determined in accordance with criteria prescribed by the regulations, and
 - (b) it is not eligible to be listed as an endangered or critically endangered ecological community.

4.6 Specific eligibility criteria for listing extinct species and collapsed ecological communities

- (1) A species is eligible to be listed as an *extinct species* at a particular time if, in the opinion of the Scientific Committee, it has not been recorded in its known or expected habitat in New South Wales, despite targeted surveys, over a time frame appropriate, in the opinion of the Scientific Committee, to its life cycle and form.
- (2) An ecological community is eligible to be listed as a *collapsed ecological community* at a particular time if, in the opinion of the Scientific Committee, all occurrences of the ecological community have moved outside the natural range of spatial and temporal variability in terms of its composition, structure or function.

4.7 Regulations prescribing eligibility criteria for listing

A regulation that prescribes criteria for the purposes of this Division is not to be made unless the Minister for the Environment certifies in writing that:

- (a) the criteria are based on scientific principles only, and

- (b) any criteria for listing under the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth were given due consideration before the regulation was made.

Division 3 Procedure for listing (other than provisional listing)

4.8 Operation of Division

- (1) This Division sets out the procedure for listing species and ecological communities in Schedules 1, 2 or 3.
- (2) This Division does not apply to a provisional listing under Division 4.

4.9 Scientific Committee responsible for listing

The Scientific Committee is responsible for determining the listing of species and ecological communities.

4.10 Who may initiate listing

- (1) The Scientific Committee may determine the listing of species and ecological communities on its own initiative.
- (2) The Scientific Committee may also determine the listing of species and ecological communities:
 - (a) following a request by the Minister for the Environment, or
 - (b) on a nomination under this Division of any other person.

4.11 Nomination for listing

- (1) A nomination by any person for listing threatened species or ecological communities must:
 - (a) be made in writing to the Scientific Committee, and
 - (b) include any information required by the Scientific Committee.
- (2) The Scientific Committee may request the person making the nomination to provide additional information about the nomination before it deals with the nomination.
- (3) The Scientific Committee, with the concurrence of the Environment Agency Head, may publish guidelines from time to time about the making of nominations, including on the themes for listing classes of animals or plants to fill gaps in current listings.
- (4) The Scientific Committee is to give notice of a duly made nomination to the Environment Agency Head within 14 days after the nomination is provided to members of the Scientific Committee.

4.12 Priority assessment of nominations for listing and other work of Committee

- (1) The Scientific Committee is required to prioritise the assessment of the nominations for listing species or ecological communities.
- (2) The priorities are to be reviewed at least on an annual basis.
- (3) The priorities for assessment determined by the Scientific Committee are to be published on a government website maintained by the Environment Agency Head.

4.13 Consideration of nomination for listing

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

- (2) The Scientific Committee may reject a nomination if:
 - (a) the subject of the nomination has already been dealt with, or
 - (b) the nomination is vexatious, or
 - (c) the information required to be included in the nomination, or which is requested by the Scientific Committee, is not included or provided or is not considered to be adequate.
- (3) If the Scientific Committee rejects a nomination, it is to notify the Environment Agency Head and the person who made the nomination and is to give reasons for the rejection.

4.14 Scientific Committee's preliminary determination

- (1) The Scientific Committee is to make a preliminary determination as to whether a proposal to list a species or ecological community should be supported or not supported.
- (2) As soon as possible after making a preliminary determination, the Scientific Committee must:
 - (a) in a case involving a nomination, notify the person who made the nomination and the Environment Agency Head, and
 - (b) in a case of a proposal raised on its own initiative or in response to a request from the Minister for the Environment, notify the Minister and the Environment Agency Head, and
 - (c) publish notice of, and invite submissions on, its preliminary determination in accordance with any requirements of the regulations.
- (3) The Scientific Committee is to consider written submissions duly received by it in accordance with the published notice.

4.15 Scientific Committee's final determination

- (1) The Scientific Committee must either accept or reject a proposal for listing a species or ecological community and must give reasons for its determination.
- (2) The reasons for a determination are to include reference to such of the criteria for listing as may be relevant to the determination.
- (3) In a case involving a nomination, the Scientific Committee must make a final determination within 6 months after the closing date for making submissions to the Scientific Committee about its preliminary determination on the matter.
- (4) Failure to make a final determination within the period required by this section does not affect the validity of the determination.

4.16 Publication of final determination

- (1) A final determination of the Scientific Committee is made on its publication on the NSW legislation website.
- (2) On making a final determination, the Scientific Committee must, as soon as practicable:
 - (a) in a case involving a nomination, notify the person who made the nomination of the final determination, and
 - (b) notify the Environment Agency Head of the final determination, and
 - (c) publish notice of, and reasons for, the final determination in accordance with any requirements of the regulations.

- (3) The validity of a final determination cannot be questioned in any legal proceedings except those commenced in a court by any person within 6 months of the date of public notice of the final determination.

4.17 Revision of Schedule on publication of final determination

Schedule 1, 2 or 3 (as the case requires) is amended to give effect to a final determination of the Scientific Committee on the date on which the final determination is published on the NSW legislation website or on such later date provided in the final determination for its commencement.

4.18 Lists to be kept under review

The Scientific Committee must, in accordance with the regulations, keep the lists of species and ecological communities under review and must, at least every 5 years, determine whether any changes to the lists are necessary.

4.19 Minor amendments to Schedules

- (1) The Scientific Committee may make and publish a final determination under this Division to amend the list of species or ecological communities without following the procedure set out in this Division if, in the opinion of the Scientific Committee, the amendment is necessary or desirable for any of the following purposes:
- (a) to reflect any change in the name of a listed species or a reclassification of a listed species into further species as a result of taxonomic revision,
 - (b) to correct any minor error or omission,
 - (c) to clarify a description of an ecological community (including to reflect new surveys or research information).
- (2) Any such determination is not to alter the listing status of a particular species or ecological community or the particular area of an ecological community.

4.20 Restriction on releasing certain information relating to listing etc

- (1) The Minister of the Environment may, at the request of the Scientific Committee, authorise the Scientific Committee to restrict access to:
- (a) information provided to the Scientific Committee related to the location of threatened species or ecological communities, or
 - (b) information provided to the Scientific Committee that may identify any individual who made a nomination or submission under this Part in relation to the listing or provisional listing of a species or ecological community.
- (2) The Minister may authorise the restriction of access to information referred to in subsection (1) (a) if satisfied that it is in the public interest to do so.
- (3) The Minister may authorise the restriction of access to information referred to in subsection (1) (b) if satisfied that it is necessary to do so to protect the individual concerned from intimidation, harassment, physical threats or other unwarranted reprisals in connection with the making of the nomination or submission.

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

4.21 Operation of Division

This Division sets out the procedure for provisionally listing an endangered or critically endangered species on an emergency basis.

4.22 Scientific Committee responsible for provisional listing

The Scientific Committee is responsible for determining whether any species should be provisionally listed under this Division.

4.23 Eligibility for provisional listing

A species is eligible to be provisionally listed under this Division if, in the opinion of the Scientific Committee:

- (a) the species:
 - (i) although not previously known to have existed in New South Wales, is believed on current knowledge to be native to New South Wales, or
 - (ii) is subject to an immediate and significant threat of extinction, or
 - (iii) was presumed to be extinct in New South Wales but has been rediscovered, and
- (b) the species is not listed in Schedule 1 as an endangered or critically endangered species.

4.24 Who may initiate provisional listing

- (1) The Scientific Committee may determine to provisionally list a species under this Division on its own initiative.
- (2) The Scientific Committee may also determine to provisionally list a species under this Division:
 - (a) following a request by the Minister for the Environment, or
 - (b) on a nomination under this Division of any other person.

4.25 Making nomination for provisional listing

- (1) A nomination by any person for the provisional listing of an endangered or critically endangered species must:
 - (a) be made in writing to the Scientific Committee, and
 - (b) include any information required by the Scientific Committee.
- (2) The Scientific Committee may request the person making the nomination to provide additional information about the nomination before it deals with the nomination.

4.26 Consideration of nomination for provisional listing by Scientific Committee

The provisions of Division 3 relating to the consideration by the Scientific Committee of a nomination for listing apply also to a nomination for the provisional listing of a species under this Division.

4.27 Publication of determination for provisional listing

- (1) A determination for provisional listing is made by the Scientific Committee on its publication on the NSW legislation website.
- (2) On making a determination for provisional listing, the Scientific Committee must, as soon as practicable:
 - (a) in a case involving a nomination, notify the person who made the nomination of the determination, and
 - (b) notify the Environment Agency Head of the determination, and
 - (c) publish notice of, and reasons for, the determination in accordance with any requirements of the regulations.

4.28 Effect of publication of determination for provisional listing

Schedule 1, 2 or 3 (as the case requires) is amended to give effect to a determination for provisional listing on the date on which the determination is published on the NSW legislation website. The amendment ceases to have effect when the provisional listing ceases to have effect under this Division.

4.29 Scientific Committee to review status of provisionally listed species

- (1) As soon as practicable after the publication of a determination under this Division, the Scientific Committee must review the status of a provisionally listed species to determine whether or not the species should be listed in Schedule 1 as a threatened species.
- (2) The requirements of Division 3 relating to the making of preliminary and final determinations for listing apply to the review of a provisional listing.

4.30 Termination of provisional listing

The provisional listing of a species under this Division ceases to have effect:

- (a) when the Scientific Committee makes a final determination in accordance with Division 3 on whether the species should or should not be listed, or
 - (b) within 2 years after the provisional listing,
- whichever first occurs.

Division 5 Key threatening processes

4.31 List of key threatening processes

Schedule 4 contains a list of key threatening processes for the purposes of this Act.

4.32 Processes eligible for listing as key threatening processes

- (1) A threatening process is eligible to be listed as a *key threatening process* if, in the opinion of the Scientific Committee:
 - (a) it adversely affects threatened species or ecological communities, or
 - (b) it could cause species or ecological communities that are not threatened to become threatened.
- (2) The regulations may prescribe criteria for the determination of matters under this section.

4.33 Procedure for listing key threatening processes

The procedure in Division 3 with respect to the listing of threatened species applies to the listing of key threatening processes.

4.34 Referral of nomination to Fisheries Scientific Committee

- (1) If, in the opinion of the Chairperson of the Scientific Committee, a nomination of a key threatening process relates to a threatening process that is likely to have an impact on both terrestrial and aquatic environments:
 - (a) the Chairperson may consult the Chairperson of the Fisheries Scientific Committee for the purpose of determining whether the nomination should also be considered by the Fisheries Scientific Committee under Part 7A of the *Fisheries Management Act 1994*, and
 - (b) if the Chairpersons agree that the nomination should also be so considered, the nomination is to be referred to the Fisheries Scientific Committee for consideration.

- (2) In that case:
 - (a) the nomination is then taken also to be a nomination for amendment of Schedule 6 to that Act, made to the Fisheries Scientific Committee in accordance with Part 7A of the *Fisheries Management Act 1994*, and
 - (b) Part 7A of that Act applies in relation to the nomination (in addition to this Division).
- (3) For the purposes of this section, a ***nomination of a key threatening process*** means:
 - (a) the nomination of any matter to be inserted in or omitted from Schedule 4, or
 - (b) the nomination of any matter in Schedule 4 for amendment.

Note. There is a reciprocal process in Part 7A of the *Fisheries Management Act 1994* for the referral of nominations made under that Part to the Scientific Committee in appropriate cases.

Division 6 Biodiversity Conservation Program for threatened species and threatened ecological communities

4.35 Establishment of Program

- (1) The Environment Agency Head is to establish a Biodiversity Conservation Program.
- (2) The Program's objectives are:
 - (a) to maximise the long-term security of threatened species and threatened ecological communities in nature, and
 - (b) to minimise the impacts of key threatening processes on biodiversity values.

4.36 Content of Program

- (1) The Biodiversity Conservation Program is to consist of the following:
 - (a) strategies to achieve the objectives of the Program in relation to each threatened species and threatened ecological community,
 - (b) a framework to guide the setting of priorities for implementing the strategies,
 - (c) a process for monitoring and reporting on the overall outcomes and effectiveness of the Program.
- (2) Strategies to minimise the impacts of key threatening processes may but are not required to be included in the Program.
- (3) The Environment Agency Head is to ensure that a strategy to achieve the objectives of the Program in relation to a threatened species or threatened ecological community is included in the Program within 2 years after the species or ecological community is listed in this Act.

Note. See Schedule 9 (Savings, transitional and other provisions) which deems strategies for species and ecological communities listed in this Act on its commencement that are contained in the Threatened Species Priorities Action Statement under section 90A of the repealed *Threatened Species Conservation Act 1995* to be strategies in the Biodiversity Conservation Program.
- (4) The Environment Agency Head may amend or replace a strategy or other component of the Program at any time.

Note. Part 9 requires public consultation in relation to a strategy included in the Program and the keeping of a public register of the strategies included in the Program.

4.37 Review and amendment of Program

- (1) The Environment Agency Head is to review the effectiveness of the strategies included in the Biodiversity Conservation Program every 5 years after the inclusion of the strategy in the Program.

- (2) A review is to examine the outcomes and cost-effectiveness of a strategy and determine whether the strategy should be amended or replaced.
- (3) A review is to be conducted in accordance with the regulations (including any provisions of the regulations relating to the preparation and publication of a report of the review).

Division 7 Threatened Species Scientific Committee

4.38 Establishment of Scientific Committee

- (1) There is established by this Act a body corporate with the corporate name of the Threatened Species Scientific Committee (the *Scientific Committee*).
- (2) The Scientific Committee is a NSW Government agency.

4.39 Scientific Committee not subject to Ministerial control

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

4.40 Functions of Scientific Committee

- (1) The functions of the Scientific Committee are as follows:
 - (a) to determine which species are to be listed under this Act as relevant categories of threatened species and which ecological communities are to be listed under this Act as relevant categories of threatened ecological communities,
 - (b) to determine which species are to be listed under this Act as extinct species and which ecological communities are to be listed under this Act as collapsed ecological communities,
 - (c) to determine which processes are to be listed under this Act as key threatening processes,
 - (d) to advise the Minister for the Environment on any matter relating to the conservation of threatened species or ecological communities that is referred to the Scientific Committee by the Minister,
 - (e) to periodically review the lists of threatened species and ecological communities and key threatening processes,
 - (f) such other functions as are conferred or imposed on the Scientific Committee by or under this or any other Act.
- (2) The Scientific Committee may, in the exercise of its functions, make use of consultants or obtain assistance or advice from other persons.

4.41 Members of Scientific Committee

- (1) The Scientific Committee is to consist of 11 members appointed by the Minister for the Environment.
- (2) Of the members of the Scientific Committee:
 - (a) 2 are to be scientists who are employees of the Office of Environment and Heritage and nominated by the head of that Office, and
 - (b) 1 is to be a scientist who is an employee of, and nominated by, the Royal Botanic Gardens and Domain Trust, and
 - (c) 1 is to be a scientist who is an employee of, and nominated by, the Australian Museum Trust, and
 - (d) 1 is to be a scientist nominated by the Commonwealth Scientific and Industrial Research Organisation, and

- (e) 2 are to be scientists who are employees of a public authority and who have expertise in forest ecology, agricultural science, or natural resource management, and
 - (f) 4 are to be scientists who are:
 - (i) employees of a New South Wales tertiary educational institution, or
 - (ii) nominated by a professional body principally involved in ecological or invertebrate research.
- (3) A person who is appointed as a member of the Scientific Committee is to have expertise in one or more of the following areas of study:
- (a) vertebrate biology,
 - (b) invertebrate biology,
 - (c) plant biology,
 - (d) terrestrial ecology,
 - (e) plant community ecology,
 - (f) limnology,
 - (g) aquatic biology,
 - (h) genetics of small populations,
 - (i) population dynamics (including population viability analysis or evolutionary ecology).
- (4) If the person or body responsible for nominating a member of the Scientific Committee under this section (*the nominating body*) fails to submit a nomination to the Minister for the Environment, within such time and in such manner as may be specified by the Minister by notice in writing to the nominating body, the Minister:
- (a) may seek a nomination from any other person or body that the Minister considers to be a suitable substitute for the nominating body, and
 - (b) may appoint any scientist nominated by that other person or body as a member of the Scientific Committee, in place of a scientist nominated by the nominating body.

Note. Schedule 7 contains other provisions relating to the members and procedure of the Scientific Committee.

4.42 Saving provision relating to existing Scientific Committee

- (1) The Scientific Committee established under this Division is a continuation of, and the same legal entity as, the Scientific Committee established under the *Threatened Species Conservation Act 1995* immediately before the repeal of that Act by this Act (*the former Committee*).
- (2) A person who held office as a member of the former Committee immediately before that repeal is taken to have been appointed as a member of the Scientific Committee established under this Division for the remainder of the person's term of office as a member of the former Committee.
- (3) Any such member who was the Chairperson or Deputy Chairperson of the former Committee is taken to have been appointed as the Chairperson or Deputy Chairperson of the Scientific Committee established under this Division.

Part 5 Investment Strategy and private land conservation agreements

Division 1 Biodiversity Conservation Investment Strategy

5.1 Making of Strategy

- (1) The Minister for the Environment is to make a Biodiversity Conservation Investment Strategy (the **Strategy**) as soon as practicable after the commencement of this Act.
Note. Part 9 requires public consultation in relation to the making of the Strategy.
- (2) The purpose of the Strategy is to guide investment in biodiversity conservation, and in particular to guide the Government and the Biodiversity Conservation Trust in prioritising investment in biodiversity conservation.
- (3) The Minister for the Environment is to publish the Strategy on an appropriate government website.

5.2 Mapping of existing public and private biodiversity protected areas

- (1) As part of the Strategy, the Minister for the Environment is to map all public and private land areas in the State whose biodiversity values are protected and make the map publicly available.
- (2) The first Strategy may be made before those areas are fully mapped.

5.3 Content of Strategy

- (1) The Strategy is to comprise:
 - (a) principles that guide the identification of priority investment areas for biodiversity conservation, and
 - (b) principles that guide investment in those priority investment areas, and
 - (c) a map of identified priority investment areas.
- (2) The Minister for the Environment may include the map of identified priority investment areas with the map of existing public and private land areas whose biodiversity is protected.
- (3) The first Strategy may be made before priority investment areas are fully mapped.
- (4) In preparing the Strategy, the Minister for the Environment is to consider the following:
 - (a) the purpose and objects of this Act,
 - (b) the role of the Strategy in complementing other government mechanisms for biodiversity conservation, including environmental planning instruments,
 - (c) established principles for establishing land conservation areas, including comprehensiveness, adequacy and representativeness,
 - (d) ensuring that good samples of the least protected ecosystems are included in the criteria for prioritisation,
 - (e) any other matter prescribed by the regulations.
- (5) Priority investment areas may include (without limitation):
 - (a) Core areas—being large remnant native vegetation whose management will contribute the greatest benefit to the conservation of key State and regional biodiversity values within a region, and
 - (b) State and regional biodiversity corridors—being linear areas that link core areas and play a crucial role in maintaining connections between animal and

- plant populations that would otherwise be isolated and at greater risk of local extinction, and
- (c) areas containing the least protected ecosystems of public or private land, and
- (d) areas required to increase the comprehensiveness, adequacy and representativeness of biodiversity in protected areas of public or private land.

5.4 Review and amendment of Strategy

The Minister for the Environment is to review the Strategy every 5 years and may amend the Strategy at any time.

Division 2 Biodiversity stewardship agreements

5.5 Minister and land owners may enter into biodiversity stewardship agreements

- (1) The Minister for the Environment may enter into an agreement relating to land with all the owners of the land for the purpose of establishing a biodiversity stewardship site (a *biodiversity stewardship agreement*).
- (2) A biodiversity stewardship agreement may designate any eligible land to which the agreement relates to be a biodiversity stewardship site for the purposes of this Act.
- (3) The Minister for the Environment must consult with the Minister for Planning and the Minister for Industry, Resources and Energy before entering into any biodiversity stewardship agreement.

Consultation note. The Minister for the Environment will delegate the power to enter into agreements.

5.6 Content of biodiversity stewardship agreements

- (1) A biodiversity stewardship agreement may contain any of the following terms, binding on the owner from time to time of the land:
 - (a) requiring or authorising the owners to carry out specified management actions on the land,
 - (b) creating (or providing for the creation) of the number and class of biodiversity credits in respect of any of those management actions in accordance with the biodiversity assessment method,
 - (c) providing for the timing of the creation of biodiversity credits and their release for sale,
 - (d) providing for the transfer or retirement of the biodiversity credits created,
 - (e) requiring the owners of the land to carry out any management action in perpetuity, unless otherwise specified (even if a biodiversity credit has already been created in respect of the action or has been transferred or retired),
 - (f) restricting the use of the biodiversity stewardship site,
 - (g) requiring the owner to permit persons to access the biodiversity stewardship site and to allow them to take any specified action on the land,
 - (h) providing for monitoring, reporting and audit requirements,
 - (i) providing for the entitlement of the owner to payments from the Biodiversity Stewardship Payments Fund,
 - (j) specifying the manner in which any money provided to the owners under the agreement is to be applied by the owners,
 - (k) requiring the owners to repay money paid to the owners under the agreement if a specified breach of the agreement occurs,

- (l) specifying the remedial measures that must be taken in the event that any contingency that has a negative impact on the biodiversity values protected by the agreement or that prevents or disrupts the continuation of a management action in respect of which biodiversity credits are in force or have been retired,
 - (m) providing for any other matter relating to a biodiversity stewardship site.
- (2) A biodiversity stewardship agreement may contain any of the following terms, binding on the Minister for the Environment:
- (a) requiring the Minister to direct that payments be made from the Biodiversity Stewardship Payments Fund to the owner of the land,
 - (b) requiring the Minister to provide technical advice or other assistance,
 - (c) requiring the Minister to carry out specified activities or do specified things,
 - (d) providing for any other matter relating to the biodiversity stewardship site.
- (3) If the biodiversity assessment method is amended or replaced after a biodiversity stewardship agreement is entered into, the biodiversity stewardship agreement prevails to the extent of any inconsistency between the agreement and the provisions of the biodiversity assessment method as amended or replaced.

5.7 Land eligible to be designated as biodiversity stewardship site

- (1) Land may be designated as a single biodiversity stewardship site even if the land consists of separate parcels of land and whether or not the parcels are adjacent (but only if the land is owned by the same person or persons).
- (2) Land that comprises only part of one or more parcels of land may be designated as a biodiversity stewardship site.
- (3) The regulations may set out criteria for land to be eligible to be designated as a biodiversity stewardship site by a biodiversity stewardship agreement.
- (4) This section has effect in relation to land at the time that any biodiversity stewardship agreement in relation to that land is first entered into or proposed to be entered into. Accordingly, the fact that land designated as a biodiversity stewardship site becomes, after the agreement is entered into, land excluded from being designated as a biodiversity stewardship site does not affect the validity of the agreement (or any subsequent variation of the agreement).

5.8 Applications to enter into biodiversity stewardship agreements

- (1) A request to the Minister for the Environment to enter into a biodiversity stewardship agreement is to be made by application of the owners of the site proposed to be designated as a biodiversity stewardship site.
- (2) The application:
 - (a) is to be in the form approved by the Minister for the Environment and containing the information required by that form, and
 - (b) is to be accompanied by a processing fee prescribed by the regulations.

The Minister may require the applicant to provide such additional information as the Minister may require to determine the application.

Note. See section 14.5 with respect to recovery, waiver or refund of fees.

- (3) The application is to be accompanied by a biodiversity stewardship site assessment report prepared by an accredited biodiversity assessor:
 - (a) that assesses the biodiversity values of the proposed site in accordance with the biodiversity assessment method, and

- (b) that sets out the management actions proposed to be carried out on the proposed site, and
 - (c) that determines in accordance with the biodiversity assessment method the number and class of biodiversity credits that may be created in respect of those management actions.
- (4) The Minister for the Environment may require the owners of the proposed site to provide management plans relating to the control of weeds, fire management or other relevant matters.
- (5) The Minister for the Environment may decline a request from the owners of a site to enter into a biodiversity stewardship agreement if the Minister considers that the owner is not a fit and proper person to enter into, and fulfil the obligations imposed by, the agreement. The regulations may make provision with respect to whether an owner is such a fit and proper person.
- (6) The regulations may prescribe other grounds on which the Minister for the Environment may decline a request to enter into a biodiversity stewardship agreement.

5.9 Requirements relating to entering into biodiversity stewardship agreements

- (1) The Minister for the Environment must not enter into a biodiversity stewardship agreement relating to land unless:
 - (a) all the owners of the land are parties to the agreement, and
 - (b) where the land (not being Crown land) is subject to a residential tenancy agreement or other lease, the tenant or the lessee has consented in writing to the biodiversity stewardship agreement, and
 - (c) where the land is subject to a mortgage or charge, the mortgagee or chargee has consented in writing to the agreement, and
 - (d) where the land is subject to a covenant, the Minister has consulted with the person entitled to the benefit of the covenant about the terms of the agreement, and
 - (e) where the land is the subject of a mining lease or mineral claim under the *Mining Act 1992* or a production lease under the *Petroleum (Onshore) Act 1991*, the holder of the lease or claim has consented in writing to the agreement, and
 - (f) where the land is the subject of any mining or petroleum authority not referred to in paragraph (e), the Minister has consulted with the holder of the mining petroleum authority about the terms of the agreement, and
 - (g) where the land is owned by a Local Aboriginal Land Council, the New South Wales Aboriginal Land Council has consented in writing to the agreement.
- (2) The Minister for the Environment may enter into a biodiversity stewardship agreement relating to land that is Crown land or lands of the Crown:
 - (a) with a public authority (not being a Public Service agency) that owns or has the control and management of the land, or
 - (b) if the land is under the control and management of a Public Service agency, with the responsible Minister.
- (3) If a biodiversity stewardship agreement is entered into under subsection (2) by a public authority that, or responsible Minister who, is not the owner of the land concerned:
 - (a) the agreement is taken to have been entered into on behalf of the owner of the land, and

- (b) a reference in this Part to the owner of the land (however expressed) includes, while a public authority has the control and management of the land, a reference to the public authority that has that control and management and, if the public authority is a Public Service agency, the responsible Minister.
- (4) The Minister for the Environment must not enter into a biodiversity stewardship agreement relating to Crown-timber lands within the meaning of the *Forestry Act 2012* except with the consent of the Minister administering that Act.
- (5) The Minister for the Environment must not enter into a biodiversity stewardship agreement for Crown land, except with the consent of the Minister administering the *Crown Lands Act 1989*.

5.10 Duration of biodiversity stewardship agreements

- (1) A biodiversity stewardship agreement has effect from a day, or on the happening of an event, specified in the agreement.
- (2) A biodiversity stewardship agreement has effect in perpetuity, unless:
 - (a) it is terminated by consent of the Minister for the Environment and all the owners (for the time being) of the biodiversity stewardship site concerned, or
 - (b) it is terminated by the Minister for the Environment (without the consent of the owners), and that termination is authorised by this Act.
- (3) The Minister for the Environment must not consent to the termination of a biodiversity stewardship agreement unless such measures as may be required by the Minister are taken by the owner of the biodiversity stewardship site to offset any negative impact of the termination on the biodiversity values protected by the agreement. This subsection does not apply if voluntary termination of the agreement is permitted under this section.
- (4) For the purposes of subsection (3), the required measures may include one or more of the following:
 - (a) the cancellation of biodiversity credits created in relation to the biodiversity stewardship site,
 - (b) the retirement of biodiversity credits created in relation to another biodiversity stewardship site,
 - (c) entering into a biodiversity stewardship agreement for the purpose of establishing another biodiversity stewardship site.
- (5) The Minister for the Environment must consent to the termination of a biodiversity stewardship agreement on the request of the owner of the biodiversity stewardship site if voluntary termination of the agreement is permitted under this section.
- (6) For the purposes of this section, voluntary termination of a biodiversity stewardship agreement is permitted only if the owner of the biodiversity stewardship site requests the termination of the agreement within 3 months after it is entered into, or after the expiry of 5 years after the agreement has been entered into, and at the time of termination:
 - (a) no biodiversity credits have been created in respect of the biodiversity stewardship site, or
 - (b) in a case where biodiversity credits have been created, the owner of the biodiversity stewardship site is the holder of all credits that have been created since the creation of the site, none of the credits created have been retired and all the credits are cancelled by the Environment Agency Head with the consent of the owner.

- (7) A request for the consent of the Minister for the Environment to the termination of a biodiversity stewardship agreement is to be made by application of the owner of the site:
- (a) in the form approved by the Minister and accompanied by the information required by the approved form, and
 - (b) accompanied by a fee prescribed by the regulations.

Note. See section 14.5 with respect to recovery, waiver or refund of fees.

5.11 Variation of biodiversity stewardship agreements

- (1) A biodiversity stewardship agreement may be varied:
- (a) by a subsequent agreement between the Minister for the Environment and the owners (for the time being) of the biodiversity stewardship site concerned, or
 - (b) by the Minister for the Environment, without the consent of the owners, where that variation is authorised by this Act.
- (2) The Minister for the Environment must not agree to any variation of a biodiversity stewardship agreement with the owners of the biodiversity stewardship site unless:
- (a) if the land is subject to a residential tenancy agreement or other lease, the tenant or the lessee has consented in writing to the variation, and
 - (b) if the land is subject to a mortgage or charge, the mortgagee or chargee has consented in writing to the variation, and
 - (c) if the land is subject to a covenant, the Minister for the Environment has consulted with the person entitled to the benefit of the covenant about the variation, and
 - (d) if the land is the subject of a mining lease or mineral claim under the *Mining Act 1992* or a production lease under the *Petroleum (Onshore) Act 1991*, the holder of the lease or claim has consented in writing to the variation, and
 - (e) if the land is the subject of any mining or petroleum authority not referred to in paragraph (d), the Minister for the Environment has consulted with the holder of the mining or petroleum authority about the variation.
- (3) The Minister for the Environment must not agree to any variation of a biodiversity stewardship agreement unless satisfied that the variation does not have a negative impact on the biodiversity values protected by the agreement or that other measures required by the Minister have been taken by the owner of the biodiversity stewardship site to offset any such negative impact.
- (4) For the purposes of subsection (3), the required measures may include one or more of the following:
- (a) the cancellation of biodiversity credits created in relation to the biodiversity stewardship site,
 - (b) the retirement of biodiversity credits created in relation to another biodiversity stewardship site.
- Note.** Division 6 of Part 6 enables a person who is required under this section to retire biodiversity credits to make a payment instead to the Biodiversity Conservation Fund of the value of the credits in accordance with the offsets payments calculator.
- (5) If a biodiversity stewardship site consists of more than one parcel of land, the Minister for the Environment may consent to the variation of a biodiversity stewardship agreement so as to terminate its application in respect of any single parcel of land, and the provisions of this section apply in respect of any such variation.

- (6) A request for the agreement of the Minister for the Environment to the variation of a biodiversity stewardship agreement is to be made by application of the owner of the site:
- (a) in the form approved by the Minister and accompanied by the information required by the approved form, and
 - (b) accompanied by a fee prescribed by the regulations.

The Minister for the Environment may require the applicant to provide such additional information as the Minister may require to determine the application.

Note. See section 14.5 with respect to recovery, waiver or refund of fees.

5.12 Registration of biodiversity stewardship agreements

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

5.13 Agreements to run with land

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

Consultation note. Further provision is to be made to deal with the consequences of the subsequent splitting of the ownership of a biodiversity stewardship site in relation to the rights and obligations for management actions and for credits created in respect of the site.

5.14 Application of Planning Act

- (1) Management actions under a biodiversity stewardship agreement for which biodiversity credits may be created (including on declared areas of outstanding biodiversity value) are taken to be exempt development for the purposes of the

Environmental Planning and Assessment Act 1979. The regulations may exclude any management actions from the operation of this subsection.

- (2) For the purposes of section 76 (3) of that Act, a reference to the environmental planning instrument in respect of any such exempt development is taken to be a reference to the biodiversity stewardship agreement.
- (3) A biodiversity stewardship agreement is not a regulatory instrument for the purposes of section 28 of that Act.

5.15 Agreement does not prevent creation of national parks and other reservations

- (1) The fact that land is a biodiversity stewardship site does not prevent the land from being reserved under Part 4 or Part 4A of the *National Parks and Wildlife Act 1974*.
- (2) On a biodiversity stewardship site being so reserved, the land concerned ceases to be a biodiversity stewardship site and the biodiversity stewardship agreement applicable to the land is terminated.

5.16 Proposals by public authorities affecting biodiversity stewardship sites

- (1) A public authority must not carry out development on a biodiversity stewardship site unless:
 - (a) it has given written notice of the proposed development to the Minister for the Environment and the owner of the biodiversity stewardship site, and
 - (b) it has received written notice from the Minister for the Environment consenting to the development.
- (2) The Minister for the Environment may consent to the development only if:
 - (a) the Minister is of the opinion that the proposed development will neither adversely affect any management actions that may be carried out on the land under the biodiversity stewardship agreement nor adversely affect the biodiversity values protected by the agreement, or
 - (b) the Minister is satisfied that any adverse effect of the development on biodiversity values (including any future improvement to biodiversity values that would otherwise be achieved by the management actions on the site) will be offset by the retirement of biodiversity credits by the public authority, or
 - (c) the development is required for an essential public purpose or for a purpose of special significance to the State.
- (3) The Minister for the Environment may, as a condition of granting consent under this section, direct the public authority to retire biodiversity credits of a number and class (if any) specified by the Minister.

Note. Division 6 of Part 6 enables a person who is required under this section to retire biodiversity credits to make a payment instead to the Biodiversity Conservation Fund of the value of the credits in accordance with the offsets payments calculator.
- (4) The Minister for the Environment may approve an arrangement under which:
 - (a) the retirement of some or all of the biodiversity credits is deferred pending the completion of restorative actions that will restore or improve the biodiversity values affected by the development, and
 - (b) the biodiversity credits the retirement of which is deferred pending the completion of those actions are required to be transferred to the Minister.
- (5) Section 6.28 applies in respect of any such arrangement as if it were a deferred credit retirement arrangement under that section.
- (6) The Minister for the Environment may, by order published in the Gazette, vary or terminate the biodiversity stewardship agreement relating to a biodiversity

stewardship site without the consent of the owner of the site if consent to development is granted under this section and the variation or termination is necessary to enable the public authority to carry out the development.

- (7) The owner of a biodiversity stewardship site is not entitled to any compensation as a result of the variation or termination of an agreement under this section.
- (8) Subsection (7) does not affect any right to compensation the owner may have under the *Land Acquisition (Just Terms Compensation) Act 1991* or any other Act in respect of the development.
- (9) The consent of the Minister for the Environment under this section is not an approval for the purposes of Part 5 of the *Environmental Planning and Assessment Act 1979*.
- (10) This section does not apply:
 - (a) to any part of a biodiversity stewardship site that is a wilderness area within the meaning of the *Wilderness Act 1987* or that is a declared area of outstanding biodiversity value, or
 - (b) in respect of development proposed to be carried out by a public authority on a biodiversity stewardship site if the public authority is the owner of the site and the proposed development is not inconsistent with the terms of the biodiversity stewardship agreement, or
 - (c) in respect of development that comprises emergency or routine work by a public authority of a kind that the authority and the Minister for the Environment have agreed to exclude from the application of this section.

5.17 Resolution of certain disputes

- (1) If a dispute arises as to the failure of the Minister for the Environment to consent to a development proposal of a public authority under section 5.16 (Proposals by public authorities affecting biodiversity stewardship sites), or as to the conditions of any consent granted or proposed to be granted under that section by the Minister for the Environment, a party to the dispute may submit that dispute to the Premier for settlement.
- (2) On the submission of a dispute to the Premier, the Premier may:
 - (a) appoint a Commissioner of Inquiry to hold an inquiry and make a report to the Premier, or
 - (b) hold an inquiry into the dispute.
- (3) After the completion of the inquiry, and after considering any report, the Premier may make such order with respect to the dispute, having regard to the public interest and to the circumstances of the case, as the Premier thinks fit.
- (4) An order made by the Premier may direct the payment of any costs or expenses of or incidental to the holding of the inquiry.
- (5) A Minister or public authority is to comply with an order given under this section and is, despite the provisions of any Act, taken to be empowered to comply with any such order.

5.18 Prospecting and mining on biodiversity stewardship sites

- (1) The Minister for the Environment may, by order published in the Gazette, vary or terminate a biodiversity stewardship agreement without the consent of the owner of the biodiversity stewardship site if a mining or petroleum authority is or has been

granted in respect of the site and the Minister for the Environment is of the opinion that the activity authorised by the mining or petroleum authority:

- (a) will adversely affect any management actions that may be carried out on the land under the biodiversity stewardship agreement, or
 - (b) will adversely affect the biodiversity values protected by the biodiversity stewardship agreement.
- (2) If the Minister for the Environment varies or terminates the biodiversity stewardship agreement under this section, the Minister may, by order in writing to the holder of the mining or petroleum authority, direct the holder to retire biodiversity credits of a number and class (if any) specified by the Minister within a time specified in the order.
- Note.** Division 6 of Part 6 enables a person who is required under this section to retire biodiversity credits to make a payment instead to the Biodiversity Conservation Fund of the value of the credits in accordance with the offsets payments calculator.
- (3) A direction may be given to a person under subsection (2) only if biodiversity credits have already been created in respect of management actions that were carried out or proposed to be carried out on the biodiversity stewardship site and have been transferred to any person.
 - (4) The maximum number of biodiversity credits that the holder of the mining or petroleum authority may be required to retire under the direction is the number of biodiversity credits that have been created in respect of the biodiversity stewardship site.
 - (5) A person must not, without reasonable excuse, fail to comply with a direction under subsection (2).
Maximum penalty: Tier 1 penalty.
 - (6) It is not an excuse for a failure to comply with a direction under this section that the person who is the subject of the direction does not, at the time the direction is given, hold a sufficient number of biodiversity credits to comply with the direction.
 - (7) A court that finds a person guilty of an offence under subsection (5) may, in addition to or in substitution for any pecuniary penalty for the offence, by order direct the person to retire, in accordance with this Act, biodiversity credits of a specified number and class (if applicable) within a time specified in the order.
 - (8) The owner of a biodiversity stewardship site is not entitled to any compensation from the Minister for the Environment as a result of the variation or termination of an agreement under this section.
 - (9) The regulations may make provision for the reimbursement of the owner of the biodiversity stewardship site or the Minister for the Environment by the holder of the mining or petroleum authority for the costs incurred by the owner or Minister in establishing the site.
 - (10) Subsection (8) does not affect any right to compensation the owner may have under the *Mining Act 1992*, the *Petroleum (Onshore) Act 1991* or any other legislation in respect of the grant of the mining or petroleum authority.

5.19 Activities authorised by mining or petroleum authorities not affected by biodiversity stewardship agreement

Nothing in this Division:

- (a) prevents the grant of a mining or petroleum authority in respect of a biodiversity stewardship site in accordance with the *Mining Act 1992* or the *Petroleum (Onshore) Act 1991*, or

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

Note. For provisions relating to the enforcement of biodiversity stewardship agreements:

- (a) see section 13.14 for civil enforcement by any person to remedy or restrain breach, and
- (b) see section 11.26 for order of Minister to remedy breach, and
- (c) see section 11.25 for direction to retire biodiversity credits.

Division 3 Conservation agreements

5.20 Biodiversity Conservation Trust may enter into conservation agreements

- (1) The Biodiversity Conservation Trust may enter into an agreement relating to land with the owner of the land for the purpose of conserving or studying the biodiversity values of the land (a *conservation agreement*).
- (2) Land may be subject to a single conservation agreement even if the land consists of separate parcels of land and whether or not the parcels are adjacent (but only if the land is owned by the same person or persons at the time the agreement is entered into).
- (3) Land that comprises only part of one or more parcels of land may be subject to a conservation agreement.

5.21 General provisions relating to conservation agreements

- (1) The Biodiversity Conservation Trust is not to enter into a conservation agreement relating to land unless:
 - (a) all the owners of the land are parties to the agreement or have consented in writing to the agreement, and
 - (b) where the land (not being Crown land) is subject to a residential tenancy agreement or other lease, the tenant or the lessee has consented in writing to the conservation agreement, and
 - (c) where the land is subject to a mortgage or charge, the mortgagee or chargee has consented in writing to the agreement, and
 - (d) where the land is subject to a covenant, the Trust has consulted with the person entitled to the benefit of the covenant about the terms of the agreement, and
 - (e) where the land is owned by a Local Aboriginal Land Council, the New South Wales Aboriginal Land Council has consented in writing to the agreement.
- (2) The Biodiversity Conservation Trust may enter into a conservation agreement relating to land that is Crown lands or lands of the Crown with a public authority that owns or has the control and management of the land. If the land is controlled or managed by a Public Service agency, the agreement requires the consent of a Minister to whom the agency is responsible.
- (3) If a conservation agreement is entered into under subsection (2) by a public authority that is not the owner of the land concerned:
 - (a) the agreement is taken to have been entered into on behalf of the owner of the land, and
 - (b) a reference in this Division to the owner of the land (however expressed) includes, while a public authority has the control and management of the land, a reference to the public authority that has that control and management.

- (4) The Biodiversity Conservation Trust is not to enter into a conservation agreement relating to Crown-timber lands within the meaning of the *Forestry Act 2012* except with the consent of the Minister administering that Act.
- (5) The Biodiversity Conservation Trust is not to enter into a conservation agreement for Crown land except with the consent of the Minister administering the *Crown Lands Act 1989*.

5.22 Content of conservation agreements

- (1) A conservation agreement may contain any of the following terms, binding on the owner from time to time of the land to which it applies:
 - (a) restricting the use of the land,
 - (b) requiring the owner to refrain from or not to permit specified activities on the land,
 - (c) requiring the owner to carry out specified activities or do specified things,
 - (d) requiring the owner to permit access to the land by specified persons,
 - (e) requiring the owner to contribute towards costs incurred which relate to the land or the agreement,
 - (f) specifying the manner in which any money provided to the owner under the agreement is to be applied by the owner,
 - (g) requiring the owner to repay money paid to the owner under the agreement if a specified breach of the agreement occurs,
 - (h) providing for any other matter relating to the conservation or enhancement of the land.
- (2) A conservation agreement may contain terms, binding on the Biodiversity Conservation Trust:
 - (a) requiring the Trust to provide financial assistance, technical advice or other assistance, or
 - (b) requiring the Trust to carry out specified activities or do specified things, or
 - (c) providing for any other matter relating to the conservation or enhancement of the land.

5.23 Duration and variation of conservation agreements

- (1) A conservation agreement has effect from a day, or on the happening of an event, specified in the agreement.
- (2) A conservation agreement may be varied by a subsequent agreement between the Biodiversity Conservation Trust and all the owners of the land at the time of the variation.
- (3) A conservation agreement has effect in perpetuity unless it is terminated by consent of all the owners of the land at the time of the termination or in any such other manner or in such circumstances as may be set out in the agreement.
- (4) A conservation agreement may be varied or terminated by the Biodiversity Conservation Trust, by order published in the Gazette, without the consent of the owners of the land, if the Trust is of the opinion that the land is no longer needed for, or is no longer capable of being used to achieve, any purpose for which the agreement was entered into.

- (5) The Biodiversity Conservation Trust is not to vary or terminate a conservation agreement without the consent of the owners of the land unless:
 - (a) written notice of the Trust's intention to vary or terminate the agreement has been given to the owners of the land stating that the owners may make submissions to the Trust within the period specified in the notice (being a period of not less than 28 days), and
 - (b) the Trust has considered any submissions made by the owners of the land within that specified period.
- (6) If a conservation agreement is varied by the Biodiversity Conservation Trust without the consent of the owners of the land at the time of the variation, the owners may, by written notice given to the Trust, terminate the agreement.
- (7) The Minister for the Environment may direct the Biodiversity Conservation Trust to terminate a conservation agreement if a mining or petroleum authority is granted in respect of the land and the Minister for the Environment is of the opinion that the activity authorised by the mining or petroleum authority:
 - (a) will adversely affect any management actions that may be carried out on the land under the agreement, or
 - (b) will adversely affect the biodiversity values protected by the agreement.The Trust is required to comply with the Minister's direction.
- (8) The owners of land subject to a conservation agreement are not entitled to any compensation from the Minister for the Environment or the Biodiversity Conservation Trust as a result of any variation or termination of the agreement by the Biodiversity Conservation Trust without the consent of the owners.
- (9) The regulations may make provision for the reimbursement of the owner of the land or the Biodiversity Conservation Trust by the holder of the mining or petroleum authority for the costs incurred by the owner or Trust in establishing the agreement. The regulations may also make provision for the reimbursement of the Trust by the owner of the land for money paid to the owner under the agreement.
- (10) Subsection (8) does not affect any right to compensation the owner may have under the *Mining Act 1992*, the *Petroleum (Onshore) Act 1991* or any other legislation in respect of the grant of the mining or petroleum authority.

5.24 Conservation agreements may be registered and run with land

Sections 5.12 and 5.13 apply to conservation agreements in the same way as they apply to biodiversity stewardship agreements.

Division 4 Wildlife refuge agreements

5.25 Biodiversity Conservation Trust may enter into wildlife refuge agreements

- (1) The Biodiversity Conservation Trust may enter into an agreement relating to land with the owner of the land for the purpose of conserving or studying the biodiversity values of the land (a *wildlife refuge agreement*).
- (2) Land may be subject to a single wildlife refuge agreement even if the land consists of separate parcels of land and whether or not the parcels are adjacent (but only if the land is owned by the same person or persons at the time the agreement is entered into).

- (3) Land that comprises only part of one or more parcels of land may be subject to a wildlife refuge agreement.

Note. Unlike a conservation agreement that is in force in perpetuity, the land subject to a wildlife refuge agreement is not subject to an exemption from the payment of land tax or local council rates.

5.26 General provisions relating to wildlife refuge agreements

- (1) The Biodiversity Conservation Trust is not to enter into a wildlife refuge agreement relating to land unless:
- (a) all the owners of the land are parties to the agreement or have consented in writing to the agreement, and
 - (b) where the land (not being Crown land) is subject to a residential tenancy agreement or other lease, the tenant or the lessee has consented in writing to the wildlife refuge agreement, and
 - (c) where the land is subject to a mortgage or charge, the mortgagee or chargee has consented in writing to the agreement, and
 - (d) where the land is subject to a covenant, the Trust has consulted with the person entitled to the benefit of the covenant about the terms of the agreement, and
 - (e) where the land is owned by a Local Aboriginal Land Council, the New South Wales Aboriginal Land Council has consented in writing to the agreement.
- (2) The Biodiversity Conservation Trust may enter into a wildlife refuge agreement relating to land that is Crown lands or lands of the Crown with a public authority that owns or has the control and management of the land. If the land is controlled or managed by a Public Service agency, the agreement requires the consent of a Minister to whom the agency is responsible.
- (3) If a wildlife refuge agreement is entered into under subsection (2) by a public authority that is not the owner of the land concerned:
- (a) the agreement is taken to have been entered into on behalf of the owner of the land, and
 - (b) a reference in this Division to the owner of the land (however expressed) includes, while a public authority has the control and management of the land, a reference to the public authority that has that control and management.
- (4) The Biodiversity Conservation Trust is not to enter into a wildlife refuge agreement relating to Crown-timber lands within the meaning of the *Forestry Act 2012* except with the consent of the Minister administering that Act.
- (5) The Biodiversity Conservation Trust is not to enter into a wildlife refuge agreement for Crown land except with the consent of the Minister administering the *Crown Lands Act 1989*.

5.27 Content of wildlife refuge agreements

- (1) A wildlife refuge agreement may contain any of the following terms, binding on the owner from time to time of the land to which it applies:
- (a) restricting the use of the land,
 - (b) requiring the owner to refrain from or not to permit specified activities on the land,
 - (c) requiring the owner to carry out specified activities or do specified things,
 - (d) requiring the owner to permit access to the land by specified persons,
 - (e) requiring the owner to contribute towards costs incurred which relate to the land or the agreement,

- (f) specifying the manner in which any money provided to the owner under the agreement is to be applied by the owner,
 - (g) requiring the owner to repay money paid to the owner under the agreement if a specified breach of the agreement occurs,
 - (h) providing for any other matter relating to the conservation or enhancement of the land.
- (2) A wildlife refuge agreement may contain terms, binding on the Biodiversity Conservation Trust:
- (a) requiring the Trust to provide financial assistance, technical advice or other assistance, or
 - (b) requiring the Trust to carry out specified activities or do specified things, or
 - (c) providing for any other matter relating to the conservation or enhancement of the land.

5.28 Duration and variation of wildlife refuge agreements

- (1) A wildlife refuge agreement has effect from a day, or on the happening of an event, specified in the agreement.
- (2) A wildlife refuge agreement may be varied by a subsequent agreement between the Biodiversity Conservation Trust and all the owners of the land at the time of the variation.
- (3) A wildlife refuge agreement has effect until it is terminated:
 - (a) by subsequent agreement between the Biodiversity Conservation Trust and all the owners of the land at the time of the termination, or
 - (b) subject to the terms of the agreement, by the Trust by notice in writing served on all those owners or by any of those owners by notice in writing served on the Trust.
- (4) The Minister for the Environment may direct the Biodiversity Conservation Trust to terminate a wildlife refuge agreement if a mining or petroleum authority is granted in respect of the land and the Minister for the Environment is of the opinion that the activity authorised by the mining or petroleum authority:
 - (a) will adversely affect any management actions that may be carried out on the land under the agreement, or
 - (b) will adversely affect the biodiversity values protected by the agreement.The Trust is required to comply with the Minister's direction.
- (5) The owners of land subject to a wildlife refuge agreement are not entitled to any compensation from the Minister for the Environment or the Biodiversity Conservation Trust as a result of the termination of the agreement.
- (6) Subsection (5) does not affect any right to compensation the owner may have under the *Mining Act 1992*, the *Petroleum (Onshore) Act 1991* or any other legislation in respect of the grant of the mining or petroleum authority.

5.29 Wildlife refuge agreements may be registered and run with land

Sections 5.12 and 5.13 apply to wildlife refuge agreements in the same way as they apply to biodiversity stewardship agreements.

Part 6 Biodiversity offsets scheme

Division 1 General scheme provisions

6.1 Definitions: Part 6

In this Part:

deferred credit retirement arrangement—see section 6.28.

Fund Manager means the Biodiversity Conservation Trust (or other public authority, body or person) appointed under Division 7 as Fund Manager in respect of the Biodiversity Stewardship Payments Fund.

holder of a biodiversity credit means a person for the time being recorded as the holder of that credit in the register of biodiversity credits under Part 9.

planning approval means a development consent under Part 4 of the *Environmental Planning and Assessment Act 1979* (other than a complying development certificate) or a State infrastructure approval under Part 5.1 of that Act.

restorative action means any rehabilitation or restoration action to improve biodiversity values taken on the site of any development or clearing after it has been substantially completed.

vegetation clearing approval means an approval under Division 6 (Approval for clearing native vegetation not otherwise authorised) of Part 5A of the *Local Land Services Act 2013* for the clearing of native vegetation on regulated rural areas of the State.

6.2 Biodiversity offsets scheme

The biodiversity offsets scheme under this Act and related legislation has the following key elements:

- (a) The establishment of biodiversity stewardship sites on land by means of biodiversity stewardship agreements entered into between the Minister for the Environment and the owners of the land concerned. Management actions will be required to be carried out on the sites by the owners under those agreements and will be funded from the Biodiversity Stewardship Payments Fund.
- (b) The creation of biodiversity credits in respect of those management actions to be held initially by the owners of those sites following a report by an accredited person on the biodiversity value of those management actions.
- (c) A system for those biodiversity credits to be traded so that they can be purchased by developers or other persons who have an obligation to retire biodiversity credits under the scheme. When those credits are first transferred (or retired by the owners of the sites without being first transferred), the Biodiversity Stewardship Fund is to be reimbursed for the payments made or to be made in future to fund the required management actions on the site that enabled the creation of those credits.
- (d) In relation to proposed development above a threshold prescribed by the regulations under this Act or proposed clearing of native vegetation not authorised without approval—biodiversity assessment and reports by accredited persons about the biodiversity values of the land concerned and the impacts on those values of the proposed development or clearing, and of the biodiversity conservation measures (including the retirement of biodiversity credits) required to offset the residual impact on biodiversity values after action that is required to be taken to avoid or minimise the impact. Those biodiversity assessment reports are to be taken into consideration in the determination under relevant legislation of the grant of (and biodiversity

conservations actions required under) planning approvals for the proposed development or vegetation clearing approvals for the proposed clearing.

- (e) In relation to future development in an area—biodiversity assessment and reports by accredited persons about the area at landscape level and biodiversity certification of that part of the area where future development may be carried out without further biodiversity impact assessment. The impact on biodiversity values of that future development is to be offset by the retirement of biodiversity credits or other conservation measures in connection with the remainder of the area or other areas (or both).
- (f) As an alternative to any requirement under the scheme to retire biodiversity credits—the payment into the Biodiversity Conservation Fund of an amount equivalent to the cost of acquiring those credits determined in accordance with an offsets payment calculator. The Biodiversity Conservation Trust will be under an obligation to later secure biodiversity offsets from the money paid into the Fund.
- (g) The establishment of a biodiversity assessment method for use by accredited persons in biodiversity assessments and reports under the scheme.
- (h) The determination in accordance with the regulations under this Act of serious and irreversible impacts on biodiversity values. The determination of such an impact by the relevant decision-maker will prevent the grant of planning approval for proposed development (except for State significant development or infrastructure) or vegetation clearing approval for proposed clearing. The determination will be required to be taken into consideration in the case of State significant development or infrastructure or in the case of proposals for the biodiversity certification of land.

6.3 Biodiversity impacts to which biodiversity offsets scheme applies

- (1) The biodiversity impacts that are to be assessed under the biodiversity offsets scheme are the following impacts on biodiversity values:
 - (a) the impacts of the clearing of native vegetation,
 - (b) the impacts of action that are prescribed by the regulations.
- (2) The impacts of action that may be prescribed by the regulations for assessment under the biodiversity offsets scheme do not include:
 - (a) pollution (within the meaning of the *Protection of the Environment Operations Act 1997*), or
 - (b) biosecurity impacts (within the meaning of the *Biosecurity Act 2015*), or
 - (c) indirect impacts, such as impacts on biodiversity values arising from global warming, or
 - (d) impacts on the likelihood, severity or effect of bushfires.

Consultation note. The impacts of actions that could be prescribed by the regulations include Wind Turbine strikes on native animals. Impacts on biodiversity values arising from all forms of pollution are regulated by the EPA or from biosecurity risks are regulated by DPI or from bushfires are the responsibility of the Rural Fires Service (and also subject to the assessment and approval processes of the Planning Act).

6.4 Biodiversity conservation offsets under scheme

- (1) For the purposes of the biodiversity offsets scheme, the biodiversity conservation measures to offset or compensate for impacts on biodiversity values after the steps taken to avoid or minimise those impacts are as follows:
 - (a) the retirement of biodiversity credits,

- (b) other actions that benefit the biodiversity values of the impacted land or other land.
- (2) The regulations may make provision with respect to the following (*offset rules*):
 - (a) the class of biodiversity credits to be retired,
 - (b) the other actions that qualify or do not qualify as biodiversity conservation measures,
 - (c) the circumstances in which biodiversity conservation measures may include a combination of the retirement of biodiversity credits and other actions.
- (3) The other actions that benefit the biodiversity values of land include:
 - (a) actions to conserve or enhance biodiversity (including threatened species and ecological communities), and
 - (b) actions for the purposes of research or education in relation to biodiversity, and
 - (c) actions under the Biodiversity Conservation Program under Part 4 or other government program or policy for the conservation or enhancement of biodiversity.

Consultation note. The offset rules to be prescribed by the regulations will generally require offsets to be “like for like”. However the rules will also outline the process for varying “like for like” requirements and for allowing the use of biodiversity conservation actions relating to threatened species and ecological communities in particular circumstances (such as captive breeding, animal translocation, the control of feral herbivores or the eradication or suppression of pests, weeds or predators).

6.5 Serious and irreversible impacts on biodiversity values

The regulations may make provision for or with respect to the determination of serious and irreversible impacts on biodiversity values for the purposes of the biodiversity offsets scheme.

Note. For proposed development—see section 7.11; for proposed clearing only—see section 60BB of the *Local Land Services Act 2013*; for proposed biodiversity certification—see section 8.8.

6.6 Minister, Agency Head, Trust and other public authorities may participate in biodiversity offsets scheme

The Minister for the Environment, the Environment Agency Head, the Biodiversity Conservation Trust and other public authorities may participate in the biodiversity offsets scheme, including by purchasing, holding, transferring and retiring biodiversity credits.

Division 2 Biodiversity assessment method

6.7 Minister may establish biodiversity assessment method

- (1) The Minister for the Environment is to establish a biodiversity assessment method in connection with the biodiversity offsets scheme.
- (2) The Minister for the Environment is to have regard to the purpose and objects of this Act when establishing the biodiversity assessment method.
- (3) The biodiversity assessment method is to be established by order of the Minister for the Environment published on the NSW legislation website.
- (4) The biodiversity assessment method may be amended or replaced by further order of the Minister for the Environment published on the NSW legislation website.

- (5) The Environment Agency Head is to make the biodiversity assessment method available on a government website maintained by the Agency Head.

Note. See Part 9 and section 6.9 (Review of biodiversity assessment method) for public consultation requirements in relation to the biodiversity assessment method.

6.8 Matters to be dealt with by the biodiversity assessment method

- (1) The biodiversity assessment method is to set out rules and guidelines with respect to the matters for which biodiversity assessment reports may be prepared under the biodiversity offsets scheme.
- (2) The regulations may set out the circumstances in which the ordinary rules under the biodiversity assessment method for the determination of the number and class of biodiversity credits required as biodiversity offsets may be varied.
- (3) The biodiversity assessment method may include provision for:
- (a) the adoption of datasets, maps and other information published from time to time by a specified person or body, and
 - (b) the use of specified computer programs and databases for the carrying out of assessments under the method.

6.9 Review of biodiversity assessment method

- (1) The Minister for the Environment is to review the biodiversity assessment method:
- (a) as soon as possible after the period of 5 years after the method is first established, and
 - (b) at least every 5 years thereafter, and
 - (c) at such other times as the Minister considers appropriate.
- (2) The Minister for the Environment is to undertake public consultation in connection with the review of the biodiversity assessment method and give the public an opportunity to make submissions in relation to the method.
- (3) The Minister for the Environment may, following a review under this section, amend or replace the biodiversity assessment method in accordance with this Act.
- (4) The regulations may make further provision for or with respect to the review of the biodiversity assessment method and the amendment or replacement of the method following a review.

6.10 Scheme for accreditation of persons who apply method

- (1) The Environment Agency Head is to prepare a scheme, in accordance with this section, for the accreditation by the Agency Head of persons as biodiversity assessors for the purposes of the application of the biodiversity assessment method.
- (2) The Minister for the Environment may, by order published on the NSW legislation website, adopt the scheme with or without any modifications the Minister considers appropriate.
- (3) The Minister for the Environment may, from time to time by similar order, amend or replace the scheme.
- Note.** Part 9 requires public consultation in relation to the preparation of the scheme.
- (4) A scheme for the accreditation of persons as biodiversity assessors may (without limitation) include the following:
- (a) the qualifications or experience required for persons to be accredited to apply the biodiversity assessment method,
 - (b) the accreditation of Public Service employees or other persons,

- (c) the procedure for applying for accreditation,
 - (d) the grant of accreditation and the conditions on which it is granted,
 - (e) the period accreditation remains in force,
 - (f) the renewal, variation, suspension or cancellation of accreditation,
 - (g) the payment of fees for applications for the grant or renewal of accreditation (including periodic fees while an accreditation remains in force),
 - (h) the provision of information by accredited assessors to the Environment Agency Head and other persons in relation to biodiversity assessment reports prepared by the assessors,
 - (i) the integrity of biodiversity assessment reports prepared by accredited assessors (including the audit of those reports and the establishment of protocols on the engagement of accredited assessors to ensure the independent exercise of their functions),
 - (j) the maximum amount that accredited assessors may charge for preparing biodiversity assessment reports at the request of any person,
 - (k) the information that an accredited assessor is required to obtain from a person requesting a biodiversity assessment report.
- (5) The regulations may make provision for or with respect to the contents of a scheme and giving effect to the scheme.

Division 3 Biodiversity assessment reports

6.11 Biodiversity stewardship site assessment report

For the purposes of the biodiversity offsets scheme, a *biodiversity stewardship site assessment report* is a report prepared by an accredited biodiversity assessor in relation to a proposed biodiversity stewardship agreement under Part 5 that:

- (a) assesses the biodiversity values of the proposed biodiversity stewardship site in accordance with the biodiversity assessment method, and
- (b) sets out the management actions proposed to be carried out on the proposed site, and
- (c) determines in accordance with the biodiversity assessment method the number and class of biodiversity credits that may be created in respect of those management actions.

6.12 Biodiversity development assessment report

For the purposes of the biodiversity offsets scheme, a *biodiversity development assessment report* is a report prepared by an accredited biodiversity assessor in relation to proposed development that would be authorised by a planning approval, or proposed clearing that would be authorised by a native vegetation clearing approval, that:

- (a) assesses in accordance with the biodiversity assessment method the biodiversity values of the land subject to the proposed development or clearing, and
- (b) assesses in accordance with that method the impact of proposed development or clearing on the biodiversity values of that land, and
- (c) sets out the measures that the proponent of the proposed development or clearing proposes to take to avoid or minimise the impact of the proposed development or clearing, and

- (d) determines in accordance with that method the number and class of biodiversity credits that are required to be retired to offset the residual impacts of the proposed development or clearing.

6.13 Biodiversity certification assessment report

For the purposes of the biodiversity offsets scheme, a *biodiversity certification assessment report* is a report prepared by an accredited biodiversity assessor in relation to the proposed biodiversity certification of land under Part 8 that:

- (a) assesses in accordance with the biodiversity assessment method the biodiversity values of the land proposed for biodiversity certification, and
- (b) assesses in accordance with that method the impacts of future development on the biodiversity values of the land proposed for biodiversity certification, and
- (c) that sets out proposed conservation measures on or in respect of other land (including the retirement of biodiversity credits) to avoid, minimise or offset those impacts on biodiversity values.

6.14 Modification or withdrawal of biodiversity assessment report

- (1) A biodiversity assessment report may be modified or withdrawn by the accredited biodiversity assessor who prepared the report:
 - (a) at the request of the person who obtained the report, or
 - (b) in the case of a biodiversity development assessment report—at the request of the person or body to whom the report was submitted in connection with the proposed development or clearing.
- (2) A biodiversity assessment report cannot be modified or withdrawn after a planning approval, a native vegetation clearing approval or biodiversity certification has been granted in reliance on the report.
- (3) A biodiversity assessment report may be prepared by an accredited biodiversity assessor even though a different report has been prepared by another assessor.

6.15 Lapsing of biodiversity assessment report

- (1) A biodiversity assessment report cannot be submitted with an application for planning approval, native vegetation clearing approval or biodiversity certification:
 - (a) after the end of the period of 2 years after it was prepared, or
 - (b) if it is extended by an accredited biodiversity assessor before the end of that 2-year period, after the end of that extended period.

The period cannot be extended for more than 2 years at any one time.

- (2) A biodiversity assessment report cannot be so submitted if it has been withdrawn.

6.16 Miscellaneous provisions applying to biodiversity assessment reports

- (1) The regulations may make provision for or with respect to the form and content of biodiversity assessment reports.
- (2) An accredited biodiversity assessor is to provide the Environment Agency Head (and such other persons as the regulations require) with a copy of any biodiversity development assessment report prepared by the assessor and submitted in connection with an application for planning approval or native vegetation clearing approval.

Division 4 Creation, transfer etc of biodiversity credits

6.17 Creation of biodiversity credits

- (1) Biodiversity credits are created by (and in accordance with) a biodiversity stewardship agreement when the agreement first takes effect or when an amendment of the agreement that increases the number of credits takes effect.
- (2) When a biodiversity credit is created, the Environment Agency Head must:
 - (a) register the creation of the credit (and its class) in the register of biodiversity credits under Part 9, and
 - (b) record the owner of the land as the holder of the credit.

A biodiversity credit has effect even if it has not been so registered.

6.18 Duration of biodiversity credit

A biodiversity credit remains in force unless it is cancelled or retired under this Act.

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

6.19 Transfers of biodiversity credits

- (1) The holder of a biodiversity credit that is in force may transfer the credit to any person, subject to this Act and the regulations.
- (2) A biodiversity credit cannot be transferred if it has been suspended by the Environment Agency Head and the suspension is in force.
- (3) The transfer of a biodiversity credit does not affect any requirement imposed on the owner of a biodiversity stewardship site under a biodiversity stewardship agreement. In particular, it does not affect any requirement that the owner carry out management actions in respect of the land in relation to which the credit was created.
- (4) The regulations may make further provision with respect to the transfer of biodiversity credits (including by prohibiting certain transfers of biodiversity credits).

6.20 Registration of transfer of biodiversity credit

- (1) The transfer of a biodiversity credit does not have effect until the transfer is registered by the Environment Agency Head in the register of biodiversity credits under Part 9.
- (2) An application for registration of a transfer of a biodiversity credit may be made to the Environment Agency Head by the parties to the transfer.
- (3) The application must:
 - (a) be made in a form approved by the Environment Agency Head and contain the information required by that approved form, and
 - (b) be accompanied by an application fee prescribed by the regulations.

The Environment Agency Head may require the applicant to provide such additional information as the Environment Agency Head may require to determine the application.

- (4) If an application for the transfer of a biodiversity credit is duly made, the Environment Agency Head must register the transfer unless authorised or required to refuse to register the transfer by or under this Act.
- (5) The Environment Agency Head must refuse to register a transfer of a biodiversity credit in respect of which an amount is required to be paid to the Biodiversity

Stewardship Payments Fund unless satisfied that the amount required to be paid to that Fund has been so paid.

- (6) If the Environment Agency Head refuses to register a transfer of a biodiversity credit in respect of which an amount has been paid to the Biodiversity Stewardship Payments Fund, the Environment Agency Head may direct the Fund Manager to repay that amount to the person who paid it, and the Fund Manager is authorised and required to comply with that direction.

6.21 Payment to Fund on first transfer of biodiversity credit or on retirement without first transfer

- (1) An amount, calculated as provided by this Act, is to be paid into the Biodiversity Stewardship Payments Fund before a first transfer of a biodiversity credit is registered.
- (2) If an application for registration of a first transfer is made in respect of all the biodiversity credits created in respect of a biodiversity stewardship site, the amount payable into the Fund before that transfer is registered is the total Fund deposit for the site.
- (3) If an application for registration of a first transfer is made in respect of a number of biodiversity credits that is less than the number of biodiversity credits created in respect of the biodiversity stewardship site, the amount payable into the Fund before that transfer is registered is (subject to this section) the relevant proportion of the total Fund deposit for the biodiversity stewardship site, or the proceeds of sale of the biodiversity credits, whichever amount is the greater.
- (4) Despite anything to the contrary in this Part, the payment of an amount into the Fund in respect of a first transfer of biodiversity credits is not to result in the total amount paid into the Fund in respect of all biodiversity credits created in respect of the biodiversity stewardship site exceeding the total Fund deposit for the site.
- (5) If a biodiversity credit is proposed to be retired without having been transferred by the owner of the biodiversity stewardship site, the amount that would have been payable under this section if the biodiversity credit had instead been transferred is to be paid into the Fund before the credit is retired.
- (6) The regulations may amend this section to vary the calculation of the amount to be paid into the Fund under this section or to provide for the deferral of the payment of the amount until a subsequent transfer of the biodiversity credit.
- (7) In this section:

proceeds of sale of a biodiversity credit, means the consideration (if any) for the transfer of the biodiversity credit.

relevant proportion of the total Fund deposit for a site, means the proportion that the number of biodiversity credits to be transferred bears to the number of biodiversity credits created in respect of the site.

total Fund deposit for a site, means an amount determined (subject to the regulations) by the Environment Agency Head as the present value of the total of all scheduled management payments in respect of the site (under the biodiversity stewardship agreement) during the life of the agreement. The present value is to be determined by applying the discount rate determined and published by the Environment Agency Head from time to time.

6.22 Other transactions relating to biodiversity credits

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

6.23 Grounds for cancellation of biodiversity credit

- (1) The Environment Agency Head may cancel a biodiversity credit that is in force, or that has been suspended under this Part:
 - (a) if the Environment Agency Head is of the opinion that any management action in respect of which the biodiversity credit was created has not been, or is not being, carried out in accordance with the biodiversity stewardship agreement, or
 - (b) if the credit was created in error, or
 - (c) if the holder of the credit has requested or agreed to the cancellation, or
 - (d) if authorised to do so by any other provision of this Act or the regulations.
- (2) Without limiting subsection (1), if the Minister for the Environment varies or terminates a biodiversity stewardship agreement because of activities authorised by a mining or petroleum authority granted in respect of a biodiversity stewardship site, the Environment Agency Head may cancel any biodiversity credits created in respect of the biodiversity stewardship site that have not been transferred by the biodiversity stewardship site owner.
- (3) The Environment Agency Head must not cancel a biodiversity credit unless before doing so the Environment Agency Head:
 - (a) gives notice to the holder of the credit that he or she intends to do so, and
 - (b) specifies in that notice the reasons for his or her intention to do so, and
 - (c) gives the holder of the credit a reasonable opportunity to make submissions in relation to the proposed cancellation, and
 - (d) takes into consideration any such submissions by the holder of the credit.
- (4) The Environment Agency Head is not to cancel a biodiversity credit if the Environment Agency Head is satisfied that the holder of the credit is a bona fide purchaser of the credit without notice of the circumstances that are grounds for the cancellation of the credit.

Note. However, the Minister for the Environment may require a wrongdoer to retire a specified number or class of credits under section 11.25.
- (5) Subsections (3) and (4) do not apply if the holder of a biodiversity credit has requested or agreed to the cancellation of the credit.

6.24 General provisions relating to cancellation of biodiversity credits

- (1) The Environment Agency Head cancels a biodiversity credit by making a recording in the register of biodiversity credits under Part 9, in relation to the biodiversity credit concerned, that indicates that the credit is cancelled.
- (2) The Environment Agency Head must give the holder of the credit notice in writing of the cancellation.
- (3) No compensation is payable for the cancellation of a biodiversity credit.
- (4) However, if a biodiversity credit is cancelled because of activities authorised by a mining or petroleum authority granted in respect of a biodiversity stewardship site, the reasonable costs incurred by the biodiversity stewardship site owner in carrying out, before the cancellation, the management actions in respect of which the biodiversity credits were created are taken, for the purposes of the *Mining Act 1992* or the *Petroleum (Onshore) Act 1991*, to be a loss caused by deprivation of the possession or of the use of the surface of the land concerned as a result of the exercise of the rights conferred by the mining or petroleum authority.

- (5) If a biodiversity credit is cancelled, the Minister for the Environment may vary or terminate the relevant biodiversity stewardship agreement (with or without the consent of the owner of the biodiversity stewardship site) to make it clear that any obligation to carry out a management action that arises only because of the creation of that credit ceases to have effect.
- (6) If the variation or termination of the agreement is made without the consent of the owner, the variation or termination is to be made by the Minister for the Environment by order published in the Gazette.
- (7) The cancellation of a biodiversity credit does not prevent the Minister for the Environment seeking an award of damages against the owner of a biodiversity stewardship site for a breach of the biodiversity stewardship agreement or taking civil enforcement action in respect of the breach under Division 2 of Part 13.

6.25 Suspension of biodiversity credit

- (1) If the Environment Agency Head considers that there may be reasons for cancelling a biodiversity credit, the Environment Agency Head may suspend the biodiversity credit for a period of up to 2 months pending an investigation into the matter.
- (2) The Environment Agency Head suspends a biodiversity credit by making a recording in the register of biodiversity credits under Part 9, in relation to the biodiversity credit concerned, that indicates that the credit is suspended.
- (3) The Environment Agency Head must give the holder of the credit notice in writing of the suspension.
- (4) No compensation is payable for the suspension of a biodiversity credit.

6.26 Appeals to Land and Environment Court

- (1) The holder of a biodiversity credit who is dissatisfied with a decision of the Environment Agency Head to cancel the biodiversity credit may, within 3 months after being notified of the decision by the Agency Head, appeal to the Land and Environment Court against the decision.
- (2) A person who applies for the registration of a transfer of a biodiversity credit and who is dissatisfied with a decision of the Environment Agency Head to refuse to register the transfer may, within 3 months after being notified of the decision by the Agency Head, appeal to the Land and Environment Court against the decision, but only in the circumstances (if any) authorised by the regulations.
- (3) A person who applies for the transfer to the person of a biodiversity credit held by the Minister for the Environment pursuant to a deferred credit retirement arrangement and who is dissatisfied with a decision of the Environment Agency Head in respect of the application may, within 3 months after being notified of the decision by the Agency Head, appeal to the Land and Environment Court against the decision.
- (4) A person who held biodiversity credits immediately before they were transferred to the Minister for the Environment pursuant to a deferred credit retirement arrangement and who is dissatisfied with a decision of the Environment Agency Head to retire those credits (other than a decision made as a result of an application referred to in subsection (3)) may, within 3 months after being notified of the decision by the Agency Head, appeal to the Land and Environment Court against the decision.

Division 5 Retirement of biodiversity credits

6.27 Retirement of biodiversity credits

- (1) The holder of a biodiversity credit that is in force may, by application in writing to the Environment Agency Head, retire the credit.
- (2) An application to retire a biodiversity credit may be made by the holder of the credit:
 - (a) for the purpose of complying with a requirement to retire biodiversity credits of a planning approval or a vegetation clearing approval, or
 - (b) for the purpose of complying with a requirement to retire biodiversity credits of a planning agreement under section 93F of the *Environmental Planning and Assessment Act 1979*, or
 - (c) for the purpose of complying with a requirement to retire biodiversity credits of a biodiversity certification of land, or
 - (d) for the purpose of complying with a requirement to retire biodiversity credits of the Minister for the Environment under section 11.25 or other provision of this Act, or
 - (e) for the purpose of complying with an order of a court, or
 - (f) on a voluntary basis, or
 - (g) in any other circumstances authorised by this Act or the regulations.
- (3) An application to retire a biodiversity credit must:
 - (a) be made in the form approved by the Environment Agency Head and contain the information required by that form, and
 - (b) be accompanied by the fee prescribed by the regulations.

The Environment Agency Head may require the applicant to provide such additional information as the Environment Agency Head may require to determine the application.
- (4) The Environment Agency Head may refuse an application to retire a biodiversity credit if:
 - (a) the application has not been duly made, or
 - (b) the Environment Agency Head is satisfied that an obligation to undertake management actions under the biodiversity stewardship agreement that enabled the creation of the credit has not been complied with (but only if the credit is sought to be retired without being first transferred), or
 - (c) any payment required to be made to the Biodiversity Stewardship Payments Fund under section 6.21 (Payment to Fund on first transfer of biodiversity credit or on retirement without first transfer) in relation to the biodiversity credit has not been made, or
 - (d) any payment required to be made to the Minister for the Environment under this Part in relation to the biodiversity credit for cost recovery in relation to administration of the biodiversity offsets scheme has not been made, or
 - (e) the application is made in purported compliance with a requirement to retire biodiversity credits under this or any other Act, but does not comply with that requirement, or
 - (f) the regulations authorise the Environment Agency Head to refuse the application.
- (5) The Environment Agency Head must give the holder of the biodiversity credit notice in writing of the retirement of the credit.

- (6) The Environment Agency Head retires a biodiversity credit by making a recording in the entry relating to the credit in the register of biodiversity credits under Part 9 to indicate that the credit has been retired.
- (7) The retirement of a biodiversity credit does not affect any requirement imposed on the owner of a biodiversity stewardship site under a biodiversity stewardship agreement. In particular, it does not affect any requirement that the owner carry out management actions in respect of the land in relation to which the credit was created.
- (8) A biodiversity credit that has been suspended by the Environment Agency Head may not be retired during any period in which the suspension has effect.

6.28 Deferred credit retirement arrangements

- (1) With the approval of the Environment Agency Head, a requirement to retire biodiversity credits under this or any other Act in relation to proposed development or clearing may be subject to an arrangement (a *deferred credit retirement arrangement*) under which:
 - (a) the requirement to retire some or all of the biodiversity credits is deferred pending the completion of restorative actions that will be taken to restore or improve the biodiversity values affected by the development or clearing, and
 - (b) the biodiversity credits whose retirement is deferred pending the completion of those restorative actions are required to be transferred to the Environment Agency Head.
- (2) Subject to this Act, the Environment Agency Head is to hold any such biodiversity credits under a deferred credit retirement arrangement pending completion of the relevant restorative actions and is not permitted to transfer, retire or otherwise deal with the biodiversity credits.
- (3) The biodiversity assessment method may make provision with respect to deferred credit retirement arrangements, including:
 - (a) the types of restorative actions in respect of which deferred credit retirement arrangements are available, and
 - (b) the number and class of biodiversity credits that may be transferred back to a former holder of biodiversity credits (or to any person who acquires the rights of a former holder to apply for such a transfer) on completion of those actions.
- (4) The provisions of this Act relating to the cancellation or suspension of biodiversity credits, and the payment of contributions towards the administration of the biodiversity offsets scheme, apply in respect of a biodiversity credit transferred to the Environment Agency Head under a deferred credit retirement arrangement as if a reference to the holder of the biodiversity credit were a reference to the former holder of the biodiversity credits.
- (5) A former holder of a biodiversity credit may, on the completion of any restorative actions the subject of a deferred credit retirement arrangement, apply to the Environment Agency Head (subject to and in accordance with the regulations) for the transfer to the former holder of any biodiversity credits held by the Agency Head under that arrangement.
- (6) The Environment Agency Head:
 - (a) is to transfer to the former holder of biodiversity credits those biodiversity credits required under the deferred credit retirement arrangement to be so transferred, and
 - (b) may retire any remaining biodiversity credits held by the Agency Head under the deferred credit retirement arrangement after giving at least 28 days notice of the proposed retirement to the former holder of the biodiversity credits.

- (7) If a deferred credit retirement arrangement provides for a period at the end of which the retirement arrangement ceases to have effect, the Environment Agency Head may, at the end of that period, retire any biodiversity credits transferred to and held by the Agency Head under the arrangement after giving at least 28 days notice of the proposed retirement to the former holder of the biodiversity credits.
- (8) In this section, a **former holder** of a biodiversity credit means:
 - (a) the person who held the biodiversity credit immediately before the biodiversity credit was transferred to the Environment Agency Head under a deferred credit retirement arrangement, or
 - (b) a person who acquires the rights of that person to apply for a transfer under this section in respect of the biodiversity credit.

6.29 Minister may require retirement of credits if not retired in accordance with credit retirement requirement

- (1) The Minister for the Environment may, by order in writing to a person, direct the person to retire biodiversity credits of a specified number and class (if applicable) within a time specified in the order if:
 - (a) the person is subject to a requirement to retire biodiversity credits under this or any other Act (including under an agreement), and
 - (b) the biodiversity credits have not been retired in accordance with that requirement.
- (2) A person must not, without reasonable excuse, fail to comply with a direction under this section.
Maximum penalty: Tier 1 penalty.
- (3) It is not an excuse for a failure to comply with a direction under this section that the person who is the subject of the direction does not, at the time the direction is given, hold a sufficient number of biodiversity credits to comply with the direction.
Note. If the person who is the subject of the direction does not hold a sufficient number of credits to comply with the direction, the person may obtain the required number by purchasing them or may instead, if authorised to do so under Division 6, pay an amount equivalent to the cost of those credits to the Biodiversity Conservation Fund.
- (4) A court that finds a person guilty of an offence under this section may order the person to comply with the direction under this section, in addition to or in substitution for any penalty for the offence.
- (5) This section does not affect the liability of a person under the *Environmental Planning and Assessment Act 1979* for a contravention of a planning approval for failing to comply with a condition of the approval to retire biodiversity credits.

Division 6 Payment into Biodiversity Conservation Fund as alternative to retirement of biodiversity credits

6.30 Payment as alternative to retirement of biodiversity credits

- (1) A person who has an obligation under this or any other Act to retire biodiversity credits may satisfy that obligation by instead paying an amount into the Biodiversity Conservation Fund determined in accordance with the offsets payment calculator established under this Division.
- (2) If that amount is paid into the Fund, the obligation under this Act to retire biodiversity credits is satisfied.

6.31 Corresponding obligation to secure required biodiversity offsets

- (1) The Biodiversity Conservation Trust is to apply the amount paid into the Biodiversity Conservation Fund under this Division towards securing biodiversity offsets determined in accordance with the regulations in substitution for the relevant number and class of biodiversity credits otherwise required to be retired.
- (2) Those biodiversity offsets include:
 - (a) the acquisition and retirement of biodiversity credits, and
 - (b) payment for other biodiversity conservation measures or actions that may be required under this Act as an alternative or in addition to the retirement of biodiversity credits.

6.32 Calculation of amount payable as alternative to retiring credits

- (1) The Minister for the Environment is to establish an offsets payment calculator for the purpose of determining the amount that may be paid into the Biodiversity Conservation Fund under this Division.
- (2) The calculator is to be established by order published on the NSW legislation website and may be varied or replaced from time to time by similar order.
- (3) The calculator may include provision for:
 - (a) the adoption of datasets and other information or rules published from time to time by the Biodiversity Conservation Trust or other specified person or body, and
 - (b) the use of specified computer programs and databases for determining the amount to be paid by the application of the calculator.
- (4) The regulations may make provision for or with respect to the updating of datasets and other information adopted by the calculator (including with respect to the scheduling of updates).

6.33 Trust may verify payment

- (1) The Biodiversity Conservation Trust may issue a statement confirming that the required amount has been paid into the Biodiversity Conservation Fund under this Division to satisfy an obligation to retire biodiversity credits.
- (2) The statement may be issued at the request of the person who imposed the requirement to retire the biodiversity credits or in any other circumstances the Biodiversity Conservation Trust considers appropriate.

Division 7 Biodiversity Stewardship Payments Fund

6.34 Biodiversity Stewardship Payments Fund

- (1) There is to be established by this Act a fund called the “Biodiversity Stewardship Payments Fund”.
- (2) The following amounts are to be paid into the Fund, subject to any requirements specified in the regulations:
 - (a) amounts required to be paid into the Fund in respect of the transfer or retirement of a biodiversity credit (other than amounts paid under Division 6 as an alternative to the retirement of biodiversity credits),
 - (b) any amount paid out of the Fund to the owner of a biodiversity stewardship site that is repaid by or recovered from the owner,
 - (c) the proceeds of investment of money in the Fund,

- (d) any other money appropriated by Parliament for the purposes of the Fund or required by this or any other Act or law to be paid into the Fund,
 - (e) any amounts standing to the credit of the Biobanking Trust Fund on the repeal of the *Threatened Species Conservation Act 1995* by this Act.
- (3) The following may be paid out of the Fund, subject to any requirements specified in the regulations:
- (a) such amounts as the Minister for the Environment directs to be paid from the Fund to an owner of a biodiversity stewardship site in respect of management actions carried out or to be carried out in accordance with a biodiversity stewardship agreement,
 - (b) such amounts as the Minister for the Environment directs to be paid from the Fund to the Fund Manager, in payment of the remuneration of the Fund Manager,
 - (c) any amounts payable by the Fund Manager in discharging the liabilities incurred by the Fund Manager in the exercise of its functions,
 - (d) such other amounts as are authorised to be paid out of the Fund by this or any other Act or law.
- (4) The amounts payable under subsection (3) (a) include, but are not limited to, the following:
- (a) any costs associated with project-managing the site,
 - (b) labour and capital costs incurred in connection with the management actions required under the agreement (including the costs of raw materials and equipment),
 - (c) costs associated with complying with reporting or audit requirements under the biodiversity offsets scheme,
 - (d) any rates, taxes or charges levied on the site or the management actions required under the agreement,
 - (e) any fees payable by the site owner under the biodiversity offsets scheme (other than amounts payable to the Fund on a first transfer of biodiversity credits or retirement of the credits before first transfer).
- (5) The regulations may make provision for the winding up of the Fund.

6.35 Fund Manager

- (1) The Biodiversity Conservation Trust is (subject to this section) the Fund Manager in respect of the Biodiversity Stewardship Payments Fund.
- (2) The Minister for the Environment may appoint a public authority, or other person or body, as the Fund Manager instead of the Trust. The appointment takes effect on the date notified by the Minister in the Gazette and may be revoked by the Minister by notice in the Gazette.
- (3) The Fund Manager (unless it is a public authority so appointed) is not, and does not represent, the Crown.

6.36 Management and control of Fund

- (1) The Fund Manager is to manage and control the Biodiversity Stewardship Payments Fund in accordance with this Act and the regulations.
- (2) The Fund Manager:
 - (a) is to act as trustee of money in the Fund, and

- (b) is to invest the money in the Fund not immediately required for the purposes for which it is to be applied in the same way as trustees may invest trust funds, subject to any requirements specified in the regulations, and
 - (c) is to make payments from the Fund as authorised by this Act and the regulations, and
 - (d) has such other functions as are conferred on the Funds Manager by this Act or the regulations, and
 - (e) may do all things necessary or convenient to be done in connection with the exercise of its functions.
- (3) The regulations may make further provision with respect to the Fund and its management and control.

6.37 Reporting and other obligations of Fund Manager

- (1) As soon as practicable after 30 June in each year, the Fund Manager is to prepare and deliver to the Minister for the Environment an annual report on its management of the Biodiversity Stewardship Payments Fund during the financial year ending on that date.
- (2) The annual report must include copies of the financial statements and accounts of the Fund Manager for the financial year to which the report relates and an auditor's report on those statements and accounts prepared by an auditor approved by the Minister for the Environment.
- (3) If the regulations so require, the Funds Manager is, as soon as practicable after 31 March, 30 June, 30 September and 31 December in each year, to prepare and deliver to the Minister for the Environment a quarterly report that summarises the financial position of the Fund and the performance of investments of money vested in the Fund during the immediately preceding 3 month period.
- (4) The Minister for the Environment is to cause a copy of each annual and quarterly report to be published on a government website maintained by the Environment Agency Head as soon as practicable after it is delivered to the Minister. The Minister is to cause a copy of each annual report to be tabled in each House of Parliament.
- (5) The Fund Manager must take out and maintain a policy of indemnity insurance, in respect of the exercise of its functions as Fund Manager, that complies with any requirements specified by the Minister for the Environment by notice in writing to the Fund Manager.
- (6) The regulations may vary the reporting obligations of the Fund Manager under this section (including in connection with any reporting obligations of the Biodiversity Conservation Trust under Part 10), and for that purpose consequentially amend this section.

Division 8 Biodiversity offsets scheme administration costs

6.38 Scheme administration cost recovery

- (1) In this section:
participant in the biodiversity offsets scheme means any of the following persons:
 - (a) the owner of a biodiversity stewardship site,
 - (b) the holder of a biodiversity credit,
 - (c) any other person to whom the scheme applies or who is associated with the scheme, being a person of a kind prescribed by the regulations as a participant in the scheme.

- (2) A participant in the biodiversity offsets scheme is required to pay to the Minister for the Environment a contribution towards the following:
 - (a) the costs of management and administration of the scheme,
 - (b) the costs of ensuring compliance with the scheme,
 - (c) any other costs relating to the scheme.
- (3) The contribution of an owner of a biodiversity stewardship site is an annual contribution of such amount as is prescribed by the regulations. The contribution is payable in accordance with an invoice issued to the owner by the Environment Agency Head.
- (4) The contribution of the holder of a biodiversity credit is such amount as is prescribed by the regulations. The contribution is payable when an application is made to the Environment Agency Head to retire the biodiversity credit (regardless of the number of credits that is sought to be retired pursuant to the application).
- (5) The contribution of any other participant of the scheme is the amount prescribed by and payable in accordance with the regulations.
- (6) A contribution is recoverable by the Minister for the Environment as a debt in a court of competent jurisdiction.
- (7) The Minister for the Environment is authorised to waive payment, or to extend the time for payment, of a contribution or part of a contribution payable under this section.
- (8) For the purposes of this section, the Minister for the Environment or Environment Agency Head is not considered to be a participant in the biodiversity offsets scheme in respect of any thing done on behalf of the Crown.
- (9) The regulations may make provision with respect to contributions payable to the biodiversity offsets scheme under this section, including (without limitation):
 - (a) any matter concerning the payment of a contribution (including circumstances in which payment may be waived), and
 - (b) exemptions from payment of a contribution, and
 - (c) the payment of contributions by instalments.

6.39 Biodiversity Stewardship Operations Account

- (1) There is to be established in the Special Deposits Account an account called the “Biodiversity Stewardship Operations Account”.
- (2) Money in the account is under the control of the Minister for the Environment.
- (3) There is to be paid into the account:
 - (a) all contributions paid by participants in the biodiversity offsets scheme under this Division, and
 - (b) all costs or damages recovered in connection with enforcement action taken against an owner of a biodiversity stewardship site in respect of a failure to comply with a biodiversity stewardship agreement or a provision of or made under this Division, other than any amount that is payable to the Biodiversity Stewardship Payments Fund, and
 - (c) the proceeds of investment of money in the account, and
 - (d) any money received by the Minister for the Environment for the disposal of property related to the biodiversity offsets scheme that the regulations require to be paid into the account, and

- (e) any other money provided by Parliament for the purposes of the account or required by this or any other Act or law to be paid into the account.
- (4) There may be paid out of the account:
- (a) the costs of the management and administration of the biodiversity offsets scheme, and
 - (b) the costs of ensuring compliance with the biodiversity offsets scheme, and
 - (c) such costs as the Minister for the Environment directs are to be paid from the account to an owner of a biodiversity stewardship site, and
 - (d) such costs as the Minister for the Environment directs to be paid from the account in payment of the remuneration of the Fund Manager of the Biodiversity Stewardship Payments Fund, and
 - (e) such other costs relating to the biodiversity offsets scheme as the Minister for the Environment directs to be paid out of the account.
- (5) There may be paid out of the account to the Consolidated Fund any amount in the account that, in the opinion of the Minister for the Environment, is in excess of the amounts required to meet the costs required to be paid out of the account.

Part 7 Biodiversity assessment and approvals under Planning Act

Division 1 Preliminary

7.1 Definitions: Part 7

In this Part:

activity means an activity within the meaning of Part 5 of the Planning Act.

biodiversity development assessment report means a biodiversity development assessment report prepared by an accredited biodiversity assessor on behalf of the applicant for planning approval, but does not include a report that is no longer eligible to be submitted with an application for planning approval because of section 6.15 (Lapsing of biodiversity assessment report).

biodiversity offsets scheme threshold—see section 7.4.

Planning Act means the *Environmental Planning and Assessment Act 1979*.

Planning Agency Head means the Secretary of the Department of Planning and Environment.

species impact statement means species impact statement prepared in accordance with Division 5.

threatened ecological communities do not include vulnerable ecological communities (except so much of any such community as comprises a threatened species).

7.2 Development or activity “likely to significantly affect threatened species”

For the purposes of this Part, development or an activity is **likely to significantly affect threatened species** if:

- (a) it is likely to significantly affect threatened species or ecological communities, or their habitats according to the test in section 7.3, or
- (b) in the case of development that is subject to the biodiversity offsets scheme—the proposed development exceeds the biodiversity offsets scheme threshold, or
- (c) it is carried out in a declared area of outstanding biodiversity value.

7.3 Test for determining whether proposed development or activity likely to significantly affect threatened species or ecological communities, or their habitats

- (1) The following is to be taken into account for the purposes of determining whether a proposed development or activity is likely to significantly affect threatened species or ecological communities, or their habitats:
 - (a) in the case of a threatened species, whether the proposed development or activity is likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction,
 - (b) in the case of an endangered ecological community or critically endangered ecological community, whether the proposed development or activity:
 - (i) is likely to have an adverse effect on the extent of the ecological community such that its local occurrence is likely to be placed at risk of extinction, or
 - (ii) is likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction,

- (c) in relation to the habitat of a threatened species or ecological community:
 - (i) the extent to which habitat is likely to be removed or modified as a result of the proposed development or activity, and
 - (ii) whether an area of habitat is likely to become fragmented or isolated from other areas of habitat as a result of the proposed development or activity, and
 - (iii) the importance of the habitat to be removed, modified, fragmented or isolated to the long-term survival of the species or ecological community in the locality,
 - (d) whether the proposed development or activity is likely to have an adverse effect on any declared area of outstanding biodiversity value (either directly or indirectly).
- (2) The Minister for the Environment may, by order published in the Gazette with the concurrence of the Minister for Planning, issue guidelines relating to the determination of whether an action is likely to significantly affect threatened species or ecological communities, or their habitats.

7.4 Exceeding biodiversity offsets scheme threshold

- (1) Proposed development exceeds the biodiversity offsets scheme threshold for the purposes of this Part if it is development of an extent or kind that the regulations declare to be development that exceeds the threshold.
- (2) Proposed development does not exceed the biodiversity offsets threshold for the purposes of this Part if it involves the clearing of native vegetation on category 1-exempt land (within the meaning of Part 5A of the *Local Land Services Act 2013*) and does not have any other impacts prescribed by the regulations under section 6.3.

7.5 Relationship with Planning Act

This Part prevails to the extent of any inconsistency between this Part and the Planning Act (or any instrument under the Planning Act).

Consultation note. The amendments to the *Environmental Planning and Assessment Act 1979* contained in Schedule 11 to this Bill remove provisions relating to threatened species and ecological communities that were inserted into that Act by the *Threatened Species Conservation Act 1995* (which is being repealed by this Act)—those provisions are replaced by the provisions of this Part.

7.6 Part does not apply to biodiversity certified land

This Part does not apply to development or activities on biodiversity certified land under Part 8.

Division 2 Biodiversity assessment requirements

7.7 Biodiversity assessment for Part 4 development (other than State significant development or infrastructure or complying development)

- (1) This section applies to an application for development consent under Part 4 of the Planning Act, except:
 - (a) an application for development consent for State significant development or for approval for State significant infrastructure, or
 - (b) an application for a complying development certificate.
- (2) If proposed development is likely to significantly affect threatened species, the application for development consent (or an environmental impact statement

accompanying the application) is to include or be accompanied by a species impact statement.

- (3) If proposed development:
- (a) is likely to have an impact on biodiversity values that are to be assessed under the biodiversity offsets scheme as referred to in section 6.3, and
 - (b) exceeds the biodiversity offsets scheme threshold,
- the application for development consent is to be accompanied by a biodiversity development assessment report.

Note. Section 7.20 provides for the circumstances in which a requirement that a species impact statement assess the impact on biodiversity values subject to the biodiversity offsets scheme may be satisfied by the assessment in a biodiversity development assessment report.

7.8 Biodiversity assessment for Part 5 activity

- (1) This section applies to environmental assessment under Part 5 of the Planning Act.
- (2) For the purposes of Part 5 of the Planning Act, an activity is to be regarded as an activity likely to significantly affect the environment if it is likely to significantly affect threatened species.
- (3) In that case, the environmental impact statement under Part 5 of the Planning Act is to include or be accompanied by a species impact statement.
- (4) If the likely significant effect on threatened species is the only significant effect on the environment, a species impact statement may be obtained instead of an environmental impact statement and Part 5 of the Planning Act applies as if references to an environmental impact statement were references to a species impact statement.

7.9 Biodiversity assessment for State significant development or infrastructure

- (1) This section applies to:
 - (a) an application for development consent under Part 4 of the Planning Act for State significant development, and
 - (b) an application for approval under Part 5.1 of the Planning Act to carry out State significant infrastructure.
- (2) Any such application must be accompanied by a biodiversity development assessment report unless the Planning Agency Head and the Environment Agency Head determine that the proposed development is not likely to have any impact on biodiversity values to which the biodiversity offsets scheme applies.
- (3) The environmental impact statement that accompanies any such application is to include the biodiversity assessment required by the environmental assessment requirements of the Planning Agency Head under the Planning Act.

7.10 Regulations relating to amendments of lists of threatened species or ecological communities

The regulations may make provision for or with respect to the effect of amendments to the lists of threatened species and ecological communities during a biodiversity assessment under this Part.

Consultation note. The savings and transitional provisions in Schedule 9 to this Bill will make provision to dis-apply biodiversity assessment under this Part for development or activities that are assessed under the proposed Biodiversity Management Plan for strategic assessment in the Upper Hunter that is to be endorsed under Part 10 of the Environmental Protection and Biodiversity Conservation Act of the Commonwealth.

Division 3 Consultation and concurrence

Consultation note. Provision may be made to enable consultation or concurrence under this Division to be assumed in cases in which a biodiversity development assessment report has been submitted and the retirement of biodiversity credits set out in the report adopted, unless there are other impacts not assessed under the biodiversity assessment scheme (eg impacts of pollution).

7.11 Consultation with Minister for the Environment if a Minister is consent authority under Part 4 or determining authority under Part 5

- (1) This section applies to the following:
 - (a) development (not being State significant development or complying development) that requires development consent under Part 4 of the Planning Act when a Minister is the consent authority,
 - (b) an activity that requires environmental impact assessment under Part 5 of the Planning Act when a Minister is the determining authority.
- (2) For the purposes of determining the application for that development consent or for the purposes of that environmental impact assessment, the Minister concerned is to consult the Minister for the Environment if the development or activity is likely to significantly affect threatened species.
- (3) In so consulting, the Minister for the Environment is to provide the Minister who is the consent authority or the determining authority with any recommendations made by the Environment Agency Head.

7.12 Concurrence of or consultation with Environment Agency Head if a Minister is not consent authority under Part 4 or determining authority under Part 5

- (1) This section applies to the following:
 - (a) development (not being State significant development or complying development) that requires development consent under Part 4 of the Planning Act when a Minister is not the consent authority,
 - (b) an activity that requires environmental impact assessment under Part 5 of the Planning Act when a Minister is not the determining authority.
- (2) The consent authority is not to grant development consent if the development is likely to significantly affect threatened species, unless the consent authority has obtained the concurrence of the Environment Agency Head.
- (3) The determining authority is not to carry out the activity, or grant an approval to carry out the activity, if the activity is likely to significantly affect threatened species, unless the determining authority has obtained the concurrence of the Environment Agency Head.
- (4) However, if the Minister for the Environment considers that it is appropriate, that Minister may elect to act in the place of the Environment Agency Head. The Minister for the Environment is required, in giving any concurrence, to consult the Environment Agency Head, to provide the consent authority or the determining authority with any recommendations made by that Agency Head and to give public notice of any such recommendation that the Minister for the Environment has not accepted.
- (5) In determining whether to give a concurrence under this section, the Environment Agency Head or Minister for the Environment (as the case requires) is to have regard to the following:
 - (a) any species impact statement prepared for the development or activity and submissions made in response to it,
 - (b) a biodiversity development assessment report prepared for the development,

- (c) any further assessment report prepared by or on behalf of the proponent,
 - (d) whether the development or activity is likely to reduce the long-term viability of the threatened species or ecological communities in the region,
 - (e) the facilitation of ecologically sustainable development.
- (6) A concurrence under this section may be conditional on the taking of action that the Environment Agency Head or Minister for the Environment (as the case requires) considers will significantly benefit threatened species or ecological communities and to which the person required to take the action has agreed. Any such action may (without limitation) include the provision of biodiversity offsets (including the retirement of biodiversity credits in accordance with this Act).
- (7) The terms of a concurrence under this section may be varied by the person who gave the concurrence at the request of the consent authority or determining authority concerned.
- (8) A consent authority that grants consent, or a determining authority that grants approval, to the carrying out of development or an activity for which a concurrence under this section has been granted must grant the consent or approval subject to any conditions of the concurrence. This does not affect the right of the consent authority or determining authority to impose other conditions not inconsistent with the conditions of the concurrence or to refuse consent or approval.

Division 4 Biodiversity offsets

7.13 Planning approval- biodiversity offsets

- (1) A development consent (other than a complying development certificate) or a State significant infrastructure approval under the Planning Act may be granted subject to a condition that requires the person who will have the benefit of the consent or approval to offset the impact on biodiversity values of the proposed development (including by the retirement of biodiversity credits in accordance with this Act).
- (2) Any such condition of a consent or approval for the retirement of biodiversity credits may provide for a deferred credit retirement arrangement under section 6.28.
- (3) This section applies whether or not a biodiversity development assessment report is submitted or is required to be submitted in respect of the proposed development.

7.14 Planning agreements etc - biodiversity offsets

- (1) A planning agreement under section 93F of the Planning Act may make provision with respect to the offset of the impact on biodiversity values of proposed development (including by the retirement of biodiversity credits in accordance with this Act).
- (2) This Part does not affect any environmental contribution required by any such planning agreement or by the conditions of a development consent or a State significant infrastructure approval under the Planning Act (including a contribution for the conservation or enhancement of the natural environment by a monetary contribution or levy or by the dedication of land or other material benefit).

7.15 Development other than State significant development or infrastructure subject to biodiversity offsets scheme

- (1) This section applies to an application for development consent under Part 4 of the Planning Act that is required under Division 2 to be accompanied by a biodiversity development assessment report, except:
 - (a) an application for development consent for State significant development or for approval for State significant infrastructure, or

- (b) an application for a complying development certificate.
- (2) The consent authority, when determining in accordance with the Planning Act any such application, is to take into consideration under that Act the likely impact of the proposed development on the biodiversity values of the land the subject of the application as assessed in the biodiversity development assessment report that accompanied the application.
- (3) If the consent authority decides to grant consent, the conditions of the consent must require the applicant to retire biodiversity credits to offset the residual impact on biodiversity values of the number and class set out in the report (subject to subsection (4)). The residual impact is the impact after the measures that are required to be carried out by the terms or conditions of the consent to avoid or minimise the impact on biodiversity values of the proposed development (being measures on which the report was based).
- Note.** Division 6 of Part 6 enables a person who is required under this section to retire biodiversity credits to make a payment instead to the Biodiversity Conservation Fund of the value of the credits in accordance with the offsets payments calculator.
- (4) The consent authority may reduce the biodiversity credits that would otherwise be required to be retired if the consent authority determines that the reduction is justified having regard to the environmental, social and economic impacts of the proposed development. The consent authority must give reasons for a decision to reduce the biodiversity credits.
- (5) This section does not operate to limit the matters that a consent authority may take into consideration in relation to the impact of proposed development on biodiversity values, the measures that a consent authority may require to avoid or minimise those impacts or the power of a consent authority to refuse to grant consent because of those impacts.

7.16 State significant development or infrastructure subject to biodiversity offsets scheme

- (1) This section applies to an application for development consent for State significant development under Part 4 of the Planning Act, or an application for approval for State significant infrastructure under Part 5.1 of the Planning Act, that is required under Division 2 to be accompanied by a biodiversity development assessment report.
- (2) The Minister for Planning, when determining in accordance with the Planning Act any such application, is to take into consideration under that Act the likely impact of the proposed development on the biodiversity values of the land the subject of the application as assessed in the biodiversity development assessment report that accompanied the application.
- (3) If the Minister for Planning decides to grant consent or approval, the conditions of the consent or approval may require the applicant to retire biodiversity credits to offset the residual impact on biodiversity values (whether of the number and class set out in the report or other number and class). The residual impact is the impact after the measures that are required to be carried out by the terms or conditions of the consent or approval to avoid or minimise the impact on biodiversity values of the proposed development.
- (4) This section does not operate to limit the matters that the Minister for Planning may take into consideration in relation to the impact of proposed development on biodiversity values, the measures that the Minister may require to avoid or minimise those impacts or the power of the Minister to refuse to grant consent or approval because of those impacts.

7.17 Proposed development that has serious and irreversible impacts on biodiversity values

- (1) In this section, *serious and irreversible impacts on biodiversity values* of proposed development means serious and irreversible impacts on biodiversity values referred to in the regulations made under section 6.5 that would remain after the measures proposed to be taken to avoid or minimise the impact on biodiversity values of the proposed development.
- (2) The consent authority must refuse to grant consent under Part 4 of the Planning Act, in the case of an application for development consent to which this Division applies (other than for State significant development), if it is of the opinion that the proposed development is likely to have serious and irreversible impacts on biodiversity values.
- (3) If the Minister for Planning is of the opinion that proposed State significant development or State significant infrastructure that is the subject of an application to which this Division applies is likely to have serious and irreversible impacts on biodiversity values, the Minister:
 - (a) is required to take those impacts into consideration, and
 - (b) is required to determine whether there are any additional and appropriate measures that will minimise those impacts.

7.18 Modifications of planning approvals

- (1) This section applies to an application for the modification of a development consent, or State significant infrastructure approval, that was granted after the commencement of this Division.
- (2) The provisions of this Division relating to applications for development consent or State infrastructure approvals apply to any such application for modification as follows:
 - (a) the provisions apply in relation to the original development as proposed to be modified,
 - (b) a biodiversity development assessment report is required to be submitted and taken into consideration if this Division applies to the original development as proposed to be modified even if a biodiversity development assessment report was submitted in connection with the application for the original development or even if this Division did not apply to the original development (for example, because the modification results in the development exceeding the biodiversity offsets scheme threshold),
 - (c) a further biodiversity development assessment report is not required to be submitted if the authority or person determining the application for modification is satisfied that the modification will not increase the impact on biodiversity values,
 - (d) the biodiversity development assessment report submitted with the application for modification is to take into account any measures already taken to avoid, minimise or offset the impact on biodiversity values in connection with the consent or approval before the proposed modification,
 - (e) if an application for the original development as proposed to be modified would have been refused because of serious and irreversible impacts on biodiversity values, the application for modification is required to be refused.
- (3) The regulations may make further provision with respect to any such applications for modification (including exemptions to the application of this section).

Division 5 Preparation of species impact statements

7.19 Form and content of species impact statement

- (1) A species impact statement for the purposes of this Part must be in writing signed by the principal author of the statement and by the applicant for development consent or the proponent of the activity proposed to be carried out (as the case requires).
- (2) A species impact statement must include a full description of the proposed development or activity and the information as to matters relating to the impact on threatened species or ecological communities as is required by the regulations.
- (3) A species impact statement must include details of the qualifications and experience in threatened species conservation of the person preparing the statement and of any other person who has conducted research or investigations relied on in preparing the statement.
- (4) The requirements of this section in relation to information concerning the State-wide conservation status of any species or ecological community are taken to be satisfied by the information in that regard supplied to the principal author of the species impact statement by the Environment Agency Head.
- (5) The regulations may make further provision for or with respect to the form and contents of species impact statements.

7.20 Environment Agency Head's requirements for species impact statements

- (1) The applicant for development consent or the proponent of the activity proposed to be carried out (as the case requires) must, for the purposes of the preparation of a species impact statement under this Part, request the Environment Agency Head to provide (and must comply with) any requirements notified to the applicant or proponent by the Agency Head concerning the form and content of the species impact statement.
- (2) The Environment Agency Head must notify any such requirements within 28 days after having been requested to provide them.
- (3) Despite anything to the contrary in this Part, the Environment Agency Head may:
 - (a) vary the matters otherwise required to be included in a species impact statement in a particular case, or
 - (b) dispense with the requirement of a species impact statement to assess the impact on biodiversity values that are required to be assessed in a biodiversity development assessment report submitted with the species impact statement, or
 - (c) dispense with the requirement for a species impact statement in a particular case if the Agency Head is satisfied that the impact of the action concerned will be trivial or negligible.

7.21 Environment Agency Head may accredit persons to prepare species impact statements

- (1) The Environment Agency Head is to make arrangements for the accreditation of suitably qualified and experienced persons to prepare species impact statements for the purposes of this Part.
- (2) An applicant for accreditation must furnish the Environment Agency Head with such information as the Agency Head requires to effectively determine the application and the application must be accompanied by the fee determined by Agency Head for the consideration of the application.

- (3) An accreditation:
 - (a) is to be for the period specified in the instrument of accreditation, and
 - (b) may be given subject to the conditions specified in the instrument of accreditation, and
 - (c) may require a species impact statement to be prepared in accordance with survey standards published from time to time by the Environment Agency Head.
- (4) The Environment Agency Head may vary the conditions of an accreditation and may suspend or cancel an accreditation.

Part 8 Biodiversity certification of land

Division 1 Preliminary

8.1 Definitions: Part 8

In this Part:

approved conservation measures under a biodiversity certification of land means the measures specified as approved conservation measures in an order that confers, extends or modifies the biodiversity certification.

biodiversity certification agreement means a biodiversity certification agreement under this Part.

equivalent conservation measure—see section 8.14.

party to a biodiversity certification means a person or body identified in an order under this Part as a party to the biodiversity certification.

planning authority means:

- (a) the Minister for Planning, or
- (b) the Greater Sydney Commission, or
- (c) a local council, or
- (d) a determining authority (within the meaning of Part 5 of the *Environmental Planning and Assessment Act 1979*), or
- (e) the Secretary of the Department of Planning and Environment, or
- (f) any other person or body declared by the regulations to be a planning authority.

Division 2 Conferral of biodiversity certification of land

8.2 Biodiversity certification

The Minister for the Environment may, by order published in the Gazette, confer biodiversity certification on specified land in accordance with this Part.

8.3 Approved conservation measures under biodiversity certification

- (1) The order conferring biodiversity certification is to specify the measures that are approved conservation measures under the biodiversity certification.
- (2) The measures that may be specified as approved conservation measures are the following measures to avoid, minimise or offset the impacts on biodiversity values of future development on the biodiversity certified land:
 - (a) in any case—the retirement of biodiversity credits,
 - (b) in the case of a strategic application for biodiversity certification—the reservation of land under the *National Parks and Wildlife Act 1974*, the adoption of development controls (or State infrastructure contributions) under the *Environmental Planning and Assessment Act 1979* that conserve or enhance the natural environment or any other measure determined by the Minister for the Environment.

Note. Division 6 of Part 6 enables a person who is required under this section to retire biodiversity credits to make a payment instead to the Biodiversity Conservation Fund of the value of the credits in accordance with the offsets payments calculator.

- (3) The following related matters may also be specified as approved conservation measures:
 - (a) any requirements determined by the Minister for the Environment as to the timing of the implementation of the proposed conservation measures,
 - (b) any requirements determined by the Minister for the Environment as to monitoring, reporting or auditing of the implementation of proposed conservation measures,
 - (c) any other matters declared to be related matters by the regulations.
- (4) This section applies to the extension or modification of biodiversity certification under this Part in the same way as it applies to the conferral of biodiversity certification.

8.4 Effect of biodiversity certification

(1) State significant infrastructure under Part 5.1 of the Planning Act

The environmental assessment requirements for the approval of State significant infrastructure under Part 5.1 of the *Environmental Planning and Assessment Act 1979* do not require an assessment of the impact of the infrastructure on biodiversity values if the infrastructure is carried out or proposed to be carried out on biodiversity certified land.

(2) Development (including SSD) under Part 4 of the Planning Act

An assessment of the likely impact on biodiversity values of development on biodiversity certified land is not required for the purposes of Part 4 of the *Environmental Planning and Assessment Act 1979*.

- (3) A consent authority, when determining a development application in relation to development on biodiversity certified land under Part 4 of the *Environmental Planning and Assessment Act 1979*, is not required to take into consideration the likely impact of the development on biodiversity values.

(4) Activities under Part 5 of the Planning Act

An activity to which Part 5 of the *Environmental Planning and Assessment Act 1979* applies which is carried out or proposed to be carried out on biodiversity certified land is taken, for the purposes of Part 5 of that Act, to be an activity that is not likely to significantly affect any threatened species or ecological community under this Act, or its habitat.

- (5) A determining authority under Part 5 of the *Environmental Planning and Assessment Act 1979* is not required under that Part to consider the effect on biodiversity values of an activity carried out on biodiversity certified land.

(6) This section prevails

This section has effect despite anything to the contrary in the *Environmental Planning and Assessment Act 1979* or Part 7 of this Act.

Note. Part 5A of the Local Land Services Act 2013 provides that biodiversity certified land is categorised as category 1-exempt land on the native vegetation regulatory map, and accordingly the land is not a regulated rural area of the State under that Part and that Part does not impose any restriction on the clearing of native vegetation on the land.

8.5 Application for biodiversity certification

- (1) An application for biodiversity certification may be made to the Minister for the Environment:
 - (a) by any planning authority, or

- (b) by all the owners of the land proposed for biodiversity certification (or by any other person with the approval in writing of all those owners).

An application may also be made jointly by 2 or more planning authorities or other authorised persons.

- (2) If an application for biodiversity certification is made or proposed to be made by a planning authority, the Minister for the Environment may, on the Minister's own initiative or at the request of the applicant (or proposed applicant), declare that it is a strategic application for biodiversity certification. The Minister is to take into account the criteria prescribed by the regulations when making such a declaration.

Note. Under this Part, the approved conservation measures under a strategic application are not limited to the retirement of biodiversity credits.

- (3) An application for biodiversity certification:
 - (a) is to be made in the form approved by the Minister for the Environment and contain the information required by that form, and
 - (b) is to identify the land proposed for biodiversity certification, and
 - (c) is to identify the land on or in respect of which proposed conservation measures are to be implemented, and
 - (d) is to identify any person or body proposed as a party to the biodiversity certification (and who will be responsible for the implementation of the proposed conservation measures).

The Minister for the Environment may require the applicant to provide such additional information as the Minister may require to determine the application.

- (4) The application for biodiversity certification is to be accompanied by a biodiversity certification assessment report prepared by an accredited biodiversity assessor that:
 - (a) assesses in accordance with the biodiversity assessment method the biodiversity values of the land proposed for biodiversity certification, and
 - (b) assesses in accordance with that method the impacts of future development on the biodiversity values of the land proposed for biodiversity certification, and
 - (c) sets out proposed conservation measures on or in respect of the other land (including by the retirement of biodiversity credits) to avoid, minimise or offset those impacts on biodiversity values.
- (5) The Minister for the Environment may decline to deal with an application for biodiversity certification:
 - (a) if the application for certification has not been duly made, or
 - (b) for any other reason the Minister considers sufficient.
- (6) A planning authority may enter into an agreement with any person for the payment of any costs and expenses incurred by the authority in undertaking studies and other matters required in relation to an application for biodiversity certification.

8.6 Consultation and public notification requirements in relation to biodiversity certification application

- (1) An applicant for biodiversity certification who is not a planning authority is to consult the local council of the area to which the application relates before undertaking public consultation on the application.
- (2) The Minister for the Environment is to consult the Minister for Planning before determining an application for biodiversity certification.

- (3) The Minister for the Environment is not to confer biodiversity certification unless:
 - (a) the applicant for biodiversity certification publishes notice of the application in a newspaper circulating generally throughout the State and on a website approved by the Minister (and specifies in the notice where the application will be exhibited), and
 - (b) the notice invites 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), and
 - (c) the applicant causes copies of the application to be exhibited on its website and such other places that the Minister requires (until the closing date for submissions), and
 - (d) the applicant provides a report to the Minister that indicates the applicant's response to any submissions relating to the application that were received by the applicant before the closing date.
- (4) An applicant may vary its application for biodiversity certification as a consequence of any submission received following public notification of the application or for any other reason.
- (5) Further public notification of the application, as varied, is not required unless the Minister for the Environment otherwise directs.
- (6) Public notification under this section may be undertaken in conjunction with community consultation on a planning proposal under Part 3 of the *Environmental Planning and Assessment Act 1979*.

8.7 Biodiversity certification to be conferred only after due assessment of impacts on biodiversity values and measures to avoid, minimise or offset those impacts

- (1) The Minister for the Environment may confer biodiversity certification only if the Minister is satisfied that:
 - (a) the impacts of future development on the biodiversity values of the land proposed for biodiversity certification have been duly assessed in accordance with the biodiversity assessment method, and
 - (b) the approved conservation measures under the biodiversity certification will offset the residual impacts on biodiversity values after any measures to avoid or minimise those impacts are taken.
- (2) For the purposes of determining the approved conservation measures (including the number of credits that may be required to be retired), the Minister for the Environment is to have regard to the biodiversity certification assessment report but is not bound by that report.
- (3) This section applies to the extension or modification of biodiversity certification under this Part in the same way as it applies to the conferral of biodiversity certification.

8.8 Biodiversity certification where serious and irreversible impacts

- (1) In this section, *serious and irreversible impacts on biodiversity values* of future development means serious and irreversible impacts on biodiversity values referred to in the regulations made under section 6.5 that would remain after the measures proposed to be taken to avoid or minimise the impact on biodiversity values of the future development.

- (2) If the Minister for the Environment is of the opinion that future development that may be carried out under a proposed biodiversity certification is likely to have serious and irreversible impacts on biodiversity values, the Minister:
 - (a) is required to take those impacts into consideration in determining the application for biodiversity certification, and
 - (b) is required to determine whether there are any additional and appropriate measures that will minimise those impacts.
- (3) This section applies to the extension or modification of biodiversity certification under this Part in the same way as it applies to the conferral of biodiversity certification.

8.9 Parties to biodiversity certification

- (1) The Minister for the Environment may, in an order conferring biodiversity certification, identify the party or parties to the biodiversity certification.
- (2) The following persons or body may be identified as parties to a biodiversity certification:
 - (a) an applicant for the biodiversity certification,
 - (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.
- (3) After biodiversity certification is conferred, the Minister for the Environment 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.
- (4) 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.
- (5) 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.

Division 3 Duration, extension and review of biodiversity certification

8.10 Duration of biodiversity certification

- (1) Biodiversity certification remains in force indefinitely or for such period as the Minister for the Environment determines and specifies in the order conferring certification.
- (2) This section does not prevent the extension of biodiversity certification or the further biodiversity certification of land.

8.11 Extension of biodiversity certification

- (1) The Minister for the Environment may, by order published in the Gazette at any time before it expires, extend the period for which any biodiversity certification remains in force.
- (2) A biodiversity certification may be extended in conjunction with a modification of the certification in accordance with this Part.

- (3) An assessment for the purposes of extending a biodiversity certification may take account of the impact of conservation measures that have already been implemented in connection with the biodiversity certification.

8.12 Review of biodiversity certification

- (1) The Minister for the Environment is to undertake periodic reviews of any biodiversity certification.
- (2) The Minister for the Environment is also to undertake a review of any matter for which a review is required by the terms of the order conferring biodiversity certification.

Division 4 Enforcement of approved conservation measures

8.13 Compliance with approved conservation measures

- (1) The Minister for the Environment may, by order in writing, require a party to a biodiversity certification to rectify any failure to comply with the approved conservation measures under the biodiversity certification:
 - (a) by implementing any of the approved conservation measures within a time specified in the order, or
 - (b) by implementing any equivalent conservation measures within a time specified in the order.
- (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 for the Environment, the Minister may, by order in writing, require the party to pay to the Minister a specified penalty.
- (3) The penalty is to be the amount the Minister for the Environment considers reasonable to cover the costs of implementing the relevant approved conservation measures or equivalent conservation measures.
- (4) A penalty imposed under this section may be recovered by the Minister for the Environment as a debt due to the Crown in any court of competent jurisdiction.
- (5) This section does not limit the power of the Minister for the Environment to suspend, revoke or modify biodiversity certification for a failure to comply with the approved conservation measures under a biodiversity certification.

8.14 Equivalent conservation measures

- (1) For the purposes of this Part, *equivalent conservation measures*, in relation to the approved conservation measures under a biodiversity certification, are conservation measures that are determined by the Minister for the Environment to have an equivalent biodiversity value as the approved conservation measures.
- (2) The biodiversity value of the approved conservation measures under a biodiversity certification are to be determined in accordance with the biodiversity assessment method on which the conferral of biodiversity certification was based.

8.15 Appeals

- (1) A party to a biodiversity certification who is dissatisfied with a decision of the Minister for the Environment to require the party to rectify a failure to comply with the approved conservation measures may appeal to the Land and Environment Court against the decision.

- (2) A party to a biodiversity certification who is dissatisfied with a decision of the Minister for the Environment to require the party to pay a penalty under this Part may appeal to the Land and Environment Court against the decision.
- (3) An appeal may be made by a party to a biodiversity certification not later than 3 months after being notified by the Minister for the Environment of the decision.
- (4) This section does not confer a right of appeal on a party to a biodiversity certification if the party is a Minister or a public authority (other than a State owned corporation).

Division 5 Biodiversity certification agreements

8.16 Biodiversity certification agreements

- (1) The Minister for the Environment may enter into an agreement (a *biodiversity certification agreement*) with a person in connection with biodiversity certification (including a proposal to confer, modify or extend biodiversity certification).
- (2) The agreement may make provision for any or all of the following:
 - (a) requiring the person to make monetary or biodiversity credit contributions to the Minister for the Environment for the purpose of improving biodiversity values,
 - (b) requiring the person to dedicate land for conservation purposes,
 - (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,
 - (d) providing for any other conservation measures that the person agrees to implement,
 - (e) requiring the person to make monetary or biodiversity credit contributions to a planning authority for the purpose of reimbursing the costs incurred by the planning authority in connection with a biodiversity certification proposal,
 - (f) requiring the person to provide security for the performance of any of the person's obligations in connection with biodiversity certification,
 - (g) providing for the timing of the implementation of any of the person's obligations in connection with biodiversity certification,
 - (h) providing for monitoring, reporting and audit requirements,
 - (i) providing for any other matter relating to biodiversity certification.
- (3) A planning authority may be a party to a biodiversity certification agreement.
- (4) The Minister for the Environment must not enter into a biodiversity certification agreement relating to Crown land except with the consent of the Minister administering the *Crown Lands Act 1989*.
- (5) A biodiversity certification agreement has effect indefinitely, or for the period specified in the agreement.

8.17 Registered agreements run with land

- (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.
- (2) A biodiversity certification agreement can be registered by the Registrar-General under this section if the following persons agree to its registration:
 - (a) if the agreement relates to land under the *Real Property Act 1900*—each person who has an estate or interest in the land registered under that Act,

- (b) if the agreement relates to land not under the *Real Property Act 1900*—each person who is seised or possessed of an estate or interest in the land.
- (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:
 - (a) by making an entry in the relevant folio of the Register kept under the *Real Property Act 1900* if the agreement relates to land under that Act, or
 - (b) by registering the agreement in the General Register of Deeds if the agreement relates to land not under the *Real Property Act 1900*.
- (4) This section applies to any amendment or revocation of a biodiversity certification agreement in the same way as it applies to the agreement.
- (5) In this Part, a reference to a *party* to a biodiversity certification agreement includes any owner of land against whom the agreement is enforceable because of this section.

8.18 Minister may order party to rectify contravention of agreement

- (1) The Minister for the Environment 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.
- (2) The order is to specify the date by which the work or other actions must be carried out.
- (3) If the requirements of the order are not complied with by that date, the Minister for the Environment:
 - (a) may enter the land and cause the work or actions specified in the order to be carried out, and
 - (b) may, by proceedings brought in any court of competent jurisdiction, recover as a debt from the person to whom the order was given the amount certified by the Minister for the Environment as the reasonable cost of complying with those requirements.
- (4) This section does not prevent the Minister for the Environment from seeking an award of damages against a party to a biodiversity certification agreement for a contravention of the biodiversity certification agreement.

8.19 Court cannot extinguish obligations

Section 89 of the *Conveyancing Act 1919* does not authorise any court to modify or wholly or partially extinguish any restriction or obligation created by a biodiversity certification agreement except with the consent of the Minister for the Environment.

8.20 Regulations—biodiversity certification agreements

The regulations may make provision for or with respect to biodiversity certification agreements, including the following:

- (a) the subject-matter of biodiversity certification agreements,
- (b) the making, amendment and revocation of biodiversity certification agreements, including the giving of public notice and inspection by the public,
- (c) the public inspection of biodiversity certification agreements after they have been made.

Division 6 Suspension, revocation and modification of certification

8.21 Suspension and revocation of certification

- (1) The Minister for the Environment may, by order published in the Gazette, suspend or revoke any biodiversity certification.
- (2) Biodiversity certification may be suspended or revoked:
 - (a) if the approved conservation measures under the biodiversity certification have not been complied with to the satisfaction of the Minister for the Environment, or
 - (b) if the Minister for the Environment 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
 - (c) if the Minister for the Environment is of the opinion that any agreement entered into in connection with the biodiversity certification has been contravened, or
 - (d) in any other circumstances prescribed by the regulations.
- (3) The regulations may make further provision for or with respect to the suspension or revocation of biodiversity certification.

8.22 Modification of certification

- (1) The Minister for the Environment may, by order published in the Gazette, modify any biodiversity certification by:
 - (a) modifying the description of land that is biodiversity certified (to extend or limit biodiversity certification), or
 - (b) modifying the approved conservation measures under the biodiversity certification.
- (2) Biodiversity certification may be modified:
 - (a) on application (in the form approved by the Minister for the Environment) by a party to the biodiversity certification or a party to a biodiversity certification agreement entered into in connection with the biodiversity certification, or
 - (b) on the Minister's own initiative (following at least 28 days notice to the parties to the biodiversity certification of the proposed modifications).
- (3) Despite section 8.7, a biodiversity certification assessment is not required in respect of a proposed modification that substitutes equivalent conservation measures for any of the approved conservation measures under a biodiversity certification. Unless a biodiversity certification assessment is not required, an application for the modification of a biodiversity certification is to be accompanied by a revised biodiversity certification assessment report prepared by an accredited biodiversity assessor.

Note. Section 8.7 requires a biodiversity certification assessment for any proposed modification.
- (4) Biodiversity certification may be modified on the Minister's own initiative:
 - (a) if the approved conservation measures under the biodiversity certification have not been complied with to the satisfaction of the Minister, or
 - (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 section 8.18 (Minister may order party to rectify contravention of agreement), or

- (c) if the Minister is of the opinion that any agreement entered into in connection with the biodiversity certification has been contravened, or
- (d) in any other circumstances prescribed by the regulations.

8.23 Appeals

- (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 for the Environment to suspend, revoke or modify the biodiversity certification may appeal to the Land and Environment Court against the decision.
- (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.
- (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 Minister or a public authority (other than a State owned corporation).

Division 7 General provisions relating to certification

8.24 Notification of certification and changes to certification

- (1) Notice of the conferral, extension, suspension, revocation or modification of biodiversity certification is to be given, within 21 days:
 - (a) on a government website maintained by the Environment Agency Head, and
 - (b) to the Secretary of the Department of Planning and Environment, and
 - (c) to each local council of an area in which the biodiversity certified land is located.
- (2) The Minister for the Environment must make reasonable endeavours to give notice of the conferral, extension, suspension, revocation or modification of biodiversity certification, within 21 days:
 - (a) to each party to the biodiversity certification, and
 - (b) to each party to a biodiversity certification agreement entered into in connection with the biodiversity certification.

8.25 Intra-government dispute resolution arrangements

- (1) This section applies to the following disputes:
 - (a) a dispute between a party to a biodiversity certification, or a party to a biodiversity certification agreement, and the Minister for the Environment in connection with a decision of the Minister to suspend, revoke or modify the biodiversity certification,
 - (b) a dispute between a public authority which is a party to a biodiversity certification and the Minister for the Environment in connection with a failure by the public authority to comply with any of the approved conservation measures under the biodiversity certification or to implement equivalent conservation measures,
 - (c) a dispute between a public authority which is a party to a biodiversity certification and the Minister for the Environment in connection with a decision of the Minister to require the public authority to pay a penalty under this Part.
- (2) A dispute to which this section applies may be referred to the Premier.

- (3) The Premier may, for the purpose of resolving a dispute referred to the Premier under this section:
 - (a) appoint a person or panel to hold an inquiry and make a report to the Premier, or
 - (b) hold an inquiry into the dispute.
- (4) 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.
- (5) An order made by the Premier may direct the payment of any costs or expenses of or incidental to the holding of the inquiry.
- (6) A public authority 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.
- (7) If a matter that is referred to the Premier under this section is also the subject of proceedings before the Land and Environment Court:
 - (a) the Premier may suspend or terminate action under this section pending a decision of the Land and Environment Court, and
 - (b) a decision of the Land and Environment Court prevails.
- (8) In this section:
public authority includes a Minister but does not include a State owned corporation.

8.26 General provisions relating to biodiversity certification

- (1) A failure to comply with the procedural requirements of this Part does not affect the validity of an order under this Part that confers, extends or modifies biodiversity certification.
- (2) The suspension, revocation or expiry of biodiversity certification does not, unless the Minister for the Environment otherwise directs:
 - (a) affect the obligations of a party to the biodiversity certification under this Part, or
 - (b) affect any obligation a person has under a biodiversity certification agreement entered into in connection with the biodiversity certification.
- (3) Biodiversity certification is not an approval for the purposes of Part 5 of the *Environmental Planning and Assessment Act 1979*.
- (4) The suspension, revocation, modification or expiry of biodiversity certification does not affect any consent, approval or any other thing under the *Environmental Planning and Assessment Act 1979* granted, carried out or done before the suspension, revocation, modification or expiry. The Minister for the Environment may, in an order that suspends, revokes or modifies biodiversity certification, specify the application of the suspension, revocation or modification to anything pending under that Act at the time of the suspension, revocation or modification.
- (5) Biodiversity certification does not apply in relation to threatened species, populations and ecological communities under Part 7A of the *Fisheries Management Act 1994*.
- (6) The regulations may make further provision for or with respect to biodiversity certification, including with respect to the following:
 - (a) the payment of fees in connection with the operation of this Part,
 - (b) the extension of biodiversity certification,

public consultation draft

Biodiversity Conservation Bill 2016 [NSW]
Part 8 Biodiversity certification of land

- (c) the modification of biodiversity certification and applications for any such modification,
- (d) consultation by an applicant for biodiversity certification who is not a planning authority with the relevant planning authority.

Part 9 Public consultation and public registers

Division 1 Public consultation

9.1 Public consultation required on documents under this Act to which Division applies

- (1) This Division applies to the following (a *public consultation document*):
 - (a) a proposed declaration of an area as an area of outstanding biodiversity value,
 - (b) a strategy included in the Biodiversity Conservation Program in relation to a threatened species or ecological community,
 - (c) the biodiversity conservation investment strategy,
 - (d) the biodiversity assessment method,
 - (e) the scheme for the accreditation of biodiversity assessors.
- (2) Public consultation in accordance with this Division is required before a public consultation document is made.
- (3) A reference in this Division to making a public consultation document includes a reference to issuing, adopting or publishing a public consultation document.

9.2 Minimum public exhibition periods for proposed public consultation documents

- (1) Before a public consultation document is made, the proposed document is to be made publicly available during the relevant period of public consultation.
- (2) The relevant period of public consultation is as follows:
 - (a) the period of 4 weeks (except as provided by paragraph (b)),
 - (b) the period prescribed by the regulations in relation to the public consultation document concerned.
- (3) The person making the public consultation document may extend the relevant period of public consultation for the proposed document.
- (4) Detailed provisions of a public consultation document may be summarised instead of being set out in full if the person making the document is satisfied that the summary provides sufficient details for public consultation.

9.3 Submissions about proposed public consultation documents

- (1) During the relevant period of public consultation on a proposed public consultation document, any person may make a written submission to the person making the document.
- (2) The person making the public consultation document may (but need not) make publicly available the submissions made on the proposed document (or a summary of or report on any such submissions).
- (3) Before a person makes a public consultation document, the person is to consider any submissions made on the proposed document.
- (4) If the person making the public consultation document is not the Environment Agency Head, the person is, before making the document, to consider any recommendations made by the Environment Agency Head in relation to submissions made on the proposed document.
- (5) If substantial changes are proposed to be made to a proposed document following public consultation, the person making the document may require further public consultation in accordance with this Division on the revised proposed document.

9.4 Amendment of public consultation documents

- (1) This Division applies to any amendment of a public consultation document in the same way that it applies to the making of a public consultation document.
- (2) However, the person making a public consultation document may dispense with public consultation under this Division on any amendment if satisfied that it should be dispensed with because of the minor nature or urgency of the matter.

9.5 Validity of public consultation documents

A failure to comply with a requirement under this Division in relation to a proposed public consultation document or proposed amendment does not prevent the document from being made or amended, or invalidate the document once it is made or amended.

9.6 Regulations relating to public consultation

The regulations may make further provision for or with respect to public consultation under this Division.

Division 2 Public registers

9.7 Registers to which Division applies

- (1) Public registers of the following are to be kept and made available in accordance with this Division:
 - (a) biodiversity conservation licences (including the conditions of those licences) and all decisions made to vary, suspend or cancel those licences,
 - (b) declarations of areas of outstanding biodiversity value under Part 3 and any amendment or revocation of a declaration,
 - (c) private land conservation agreements under Part 5, including details of any variation or cancellation of any such agreement,
 - (d) biodiversity credits under Part 6, including documents creating the credits, the number and class (if any) of the credits, the name of the current and former holders of the credits and details relating to all transfers, suspensions, cancellations and retirement of the credits,
Consultation note. The regulations are proposed to require details of the retirement of credits to include details of the planning approval, native vegetation clearing approval or biodiversity certification of land for which any credits have been retired.
 - (e) the persons who are accredited biodiversity assessors under Part 6,
 - (f) orders made under Part 8 conferring, extending, suspending, revoking or modifying biodiversity certification of land,
 - (g) interim protection orders in force under Division 3 of Part 11,
 - (h) remediation orders in force under Division 4 of Part 11,
 - (i) strategies included in the Biodiversity Conservation Program in relation to a threatened species or ecological community.
- (2) The Environment Agency Head is responsible for keeping and making available any such public register.
- (3) The Environment Agency Head may engage the Biodiversity Conservation Trust or other persons or bodies to keep (or to assist in keeping) any such public register on behalf of the Environment Agency Head.
- (4) Any such register may be kept only in electronic form.

9.8 Registers to be available on government website

Public registers required to be kept under this Division are to be made available on a government website maintained by the Environment Agency Head.

9.9 Providing other access to registers

An extract from a public register required to be kept under this Division is (subject to the regulations) to be made available on request by any person on payment of a reasonable fee determined by the Environment Agency Head.

9.10 Restriction of access to certain information in registers

- (1) The Environment Agency Head may restrict access to information in a public register required to be kept under this Division (including a register that relates to a declared area of outstanding biodiversity value) if the Environment Agency Head is satisfied that it is in the public interest to do so or is authorised by the regulations to do so.
- (2) The Environment Agency Head is to make restricted access information in any such public register available to the Biodiversity Conservation Trust if the Agency Head is satisfied that the information is required in connection with the exercise of the Trust's functions under this Act.
- (3) If access to information that relates to a declared area of outstanding biodiversity value is restricted, a person has a defence to a prosecution under this Act for damaging the biodiversity values of the area if the person establishes that he or she did not know that it was a declared area.
- (4) Access to information on a public register required to be kept under this Division is to be restricted if its disclosure would contravene the *Privacy and Personal Information Protection Act 1998*.

9.11 Regulations relating to public registers

The regulations may make further provision for or with respect to public registers required to be kept under this Division (including the information required to be included in the registers and the correction of the registers).

Part 10 Biodiversity Conservation Trust

Division 1 Establishment, functions and operation of Trust

10.1 Establishment of Trust

There is established by this Act a body corporate with the corporate name of the Biodiversity Conservation Trust of New South Wales (the *Trust*).

10.2 Status of Trust

- (1) The Trust is a statutory body representing the Crown.
- (2) The Trust is not subject to the control and direction of the Minister for the Environment or any other Minister.

10.3 Trust Board

- (1) There is to be a Board of the Trust.
- (2) The Board of the Trust is to consist of 7 or more members appointed by the Minister for the Environment.
- (3) The affairs of the Trust are to be managed by the Board.
- (4) Any act, matter or thing done in the name of, or on behalf of, the Trust by the Board is taken to have been done by the Trust.
- (5) Schedule 8 contains provisions relating to the members and procedure of the Board.

10.4 Object of Trust

- (1) The object of the Trust is to protect and enhance biodiversity by:
 - (a) encouraging landholders to enter into co-operative arrangements for the management and protection of the natural environment that is significant for the conservation of biodiversity, and
 - (b) seeking strategic biodiversity offset outcomes to compensate for the loss of biodiversity due to development and other activities, and
 - (c) providing mechanisms for achieving the conservation of biodiversity, and
 - (d) promoting public knowledge, appreciation and understanding of:
 - (i) biodiversity, and
 - (ii) the importance of conserving biodiversity.
- (2) The co-operative arrangements for the management and protection of land may include arrangements for the management and protection of any waters that affect the biodiversity values of the land, whether or not the waters are on or under the surface of the land.
- (3) The affairs of the Trust are to be conducted on a not-for-profit basis.
- (4) The object of the Trust is also its principal purpose.

Note. For donations to the Biodiversity Conservation Trust Public Fund maintained by the Trust to have tax deductible status under Subdivision 30-E of the Commonwealth Income Tax Assessment Act, the Trust must have as its principal purpose the protection and enhancement of the natural environment or a significant aspect of the natural environment.

10.5 Functions of Trust

- (1) The Trust has the following functions:
 - (a) to negotiate, enter into and administer private land conservation agreements (and assist in the enforcement of compliance with those agreements),

- (b) to provide assistance to planning authorities in connection with applications for the biodiversity certification of land under Part 8 (including the provision in accordance with the regulations of loans and other financial assistance),
 - (c) to manage and control the Biodiversity Conservation Fund,
 - (d) to establish and maintain the Biodiversity Conservation Trust Public Fund,
 - (e) to raise money from organisations and the general public to help fund its activities,
 - (f) to use any gifts, devises, bequests or contributions received by the Trust for the protection and enhancement of biodiversity,
 - (g) to assist and educate landholders who propose to enter into agreements with the Trust,
 - (h) to provide technical, financial and other assistance to landholders generally, when the Trust considers it appropriate to do so, for the purpose of facilitating the achievement of conservation goals,
 - (i) to provide education to the public on issues of conservation, land management and ecological sustainability,
 - (j) to exercise functions under this Act that are delegated to the Trust,
 - (k) any other function conferred or imposed on it by this or any other Act or law.
- (2) The Trust has the functions under this Act as the Funds Manager of the Biodiversity Stewardship Payments Fund (including its functions under this Act in connection with operation of the biodiversity offsets scheme).

Note. The Trust is appointed by this Act as the Funds Manager of that Trust, but the Minister may appoint another person or body as the Funds Manager.

10.6 Powers of Trust

- (1) The Trust has power to do all things that are necessary or convenient to be done for or in connection with the exercise of its functions or that are supplemental or incidental to, or consequential on, the exercise of its functions
- (2) Without limiting subsection (1), the Trust has power to do the following:
- (a) to buy, sell, hold, mortgage, lease or otherwise deal with land,
 - (b) to acquire, transfer or retire biodiversity credits,
 - (c) to enter into private land conservation agreements as land owner,
 - (d) by mutual agreement with the Crown, to surrender land vested in the Trust (whether on trust or otherwise) to the Crown to be used for a purpose specified by the Trust,
 - (e) to buy or otherwise acquire, sell, hold, create security interests in and otherwise deal in access licences, holdings in access licences and water authorities under the *Water Management Act 2000*,
 - (f) to borrow money, either with or without security,
 - (g) to act as trustee of money or other property vested in the Trust,
 - (h) to invest money in any fund managed or maintained by the Trust in the manner authorised by the *Public Authorities (Financial Arrangements) Act 1987* or (if that Act does not confer power on the Trust to invest money) to invest the money in the same way as trustees may invest trust funds or in any other way approved by the Treasurer,
 - (i) to make and enter into contracts or other arrangements for the carrying out of works, the performance of services or the supply of goods or materials,
 - (j) to appoint agents.

10.7 Trust to conduct activities in accordance with business plan

- (1) The Trust must conduct its activities, as far as is practicable, in accordance with a business plan published under this section.
- (2) The Trust must, no later than 6 months after the commencement of this Act and at least every 4 years thereafter, prepare and publish a business plan for the conduct of its activities.
- (3) A business plan is to be prepared and published in accordance with any requirements prescribed by the regulations.

10.8 Acquisition of property by gift

- (1) The Trust may acquire any property by gift (whether on trust or otherwise) for the purposes of this Act and may agree to, and carry out, the conditions of any such gift, but only if the carrying out of any such condition is not inconsistent with the functions of the Trust.
- (2) The rule of law against remoteness of vesting does not apply to any condition of a gift to which the Trust has agreed under this section.
- (3) The *Duties Act 1997* does not apply to or in respect of any gift made or to be made to the Trust.
- (4) The Trust must not agree to any condition of a gift of money or property that is made to or to be held in the Biodiversity Conservation Trust Public Fund.
Note. Gifts of money or property made to the Public Fund may be used only for the principal purpose of the Trust.
- (5) In this section, *gift* includes a devise or bequest.

10.9 Dealings with certain property acquired by gift, devise or bequest

- (1) If the Trust has, by gift, devise or bequest, acquired property subject to a condition to which the Trust has agreed under section 10.8, the Trust must not sell, lease, exchange or otherwise dispose of or deal with that property otherwise than in accordance with the condition.
- (2) Despite subsection (1), if the Trust decides that any property that has been acquired by the Trust subject to a condition to which the Trust has agreed is not required for the purposes of the Trust, the Trust may:
 - (a) sell the property and retain the proceeds of the sale as property of the Trust, or
 - (b) exchange the property for other property, or
 - (c) if the Trust is of the opinion that the property is of no commercial value, dispose of the property without valuable consideration,in contravention of the condition.
- (3) Further, if, after acquiring real property subject to a condition to which the Trust has agreed, the Trust is of the opinion that compliance with the condition would result in:
 - (a) inefficient management of the property, or
 - (b) management detrimental to the conservation of the biodiversity values of the property,the Trust may manage the property in contravention of the condition.

10.10 Staff of Trust

- (1) Persons may be employed in the Public Service under the *Government Sector Employment Act 2013* to enable the Trust to exercise its functions.

Note. Section 59 of the *Government Sector Employment Act 2013* provides that the persons so employed (or whose services the Trust makes use of) may be referred to as officers or employees, or members of staff, of the Trust. Section 47A of the *Constitution Act 1902* precludes the Trust from employing staff.

- (2) The Trust may engage consultants for the purpose of getting expert advice.

10.11 Delegation by Biodiversity Conservation Trust

The Trust may delegate any of the functions of the Trust (other than this power of delegation) to a member or committee of the Board of the Trust or to any member of staff of the Trust.

10.12 Annual reports of Trust

The regulations may prescribe additional matters relating to the exercise of its functions that the Trust is required to include in its annual report under the *Annual Reports (Statutory Bodies) Act 1984*.

10.13 Exemption from certain State taxes

The *Duties Act 1997* does not apply to or in respect of:

- (a) the acquisition of land by the Trust for the purposes of this Act, or
- (b) the leasing of land (whether as lessor or lessee) by the Trust for the purposes of this Act, or
- (c) the disposal of land by the Trust under this Act.

10.14 Recovery of money by Trust

Any fee or other money due to the Trust may be recovered by the Trust as a debt in a court of competent jurisdiction.

10.15 Saving provision relating to existing Trust

- (1) The Biodiversity Conservation Trust established under this Division is a continuation of, and the same legal entity as, the Nature Conservation Trust established under the *Nature Conservation Trust Act 2001* immediately before the repeal of that Act by this Act (the **former Trust**).
- (2) A person who held office as a member of the Board of the former Trust immediately before that repeal is taken to have been appointed as a member of the Board of the Biodiversity Conservation Trust established under this Division for the remainder of the term of the person's term of office as a member of the Board of the former Trust.
- (3) Any such member who was the Chairperson or Deputy Chairperson of the Board of the former Trust is taken to have been appointed as the Chairperson or Deputy Chairperson of the Board of the Biodiversity Conservation Trust established under this Division.

Division 2 Biodiversity Conservation Fund

10.16 Biodiversity Conservation Fund

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

Consultation note. The fund may be established as an account in the special deposits account under the Public Finance and Audit Act 1983.

- (2) The following amounts are to be paid into the Fund, subject to any requirements specified in the regulations:
 - (a) amounts received by the Trust that are not required to be paid to the Biodiversity Stewardship Payments Fund or to the Biodiversity Conservation Trust Public Fund,
 - (b) amounts directed to be paid to the Fund under Division 6 of Part 6 as an alternative to the retirement of biodiversity credits,
 - (c) the proceeds of investment of money in the Fund,
 - (d) any other money appropriated by Parliament for the purposes of the Fund or required by this or any other Act or law to be paid into the Fund.
- (3) The following may be paid out of the Fund, subject to any requirements specified in the regulations:
 - (a) such amounts as are required to be paid for securing biodiversity offsets resulting from payments to the Fund as an alternative to the retirement of biodiversity credits,
 - (b) such other amounts as are authorised to be paid out of the Fund by this or any other Act or law.

10.17 Management and control of Biodiversity Conservation Fund

- (1) The Trust is to manage and control the Biodiversity Conservation Fund in accordance with this Act and the regulations.
- (2) The Trust:
 - (a) is to invest the money in the Fund not immediately required for the purposes for which it is to be applied in the same way as trustees may invest trust funds, subject to any requirements specified in the regulations, and
 - (b) is to make payments from the Fund as authorised by this Act and the regulations.
- (3) The regulations may make further provision with respect to the Fund and its management and control.

Division 3 Biodiversity Conservation Trust Public Fund

10.18 Biodiversity Conservation Trust Public Fund

- (1) The Trust is to establish and maintain a public fund for the principal purpose of the Trust.
- (2) The fund is to be called the Biodiversity Conservation Trust Public Fund.
- (3) The Public Fund is not-for-profit.
- (4) The following are to be held in the Public Fund:
 - (a) all gifts of money or property made for the principal purpose of the Trust that are to be made to the Public Fund under section 30-130 of the Commonwealth Income Tax Assessment Act,
 - (b) all contributions made in relation to a fundraising event held for the principal purpose of the Trust that are to be made to the Public Fund under section 30-130 of the Commonwealth Income Tax Assessment Act,
 - (c) any money received by the Trust because of such gifts or contributions.
- (5) No other money or property is to be held in the Public Fund.

- (6) Money and property held in the Public Fund may be used by the Trust only for its principal purpose.
- (7) Money held in the Public Fund is to be paid into an account kept, for the purposes of the Public Fund, with an authorised deposit-taking institution.
- (8) The Trust must comply with any requirements made of it in connection with registration as an environmental organisation under Subdivision 30-E of the Commonwealth Income Tax Assessment Act.
- (9) In particular, the Trust must:
 - (a) comply with any rules made by the Treasurer and the Environment Minister under Subdivision 30-E of the Commonwealth Income Tax Assessment Act to ensure that gifts or contributions made to the Public Fund are used only for its principal purpose, and
 - (b) provide to the Environment Secretary under Subdivision 30-E of the Commonwealth Income Tax Assessment Act, within 4 months after the end of each financial year of the Trust, any statistical information about gifts or contributions made to the Public Fund during that financial year required for the purposes of compliance with that Act.
- (10) The Trust must appoint a management committee to manage the Public Fund on its behalf.

10.19 Distribution of outstanding property of Public Fund on dissolution of Trust

- (1) On the dissolution of the Trust, any outstanding property held in the Biodiversity Conservation Trust Public Fund after the Trust is dissolved is to be transferred to a tax exempt fund determined by the Minister for the Environment that is maintained for a similar purpose to the principal purpose of the Trust.
- (2) A *tax exempt fund* is a fund that is on the register of environmental organisations kept under Subdivision 30-E of the Commonwealth Income Tax Assessment Act.
- (3) Preference is to be given to a tax exempt fund that is used for the protection of biodiversity in New South Wales.

Part 11 Regulatory compliance mechanisms

Division 1 Preliminary

11.1 Definitions: Part 11

In this Part:

animal protection direction means an animal protection direction under Division 6.

biodiversity offsets enforcement order means an order under Division 5.

interim protection order means an interim protection order under Division 3.

remediation order means an order under Division 4.

stop work order means an order under Division 2.

11.2 Purposes for which powers may be exercised under this Part

- (1) The powers under this Part may be exercised for the purposes of terrestrial biodiversity conservation (including the protection of animals and plants).
- (2) This Part does not affect the exercise of powers under the *Local Land Services Act 2013*, the *Environmental Planning and Assessment Act 1979* or any other Act in relation to purposes for which powers may be exercised under this Part.

Note. Part 5A of the *Local Land Services Act 2013* also authorises Local Land Services to exercise the functions of the Environment Agency Head under this Part to make stop work orders and remediation orders for the purposes of the management of native vegetation.

Division 2 Stop work orders

11.3 Environment Agency Head may make stop work order

- (1) If the Environment Agency Head is of the opinion that any action is being, or is about to be, carried out (or that any action that should be carried out is not being carried out) in any area of land that is likely to result in a contravention of this Act, the Environment Agency Head may order:
 - (a) that the action cease and not be carried out within the period of 40 days (or a lesser specified period) after the order is made, or
 - (b) in the case of action that is not being carried out—that the action be carried out within the period specified in the order.
- (2) The Environment Agency Head is not required, before making a stop work order, to notify any person who may be affected by the order.

11.4 Taking effect and extension of stop work order

- (1) A stop work order takes effect on and from the date on which:
 - (a) a copy of the order is affixed in a conspicuous place in the area in which the action is or about to be carried out, or
 - (b) the person carrying out or about to carry out the action (or not carrying out the action) is notified, either in writing or verbally, that the order has been made, whichever is the sooner. An order notified to a person verbally ceases to have effect unless it is confirmed in writing to the person within 72 hours.
- (2) The Environment Agency Head may extend the operation of a stop work order by making a further order or orders under this Division.

11.5 Offence—contravention of stop work order

A person must not contravene a stop work order.
Maximum penalty (includes additional daily penalty): Tier 1 penalty.

11.6 Appeal against stop work order

- (1) A person against whom a stop work order is made may appeal to the Land and Environment Court against the making of the order.
- (2) The lodging of an appeal does not, except to the extent that the Court otherwise directs in relation to the appeal, operate to stay action on the stop work order appealed against.
- (3) After hearing an appeal, the Court may:
 - (a) confirm the order, or
 - (b) modify or rescind the order.
- (4) In making a decision on an appeal, the Court is to have regard to the principles of ecologically sustainable development and the public interest.

11.7 Consultation about modification or licensing of proposed detrimental action

- (1) After making a stop work order, the Environment Agency Head must immediately consult with the person taking or proposing to take the relevant action to determine whether any modification of the action may be sufficient to prevent the contravention of this Act.
- (2) The Environment Agency Head may, for that purpose, request the person to provide information to determine whether any modification of the action would be sufficient or whether a biodiversity conservation licence or other authority should be issued.

Division 3 Interim protection orders

11.8 Recommendation for making of interim protection order

- (1) The Environment Agency Head may recommend to the Minister for the Environment the making of an interim protection order in respect of an area of land:
 - (a) that has, in the Agency Head's opinion, natural or scientific significance, or
 - (b) on which the Agency Head intends to exercise any of the Agency head's functions under this Act in relation to threatened species or ecological communities or to protected animals or protected native plants, or
 - (c) that is a declared area of outstanding biodiversity value or the habitat of a threatened species or ecological community.
- (2) This subsection applies where the Environment Agency Head has made a stop work order. The Environment Agency Head is to recommend to the Minister for the Environment the making of an interim protection order if, after consulting the person taking or proposing to take the relevant action, the Environment Agency Head is of the opinion that satisfactory arrangements cannot be made to prevent the contravention of the relevant provisions of this Act and that it is appropriate to make an interim protection order in the circumstances.

11.9 Making of interim protection orders

- (1) The Minister for the Environment may, after considering a recommendation of the Environment Agency Head, make an interim protection order in respect of the area of land the subject of the recommendation.

- (2) An interim protection order may contain terms of a kind set out in the regulations, being terms relating to the preservation, protection and maintenance of the area of land concerned, of threatened species and threatened ecological communities, of protected animals and of protected native plants.
- (3) The Minister for the Environment is not required, before making an interim protection order, to notify any person who will be affected by the order of the intention to make the order.

11.10 Taking effect and duration of interim protection order

- (1) An interim protection order takes effect on the date of its publication in the Gazette or on a later date specified in the order.
- (2) An interim protection order has effect for such period (not exceeding 2 years) specified in the order.
- (3) An interim protection order ceases to have effect if the order is revoked by the Minister for the Environment by notice published in the Gazette.
- (4) An interim protection order also ceases to have effect if the land subject to the order is reserved under the *National Parks and Wildlife Act 1974*.

11.11 Notice of making of interim protection order

The Minister for the Environment is to cause notice of an interim protection order and its terms (or of the revocation of the order) to be given to:

- (a) any person who appears to the Minister for the Environment to be a landholder of the area of land subject to the order, and
- (b) the local council in whose area the land subject to the order is situated, and
- (c) any other person the Minister for the Environment thinks fit.

11.12 Offence—contravention of interim protection order

A person who is given notice of an interim protection order must not contravene the order.

Maximum penalty (includes additional daily penalty): Tier 1 penalty.

11.13 Appeal against interim protection order

- (1) A landholder of the whole or any part of an area of land subject to an interim protection order may appeal to the Land and Environment Court against the making of order or any of its terms.
- (2) An appeal is to be made within the time and in the manner provided by the rules of the Court.
- (3) The lodging of an appeal does not, except to the extent that the Court otherwise directs in relation to the appeal, operate to stay action on the interim protection order appealed against.
- (4) In deciding an appeal, the Court is to have regard to:
 - (a) any hardship caused to the landholder by the making of the order or any of its terms, and
 - (b) the purposes of the order, and
 - (c) the public interest.

Division 4 Remediation orders

11.14 Definition of “damage”

In this Division:

damage:

- (a) in relation to a declared area of outstanding biodiversity value, includes damaging the biodiversity values of the area, and
- (b) in relation to a plant, includes picking the plant, and
- (c) in relation to an animal, includes harming the animal.

11.15 Orders for remedial work relating to damage to land, habitat and plants and animals

- (1) The Environment Agency Head may order a person to carry out specified remediation work in a specified manner and within a specified time, if the Environment Agency Head is satisfied that any of the following has been damaged in or as a result of the commission of an offence against this Act or the regulations (whether or not any person has been proceeded against or convicted for the offence):
 - (a) any declared area of outstanding biodiversity value,
 - (b) any habitat of a threatened species or threatened ecological community,
 - (c) any plant or animal that is of, or is part of, a threatened species or threatened ecological community.
- (2) A remediation order may, as alternative to requiring a person to carry out specified remediation work in a specified manner, require the person to carry out the required work that will achieve a specified remediation outcome.
- (3) A remediation order is to be served in writing on the person to whom it is given.
- (4) A remediation order may be varied or revoked in the same manner in which a remediation order may be given.

11.16 Remediation work required by order

- (1) The specified remediation work to be carried out by a person to whom a remediation order is given may include one or more of the following types of work:
 - (a) work to control, abate or mitigate the damage to the area, habitat, plant or animal concerned,
 - (b) work to maintain, remediate or restore the damaged area, habitat, plant or animal concerned (including replacing removed or dead plants or animals).
- (2) A remediation order may also require the person to carry out the following actions (and any such action that is required to be carried out is to be regarded for the purposes of this Division as part of the remediation work required by the order):
 - (a) ascertaining the nature and extent of the damage concerned and furnishing the information or records obtained to other persons (including to the Environment Agency Head),
 - (b) preparing, furnishing and carrying out a plan of action,
 - (c) engaging a suitably qualified person to plan, design or carry out the work required by the order,
 - (d) furnishing progress reports,
 - (e) monitoring, sampling and analysing anything to ascertain the nature and extent of the damage concerned or the progress in remediating the damage,

- (f) vacating the land concerned (or part of it), ceasing to carry on, modifying, or not commencing, an activity on, or use of, the land (or part of it),
- (g) carrying on an activity (or an aspect of it) only during particular times or in a particular manner,
- (h) construction, installation or removal of anything (including plants and structures such as fencing, walls, bunds or other barriers),
- (i) erecting or displaying on the land concerned any sign or notice containing directions to persons not to enter the land or not to use the land in a specified manner or for a specified purpose or containing other directions of that kind or any other kind,
- (j) refraining from disturbance or further disturbance of the land concerned in a specified manner or below a specified depth,
- (k) informing the Environment Agency Head of any change in the ownership or occupancy of the land concerned, to the extent that the person subject to the requirement is aware of the change.

11.17 Persons to whom remediation orders may be given

A remediation order may be given to any or all of the following persons:

- (a) the current or former landholder of any land on which the damage concerned occurred,
- (b) any other person the Environment Agency Head reasonably believes is responsible for the damage concerned.

11.18 Other person may carry out remediation work if failure to comply with order

- (1) If a person fails to comply with a remediation order, the Environment Agency Head may authorise any other person to enter the land concerned and carry out all or part of the specified remediation work.
- (2) The Environment Agency Head may recover the cost of that remediation work from the person given the remediation order in any court of competent jurisdiction as a debt due by that person to the Crown.

11.19 Development consent not required to carry out remediation work

A person is not required to obtain development consent under the *Environmental Planning and Assessment Act 1979* to carry out remediation work that the person is required or authorised to carry out under this Division.

11.20 Entry to land to carry out remediation work

- (1) A person required or authorised to carry out remediation work under a remediation order may enter the land concerned to carry out the work.
- (2) Nothing in this Division authorises a person to enter any part of premises used only for residential purposes except with the consent of the occupier of the premises.

11.21 Recovery by person given remediation order

If the person given a remediation order complies with the order but was not the person who caused the damage concerned, the cost of complying with the order may be recovered by the person who complied with the order as a debt in a court of competent jurisdiction from the person who caused the damage.

11.22 Offence of contravening remediation order or obstructing remediation work

- (1) A person must not, without reasonable excuse, contravene a remediation order to which the person is subject.
Maximum penalty (includes additional daily penalty): Tier 2 penalty.
- (2) An example of a reasonable excuse is that the person was unable to enter the land because of the refusal of access to the land by its occupier, but entry to that land was essential for the person to avoid committing the offence.
- (3) A person must not intentionally obstruct anyone who is carrying out remediation work under a remediation order.
Maximum penalty (includes additional daily penalty): Tier 2 penalty.

11.23 Appeals under this Division

- (1) A person given a remediation order may appeal against the giving of the order (or any terms of the order) to the Land and Environment Court within 30 days of the service of the order.
- (2) The lodging of an appeal does not, except to the extent that the Court otherwise directs in relation to the appeal, operate to stay action on the remediation order appealed against.

Division 5 Biodiversity offsets enforcement order

11.24 Definitions

In this Division, words and expressions have the same meaning they have in Part 6.

11.25 Order requiring biodiversity stewardship site owner to retire biodiversity credits

- (1) The Minister for the Environment may, by order in writing to a person, direct the person to retire biodiversity credits of a specified number and class (if applicable) within a time specified in the order.
- (2) A direction may be given to a person under this Division only if:
 - (a) the person is the owner of a biodiversity stewardship site (or a former owner), and
 - (b) the Minister for the Environment is satisfied that, because of any act or omission by the person, one or more biodiversity credits were created in respect of a management action that was not, or is not being, carried out in accordance with the relevant biodiversity stewardship agreement, and
 - (c) the biodiversity credit or credits created have been transferred to another person or retired.
- (3) The number of biodiversity credits, and class (if applicable), that are required to be retired is to be equivalent to the number and class of biodiversity credits that, in the opinion of the Minister for the Environment, were created in respect of management actions not carried out or not being carried out in accordance with the biodiversity stewardship agreement and which have been transferred or retired.
Note. Division 6 of Part 6 enables a person who is required under this section to retire biodiversity credits to make a payment instead to the Biodiversity Conservation Fund of the value of the credits in accordance with the offsets payments calculator.
- (4) A direction may be given to a person under this section only if before doing so the Minister for the Environment:
 - (a) gives notice to the person that the Minister intends to make the direction, and
 - (b) specifies in that notice the reasons for the Minister's intention to do so, and

- (c) gives the person a reasonable opportunity to make submissions in relation to the proposed direction, and
 - (d) takes into consideration any such submissions by the person.
- (5) Any action taken under this section does not prevent the Minister for the Environment from seeking an award of damages against the owner or former owner of a biodiversity stewardship site for a breach of a biodiversity stewardship agreement.

11.26 Order requiring owner to rectify breach of biodiversity stewardship agreement

- (1) The Minister for the Environment may, by order in writing to a person, direct a person who is the owner of a biodiversity stewardship site to carry out at the person's cost, within a period specified in the order, such work or other actions as the Minister considers necessary to rectify any breach of a biodiversity stewardship agreement.
- (2) If the requirements of the order are not complied with within the period specified in it, the Minister for the Environment:
 - (a) may enter the land and cause the work or actions specified in the order to be carried out, and
 - (b) may, by proceedings brought in any court of competent jurisdiction, recover as a debt from the person to whom the order was given the reasonable cost of complying with those requirements.
- (3) A direction may be given to a person under this section only if before doing so the Minister for the Environment:
 - (a) gives notice to the person that the Minister intends to make the direction, and
 - (b) specifies in that notice the reasons for the Minister's intention to do so, and
 - (c) gives the person a reasonable opportunity to make submissions in relation to the proposed direction, and
 - (d) takes into consideration any such submissions by the person.
- (4) This section does not prevent the Minister for the Environment from seeking an award of damages against the owner of a biodiversity stewardship site for a breach of a biodiversity stewardship agreement.

11.27 Offence—contravention of biodiversity offsets enforcement order

- (1) A person who is given a biodiversity offsets enforcement order must not contravene the order.
Maximum penalty (includes additional daily penalty): Tier 2 penalty.
Note. If the owner of a biodiversity stewardship site fails to comply with the order, that failure is also grounds for the cancellation or suspension of registration of a biodiversity stewardship site.
- (2) It is not an excuse for a failure to comply with a biodiversity offsets enforcement order that the person who is the subject of the order does not, at the time the order is made, hold a sufficient number of biodiversity credits to comply with the order.
Note. If the person who is the subject of the order does not hold a sufficient number of credits to comply with the order, the person may obtain the required number by purchasing them or carrying out the necessary management actions to create them. Alternatively, the person may, instead of retiring the credits, make a payment into the Biodiversity Conservation Fund under Division 6 of Part 6.
- (3) A court that finds a person guilty of an offence under this section may, in addition to or in substitution for any pecuniary penalty for the offence, by order direct the person to retire, in accordance with this Part, biodiversity credits of a specified number and class (if applicable) within a time specified in the order.

11.28 Appeals under this Division

- (1) A person given a biodiversity offsets order may appeal against the giving of the order (or any terms of the order) to the Land and Environment Court within 30 days of the service of the order.
- (2) The lodging of an appeal does not, except to the extent that the Court otherwise directs in relation to the appeal, operate to stay action on the order appealed against.

Division 6 Directions relating to protected animals and threatened species of animals

11.29 Definition

In this Division:

protected animals includes animals of (or part of) a threatened species or threatened ecological community.

11.30 Authorised officer who may give directions

For the purposes of this Division the following are authorised officers who may give directions under this Division:

- (a) the Minister for the Environment,
- (b) the Environment Agency Head,
- (c) a person employed in the Office of Environment and Heritage who is authorised by the Environment Agency Head to give directions under this Division.

11.31 Directions to stop activity distressing protected animals

- (1) An authorised officer may give a direction to a person to stop an activity that is causing or likely to cause distress to protected animals.
- (2) A direction cannot be given in relation to an activity of a person if that person would have a defence under Part 2 to any prosecution of the person for an offence of harming the protected animals concerned.

11.32 Directions for welfare of protected animals in confinement

An authorised officer may give a direction to a person who keeps protected animals in confinement or in a domesticated state to take such action with respect to the feeding, shelter or other welfare of the protected animals as the authorised officer considers appropriate.

11.33 Taking effect and duration of animal protection direction

- (1) An animal protection direction takes effect on the date it is served on the person to whom it is given.
- (2) An animal protection direction has effect for the period specified in the order:
 - (a) in the case of direction given by the Minister for the Environment—being a period not exceeding 2 years, or
 - (b) in the case of a direction given by any other authorised officer—being a period not exceeding 28 days.
- (3) An animal protection direction ceases to have effect if the direction is revoked by an authorised officer by notice served on the person to whom it was given. A direction given by the Minister for the Environment may only be revoked by the Minister.

- (4) A further animal protection direction may be given after the expiry or revocation of an earlier direction.

11.34 Appeals to Minister against animal protection direction and directions by Minister

- (1) A person who is given an animal protection direction by an authorised officer other than the Minister for the Environment may appeal to the Minister against the giving of the direction within 14 days after the direction is given.
- (2) The lodging of an appeal does not, except to the extent that the Minister for the Environment otherwise directs in relation to the appeal, operate to stay action on the direction appealed against.
- (3) After hearing an appeal, the Minister for the Environment may:
- (a) confirm the direction, or
 - (b) modify or revoke the direction.
- (4) The Minister for the Environment is not to give an animal protection direction unless:
- (a) a direction in similar terms has been given to the person by an authorised officer other than the Minister, and
 - (b) a period of 14 days has elapsed since that direction was given and no appeal has been made to the Minister against the direction or, if an appeal has been made, the direction was not substantially modified or revoked.

11.35 Offence—contravention of animal protection direction

A person must not, without reasonable excuse, contravene an animal protection direction.

Maximum penalty (includes additional penalty):

- (a) in the case of an animal that is (or is part of) a threatened species or threatened ecological community (other than a vulnerable species or community)—Tier 2 penalty, or
- (b) in the case of an animal that is (or is part of) a vulnerable species or vulnerable ecological community—Tier 3 penalty, or
- (c) in any other case—Tier 4 penalty.

Part 12 Investigation powers

Division 1 Preliminary

12.1 Definitions

In this Part:

authorised officer means a person appointed under Division 2.

motor vehicle has the same meaning as it has in the *Road Transport Act 2013*.

occupier of premises means the person who has the management or control of the premises.

owner of a motor vehicle includes the responsible person for the vehicle within the meaning of the *Road Transport Act 2013*.

premises includes:

- (a) a building or structure, or
- (b) land or a place (whether enclosed or built on or not), or
- (c) a mobile plant, vehicle, vessel or aircraft.

records includes plans, specifications, maps, reports, books and other documents (whether in writing, in electronic form or otherwise).

specify an act, matter or thing, includes:

- (a) describe the act, matter or thing, and
- (b) specify a class of acts, matters or things.

vessel means any kind of vessel used in navigation.

12.2 Purposes for which powers under this Part may be exercised

Powers may be exercised under this Part for the following purposes:

- (a) for determining whether there has been compliance with or a contravention of this Act, the regulations, biodiversity conservation licences, private land conservation agreements, orders or other instruments or requirements issued or made under this Act,
- (b) for determining whether there has been compliance with the approved conservation measures under biodiversity certification or biodiversity offset obligations under the biodiversity offsets scheme,
- (c) for obtaining information or records for purposes connected with the administration of this Act,
- (d) for terrestrial biodiversity conservation (including the protection of animals and plants),
- (e) generally for administering this Act.

12.3 Effect on other functions

Nothing in this Part affects any function under any other Part of this Act or under any other Act.

Consultation note. Authorised officers appointed by the Minister for Planning or Local Land Services may be authorised also to exercise investigation powers under relevant legislation relating to planning and native vegetation management.

Division 2 Authorised officers

12.4 Appointment of authorised officers

The Environment Agency Head may appoint any person (including a class of persons) as an authorised officer for the purposes of this Act.

12.5 Scope of authority

- (1) An authorisation of a person as an authorised officer can be given generally, or subject to conditions, limitations or restrictions or only for limited purposes.
- (2) If such authorisation is given subject to conditions, limitations or restrictions or only for limited purposes, nothing in this Act authorises or requires the authorised officer to act in contravention of the conditions, limitations or restrictions or for other purposes.

12.6 Identification

- (1) Every authorised officer, who is not a police officer, is to be provided with an identification card as an authorised officer by Environment Agency Head.
- (2) In the course of exercising the functions of an authorised officer under this Act, the officer must, if requested to do so by any person affected by the exercise of any such function, produce to the person the officer's identification card, issued in accordance with this section, or, in the case of a police officer, the officer's police identification.

Division 3 Powers to require information and records

12.7 Application of Part

This Part applies whether or not a power of entry under Division 4 is being or has been exercised.

12.8 Requirement to provide information and records

- (1) The Environment Agency Head may, by notice in writing given to a person, require the person to furnish to it such information or records (or both) as it requires by the notice.
- (2) An authorised officer may, by notice in writing given to a person, require the person to furnish to the officer such information or records (or both) as the officer requires by the notice.

12.9 Manner, time etc for compliance

A notice under this Part must specify the manner in which information or records are required to be furnished and a reasonable time by which the information or records are required to be furnished.

12.10 Provisions relating to records

- (1) A notice under this Part may only require a person to furnish existing records that are in the person's possession or that are within the person's power to obtain lawfully.
- (2) The body or person to whom any record is furnished under this Part may take copies of it.
- (3) If any record required to be furnished under this Part is in electronic, mechanical or other form, the notice requires the record to be furnished in written form, unless the notice otherwise provides.

Division 4 Powers of entry and search of premises

12.11 Powers of authorised officers to enter premises

- (1) An authorised officer may enter any premises at any reasonable time.
- (2) A power to enter premises conferred by this Part authorises entry by foot or by means of a motor vehicle or other vehicle, or by an aircraft, or in any other manner.
- (3) Entry may be effected under this Part by an authorised officer with the aid of such authorised officers or police officers as the authorised officer considers necessary and with the use of reasonable force.
- (4) Entry may be effected to any premises with the authority of a search warrant under section 12.14.

12.12 Entry into residential premises only with permission or warrant

This Part does not empower an authorised officer to enter any part of premises used only for residential purposes without the permission of the occupier or the authority of a search warrant under this Part.

12.13 Powers of authorised officers to do things at premises

- (1) An authorised officer may, at any premises lawfully entered, do anything that in the opinion of the authorised officer is necessary to be done for the purposes of this Part, including (but not limited to) the things specified in subsection (2).
- (2) An authorised officer may do any or all of the following:
 - (a) examine and inspect any animal, plant, works, vehicle, aircraft or other article,
 - (b) take and remove samples,
 - (c) make such examinations, inquiries and tests as the authorised officer considers necessary,
 - (d) take such photographs, films, audio, video and other recordings as the authorised officer considers necessary,
 - (e) require records to be produced for inspection,
 - (f) examine and inspect any records,
 - (g) copy any records,
 - (h) seize anything that the authorised officer has reasonable grounds for believing is connected with an offence against this Act or the regulations,
 - (i) for the purposes of any such seizure, direct the occupier of the premises where the thing is seized to retain it at those premises or at another place under the control of the occupier,
 - (j) do any other thing the authorised officer is empowered to do under this Part.
- (3) The power to seize anything connected with an offence includes a power to seize:
 - (a) a thing with respect to which the offence has been committed, and
 - (b) a thing that will afford evidence of the commission of the offence, and
 - (c) a thing that was used for the purpose of committing the offence.

A reference to any such offence includes a reference to an offence that there are reasonable grounds for believing has been committed.

12.14 Search warrants

(1) Application for search warrant

An authorised officer under this Act may apply to an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002* for the issue of a search warrant if the authorised officer under this Act believes on reasonable grounds that:

- (a) a provision of this Act or the regulations is being or has been contravened at any premises, or
- (b) there is in or on any premises matter or a thing that is connected with an offence under this Act or the regulations.

(2) Issue of search warrant

An authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002* to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised officer under this Act named in the warrant:

- (a) to enter the premises, and
- (b) to exercise any function of an authorised officer under this Part.

(3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.

(4) Definitions

In this section:

matter or a thing connected with an offence means:

- (a) matter or a thing with respect to which the offence has been committed, or
- (b) matter or a thing that will afford evidence of the commission of an offence, or
- (c) matter or a thing that was used, or is intended to be used, for the purpose of committing the offence.

offence includes an offence that there are reasonable grounds for believing has been, or is to be, committed.

12.15 Authorised officers may request assistance

A person may accompany an authorised officer and take all reasonable steps to assist an authorised officer in the exercise of the authorised officer's functions under this Part if the authorised officer is of the opinion that the person is capable of providing assistance to the authorised officer in the exercise of those functions.

12.16 Assistance to be given to authorised officers

- (1) This section applies for the purpose of enabling an authorised officer to exercise any of the powers of an authorised officer under this Part in connection with any premises.
- (2) The Environment Agency Head may, by notice in writing given to the owner or occupier of the premises, require the owner or occupier to provide such reasonable assistance and facilities as are specified in the notice within a specified time and in a specified manner.
- (3) Assistance and facilities can be required under this section, whether they are of the same kind as, or a different kind from, any prescribed by the regulations.

12.17 Care to be taken

In the exercise of a power of entering or searching premises under this Part, the authorised officer must do as little damage as possible.

12.18 Compensation

The Environment Agency Head must compensate all interested parties for any damage caused by an authorised officer in exercising a power of entering premises (but not any damage caused by the exercise of any other power), unless the occupier obstructed or hindered the authorised officer in the exercise of the power of entry.

Division 5 Powers to question and to identify persons

12.19 Power of authorised officers to require answers

- (1) An authorised officer may require a person whom the authorised officer suspects on reasonable grounds to have knowledge of matters in respect of which information is reasonably required for the purposes of this Act to answer questions in relation to those matters.
- (2) The Environment Agency Head may, by notice in writing, require a corporation to nominate, in writing within the time specified in the notice, a director or officer of the corporation to be the corporation's representative for the purpose of answering questions under this section.
- (3) Answers given by a person so nominated bind the corporation.
- (4) An authorised officer may, by notice in writing, require a person to attend at a specified place and time to answer questions under this section if attendance at that place is reasonably required in order that the questions can be properly put and answered.
- (5) The place and time at which a person may be required to so attend is to be:
 - (a) a place or time nominated by the person, or
 - (b) if the place and time nominated is not reasonable in the circumstances or a place and time is not nominated by the person, a place and time nominated by the authorised officer that is reasonable in the circumstances.

12.20 Recording of evidence

- (1) An authorised officer may cause any questions and answers to questions given under this Part to be recorded if the officer has informed the person who is to be questioned that the record is to be made.
- (2) A record may be made using sound recording apparatus or audio visual apparatus, or any other method determined by the authorised officer.
- (3) A copy of any such record must be provided by the authorised officer to the person who is questioned as soon as practicable after it is made.
- (4) A record may be made under this section despite the provisions of any other law.

12.21 Power of authorised officers to demand name and address

(1) Name and address to be given if offence suspected

An authorised officer may require a person whom the authorised officer suspects on reasonable grounds to have offended or to be offending against this Act or the regulations to state his or her full name and residential address.

(2) **Proof of name and address**

An authorised officer may request a person who is required under this section to state his or her full name and residential address to provide proof of the name and address. It is not an offence to fail to comply with any such request.

(3) **Power of arrest**

A person who, being required to do so under this section:

- (a) refuses to state his or her name or residential address, or
- (b) states a name or residential address that in the opinion of the authorised officer is false,

may without any other warrant than this Act be apprehended by the authorised officer and taken before a Magistrate or court officer to be dealt with according to law.

(4) **Bail**

A Magistrate or court officer before whom a person is so taken may make a bail decision under the *Bail Act 2013* in respect of the person.

(5) If the person has not been charged with an offence, the *Bail Act 2013* applies as if the person were accused of an offence.

(6) For the purpose of applying the *Bail Act 2013*, a court officer has the same functions as an authorised justice under that Act.

(7) In this section:

court officer means an authorised officer under the *Criminal Procedure Act 1986*.

Division 6 General

12.22 Offences

(1) A person who, without lawful excuse, neglects or fails to comply with a requirement made of the person under this Part (except under section 12.21) is guilty of an offence.

Maximum penalty (includes additional daily penalty): Tier 2 penalty.

(2) A person who, without lawful excuse, neglects or fails to comply with a requirement made of the person under section 12.21 is guilty of an offence.

Maximum penalty: Tier 4 penalty.

(3) A person who furnishes any information or does any other thing in purported compliance with a requirement made under this Part, knowing that it is false or misleading in a material respect is guilty of an offence.

Maximum penalty: Tier 1 penalty.

(4) A person who intentionally delays or obstructs an authorised officer in the exercise of the authorised officer's powers under this Part is guilty of an offence.

Maximum penalty: Tier 1 penalty.

(5) A person who impersonates an authorised officer is guilty of an offence.

Maximum penalty: Tier 2 penalty.

12.23 Provisions relating to requirements to furnish records, information or answer questions

(1) Warning to be given on each occasion

A person is not guilty of an offence of failing to comply with a requirement under this Part to furnish records or information or to answer a question unless the person was warned on that occasion that a failure to comply is an offence.

(2) Self-incrimination not an excuse

A person is not excused from a requirement under this Part to furnish records or information or to answer a question on the ground that the record, information or answer might incriminate the person or make the person liable to a penalty.

(3) Information or answer not admissible if objection made

However, any information furnished or answer given by a natural person in compliance with a requirement under this Part is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under this Part) if:

- (a) the person objected at the time to doing so on the ground that it might incriminate the person, or
- (b) the person was not warned on that occasion that the person may object to furnishing the information or giving the answer on the ground that it might incriminate the person.

(4) Records admissible

Any record furnished by a person in compliance with a requirement under this Part is not inadmissible in evidence against the person in criminal proceedings on the ground that the record might incriminate the person.

(5) Further information

Further information obtained as a result of a record or information furnished or of an answer given in compliance with a requirement under this Part is not inadmissible on the ground:

- (a) that the record or information had to be furnished or the answer had to be given, or
- (b) that the record or information furnished or answer given might incriminate the person.

(6) Requirement to state name and address

This section extends to a requirement under this Part to state a person's name and address.

12.24 Revocation or variation

- (1) A notice given under this Part may be revoked or varied by a subsequent notice or notices.
- (2) A notice may be varied by modification of, or addition to, its terms and specifications.
- (3) Without limiting the above, a notice may be varied by extending the time for complying with the notice.
- (4) A notice may only be revoked or varied by:
 - (a) the Environment Agency Head, or
 - (b) the authorised officer who gave the notice, or

- (c) another authorised officer.

12.25 Extraterritorial application

A notice may be given under this Part to a person in respect of a matter even though the person is outside the State or the matter occurs or is located outside the State, so long as the matter affects the environment of this State.

12.26 Extraterritorial exercise of functions

- (1) The Minister for the Environment may enter into an arrangement with a Minister of another State or Territory providing for the exercise, in another State or Territory, by authorised officers or by officers of that State or Territory of functions under this Act or the regulations.
- (2) An authorised officer or an officer of another State or Territory may, in accordance with any such arrangement, exercise functions under this Act, but only to the extent that the matters concerned relate to the natural environment of this State.

Part 13 Criminal and civil proceedings

Division 1 Criminal proceedings

13.1 Maximum penalty—Tier 1, Tier 2, Tier 3, Tier 4 or Tier 5

- (1) If *Tier 1*, *Tier 2*, *Tier 3*, *Tier 4* or *Tier 5* is specified as the maximum penalty at the end of a provision (or a number of provisions) of this Act, a person who contravenes or fails to comply with that provision (or those provisions) is guilty of an offence and liable to a penalty not exceeding the relevant penalty specified in this section.

Note. Section 14.9 provides that the regulations may create offences and impose a penalty for an offence against the regulations not exceeding \$110,000.

- (2) The maximum penalty for *Tier 1* is:
- (a) in the case of a corporation:
 - (i) \$1,650,000, and
 - (ii) if this Act provides that an additional daily penalty applies to the offence—a further \$165,000 for each day the offence continues, and
 - (iii) if this Act provides that an additional penalty for each animal or plant applies to the offence—a further \$165,000 for each animal or whole plant to which the offence relates, or
 - (b) in the case of an individual:
 - (i) \$330,000, and
 - (ii) if this Act provides that an additional daily penalty applies to the offence—a further \$33,000 for each day the offence continues, and
 - (iii) if this Act provides that an additional penalty for each animal or plant applies to the offence—a further \$33,000 for each animal or whole plant to which the offence relates.
- (3) The maximum penalty for *Tier 2* is:
- (a) in the case of a corporation:
 - (i) \$660,000 and
 - (ii) if this Act provides that an additional daily penalty applies to the offence—a further \$66,000 for each day the offence continues, and
 - (iii) if this Act provides that an additional penalty for each animal or plant applies to the offence—a further \$66,000 for each animal or whole plant to which the offence relates, or
 - (b) in the case of an individual:
 - (i) \$132,000, and
 - (ii) if this Act provides that an additional daily penalty applies to the offence—a further \$13,200 for each day the offence continues, and
 - (iii) if this Act provides that an additional penalty for each animal or plant applies to the offence—a further \$13,200 for each animal or whole plant to which the offence relates.
- (4) The maximum penalty for *Tier 3* is:
- (a) in the case of a corporation:
 - (i) \$440,000, and
 - (ii) if this Act provides that an additional daily penalty applies to the offence—a further \$44,000 for each day the offence continues, and

- (iii) if this Act provides that an additional penalty for each animal or plant applies to the offence—a further \$44,000 for each animal or whole plant to which the offence relates, or
 - (b) in the case of an individual:
 - (i) \$88,000, and
 - (ii) if this Act provides that an additional daily penalty applies to the offence—a further \$8,800 for each day the offence continues, and
 - (iii) if this Act provides that an additional penalty for each animal or plant applies to the offence—a further \$8,800 for each animal or whole plant to which the offence relates.
- (5) The maximum penalty for *Tier 4* is:
 - (a) in the case of a corporation:
 - (i) \$110,000, and
 - (ii) if this Act provides that an additional daily penalty applies to the offence—a further \$11,000 for each day the offence continues, and
 - (iii) if this Act provides that an additional penalty for each animal or plant applies to the offence—a further \$11,000 for each animal or whole plant to which the offence relates, or
 - (b) in the case of an individual:
 - (i) \$22,000, and
 - (ii) if this Act provides that an additional daily penalty applies to the offence—a further \$2,200 for each day the offence continues, and
 - (iii) if this Act provides that an additional penalty for each animal or plant applies to the offence—a further \$2,200 for each animal or whole plant to which the offence relates.
- (6) The maximum penalty for *Tier 5* is \$22,000.

13.2 Proceedings for offences

- (1) Proceedings for an offence against this Act or the regulations may be dealt with summarily before the Local Court or before the Land and Environment Court in its summary jurisdiction.
- (2) If proceedings for an offence are brought in the Local Court, the maximum monetary penalty that the Local Court may impose for the offence is, despite any other provision of this Act, \$110,000 (including within that maximum amount any daily penalty or any additional penalty for each animal or plant affected by the offence) or the maximum monetary penalty provided for the offence, whichever is the lesser.

13.3 Authority to take proceedings

- (1) Any legal proceedings for an offence against this Act or the regulations may only be taken by a police officer, by the Environment Agency Head or by a person duly authorised by the Environment Agency Head in that behalf, either generally or in any particular case.
- (2) In any proceedings referred to in this section the production of an authority purporting to be signed by the Environment Agency Head is evidence of the authority without proof of the signature of the Environment Agency Head.

13.4 Time within which proceedings may be commenced

- (1) Proceedings for an offence against this Act or the regulations may be commenced not later than 2 years after the date on which the offence is alleged to have been committed.
- (2) Proceedings for an offence against this Act or the regulations may also be commenced within, but not later than, 2 years after the date on which evidence of the alleged offence first came to the attention of any relevant investigation officer.
- (3) If subsection (2) is relied on for the purpose of commencing proceedings for an offence, the court attendance notice or application must contain particulars of the date on which evidence of the offence first came to the attention of any relevant investigation officer and need not contain particulars of the date on which the offence was committed. The date on which evidence first came to the attention of any relevant investigation officer is the date specified in the court attendance notice or application, unless the contrary is established.
- (4) This section applies despite anything in the *Criminal Procedure Act 1986* or any other Act.
- (5) In this section:
evidence of an offence means evidence of any act or omission constituting the offence.
investigation officer means an authorised officer within the meaning of Part 12, whether or not the person has the functions of an investigation officer in connection with the offence concerned.
relevant investigation officer means:
 - (a) in relation to proceedings for an offence instituted by or with the consent of the Environment Agency Head—any investigation officer who is an employee of the Office of Environment and Heritage, or
 - (b) in relation to proceedings for an offence instituted by any other person—any investigation officer.

13.5 Penalty notices for certain offences

- (1) An authorised person may serve a penalty notice on a person if it appears to the authorised person that the person has committed an offence under this Act or the regulations, being an offence prescribed by the regulations.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice:
 - (a) may be served personally or by post, or
 - (b) if it relates to an offence involving the use of a vehicle, may be addressed to the owner (without naming the owner or stating the owner's address) and may be served by leaving it on or attaching it to the vehicle.
- (4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.

- (6) The regulations may:
 - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
 - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
 - (c) prescribe different amounts of penalties for different offences or classes of offences, and
 - (d) prescribe different amounts of penalties for the same offence in different circumstances (including in the case of repeat offenders), and
 - (e) in the case of a continuing offence, prescribe different amounts of penalties for different periods during which the offence continues.
- (7) The amount of a penalty prescribed under this section for an offence must not exceed the maximum amount of penalty which could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings which may be taken in respect of offences.
- (9) In this section, *authorised person* means a person who is declared by the regulations to be an authorised person for the purposes of this section or who belongs to a class of persons so declared.

13.6 Liability of directors etc for offences by corporation—offences attracting executive liability

- (1) For the purposes of this section, an *executive liability offence* is an offence against any of the following provisions of this Act that is committed by a corporation:
 - (a) section 2.1 or 2.2 (Harming animals or picking plants), in the case of an animal or plant that is (or is part of) a threatened species or threatened ecological community,
 - (b) section 2.3 (Damaging the biodiversity values of declared areas of outstanding biodiversity value),
 - (c) section 2.4 (Damaging habitat of threatened species or ecological communities),
 - (d) section 2.5 (Dealing in animals or plants), in the case of an animal or plant that is (or is part of) threatened species or ecological community,
 - (e) section 11.5, 11.12, 11.22 or 11.27 (Contravening stop work order, interim protection order, remediation order or biodiversity offsets enforcement order),
 - (f) section 13.25 (Offence of failing to comply with court order), being an order in relation to an offence involving threatened species, threatened ecological communities or areas of outstanding biodiversity value but not being an order in relation to costs and expenses incurred by a public authority or agency.
- (2) A person commits an offence against this section if:
 - (a) a corporation commits an executive liability offence, and
 - (b) the person is:
 - (i) a director of the corporation, or
 - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the executive liability offence, and

- (c) the person:
 - (i) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and
 - (ii) fails to take all reasonable steps to prevent or stop the commission of that offence.

Maximum penalty: The maximum penalty for the executive liability offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the executive liability offence.
- (5) This section does not affect the liability of the corporation for the executive liability offence, and applies whether or not the corporation is prosecuted for, or convicted of, the executive liability offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are accessories to the commission of the executive liability offence or are otherwise concerned in, or party to, the commission of the executive liability offence.
- (7) In this section:
 - director* has the same meaning it has in the *Corporations Act 2001* of the Commonwealth.

reasonable steps, in relation to the commission of an executive liability offence, includes, but is not limited to, such action (if any) of the following kinds as is reasonable in all the circumstances:

- (a) action towards:
 - (i) assessing the corporation's compliance with the provision creating the executive liability offence, and
 - (ii) ensuring that the corporation arranged regular professional assessments of its compliance with the provision,
- (b) action towards ensuring that the corporation's employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them to enable them to comply with the provision creating the executive liability offence so far as the provision is relevant to them,
- (c) action towards ensuring that:
 - (i) the plant, equipment and other resources, and
 - (ii) the structures, work systems and other processes,relevant to compliance with the provision creating the executive liability offence are appropriate in all the circumstances,
- (d) action towards creating and maintaining a corporate culture that does not direct, encourage, tolerate or lead to non-compliance with the provision creating the executive liability offence.

13.7 Liability of directors etc for offences by corporation—accessory to the commission of the offences

- (1) For the purposes of this section, a *corporate offence* is an offence against this Act or the regulations that is capable of being committed by a corporation, whether or not it is an executive liability offence referred to in section 13.6.

- (2) A person commits an offence against this section if:
- (a) a corporation commits a corporate offence, and
 - (b) the person is:
 - (i) a director of the corporation, or
 - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
 - (c) the person:
 - (i) aids, abets, counsels or procures the commission of the corporate offence, or
 - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
 - (iii) conspires with others to effect the commission of the corporate offence, or
 - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

13.8 Evidence as to state of mind of corporation

- (1) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a corporation (while acting in his or her capacity as such) had, at any particular time, a particular state of mind, is evidence that the corporation had that state of mind.
- (2) In this section, the *state of mind* of a person includes:
 - (a) the knowledge, intention, opinion, belief or purpose of the person, and
 - (b) the person's reasons for the intention, opinion, belief or purpose.

13.9 Ancillary offences

- (1) A person who:
 - (a) causes or permits another person to commit, or
 - (b) aids, abets, counsels or procures another person to commit, or
 - (c) conspires to commit,an offence under another provision of this Act or the regulations is guilty of an offence against that other provision and is liable, on conviction, to the same penalty applicable to an offence against that other provision.

- (2) A person does not commit an offence because of this section for any act or omission that is an offence under section 13.7 (Liability of directors etc for offences by corporations—accessory to the commission of the offences).

13.10 Offence—false or misleading information

- (1) A person must not provide information in connection with a matter under this Act that the person knows, or ought reasonably to know, is false or misleading in a material particular.
Maximum penalty: Tier 1 penalty.
- (2) For the purposes of this section, a person provides information in connection with a matter under this Act if:
- (a) the person is an applicant for a biodiversity conservation licence (or for the amendment of a biodiversity conservation licence) and the information is provided by the applicant in or in connection with the application, or
 - (b) the person is engaged by any such applicant and the information is provided by that person for the purposes of the application, or
 - (c) the person provides information in connection with any other matter or thing under this Act that the regulations declare to be the provision of information in connection with a matter under this Act.

Note. The *Crimes Act 1900* contains other offences relating to false and misleading information: section 192G (Intention to defraud by false or misleading statement—maximum penalty 5 years imprisonment); sections 307A, 307B and 307C (False or misleading applications/information/documents—maximum penalty 2 years imprisonment or \$22,000, or both).

13.11 Continuing offences

- (1) A person who is guilty of an offence because the person contravenes a requirement made by or under this Act or the regulations (whether the requirement is imposed by a notice or otherwise) to do or cease to do something (whether or not within a specified period or before a particular time):
- (a) continues, until the requirement is complied with and despite the fact that any specified period has expired or time has passed, to be liable to comply with the requirement, and
 - (b) is guilty of a continuing offence for each day the contravention continues.
- (2) This section does not apply to an offence if the relevant provision of this Act or the regulations does not provide for a penalty for a continuing offence.
- (3) This section does not apply to the extent that a requirement of a notice is revoked.

Division 2 Civil proceedings

13.12 Definition of “breach”

In this section:

breach includes a threatened or apprehended breach.

13.13 Civil proceedings to remedy or restraint of breaches of this Act or regulations

- (1) Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of this Act or the regulations.
- (2) Any such proceedings may be brought whether or not proceedings have been instituted for an offence against this Act or the regulations.

- (3) If the Court is satisfied that a breach has been committed or that a breach will, unless restrained by order of the Court, be committed, it may make such orders as it thinks fit to remedy or restrain the breach.
- (4) Without limiting the powers of the Court under this section, an order under this section may suspend any biodiversity conservation licence.

13.14 Civil proceedings for enforcement of private land conservation agreements

- (1) Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of a biodiversity stewardship agreement.
- (2) The Minister for the Environment, or a person acting with the written consent of the Minister for the Environment, may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of any private land conservation agreement.
- (3) If the Court is satisfied that a breach has been committed or that a breach will, unless restrained by order of the Court, be committed, it may make such orders as it thinks fit to remedy or restrain the breach.
- (4) Without limiting the powers of the Court under this section, the Court may:
 - (a) in the case of proceedings brought by the Minister for the Environment—award damages against the owner of the land subject to the private land conservation agreement for a breach of the agreement that arose from an intentional, reckless or negligent act or omission by or on behalf of the owner or a previous owner of the land (being an act or omission of which the owner had notice) including a failure by the owner or previous owner to prevent another person from causing a breach of the agreement, and
 - (b) in any case involving a biodiversity stewardship agreement—direct the owner of the biodiversity stewardship site to retire biodiversity credits of a specified number and class (if applicable) within a period specified in the order.

Note. Division 6 of Part 6 enables a person who is required under this section to retire biodiversity credits to make a payment instead to the Biodiversity Conservation Fund of the value of the credits in accordance with the offsets payments calculator.
- (5) In assessing damages for breach of a biodiversity stewardship agreement by an owner or previous owner, the Court may have regard to:
 - (a) any detriment to the public interest arising from the breach, and
 - (b) any financial or other benefit that the owner or previous owner gained or sought to gain by committing the breach, and
 - (c) any other matter that it considers relevant.
- (6) Section 89 of the *Conveyancing Act 1919* does not authorise any court to modify or wholly or partially extinguish any restriction or obligation created by a biodiversity stewardship agreement except with the consent of the Minister for the Environment.

13.15 Civil proceedings for enforcement of biodiversity certification agreements

- (1) The Minister for the Environment, or a person acting with the written consent of the Minister for the Environment, may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of a biodiversity certification agreement under this Act.
- (2) In any such proceedings, a consent to institute the proceedings, purporting to have been signed by the Minister for the Environment, is evidence of that consent without proof of the signature of the Minister for the Environment.

- (3) If the Court is satisfied that a breach has been committed or that a breach will, unless restrained by order of the Court, be committed, it may make such orders as it thinks fit to remedy or restrain the breach.

13.16 Provisions relating to proceedings under this Division

- (1) Proceedings may be brought by a person under this Division whether or not any right of the person has been or may be infringed by or as a consequence of the breach concerned.
- (2) Proceedings may be brought by a person under this Division on the person's own behalf or on behalf of another person (with their consent), or of a body corporate or unincorporate (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings.
- (3) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.

Division 3 Ancillary court orders

13.17 Operation of Division

(1) Application to proved offences

This Division applies where a court finds an offence against this Act or the regulations proved.

(2) Meaning of proved offences

Without limiting the generality of subsection (1), a court finds an offence proved if:

- (a) the court convicts the offender of the offence, or
- (b) the court makes an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999* against the offender in relation to the offence (in which case the order is not a punishment for the purposes of that section).

(3) Definitions

In this Division:

the court means the court that finds the offence proved.

the offender means the person who is found to have committed the offence.

Note. Part 5A of the Local Land Services Act 2013 also authorises the Land and Environment Court to make ancillary court orders in relation to native vegetation offences under that Part.

13.18 Orders generally

(1) Orders may be made

One or more orders may be made under this Division against the offender.

(2) Orders are additional

Orders may be made under this Division in addition to any penalty that may be imposed or any other action that may be taken in relation to the offence.

(3) Other action not required

Orders may be made under this Division regardless of whether any penalty is imposed, or other action taken, in relation to the offence.

13.19 Orders for restoration and prevention

- (1) The court may order the offender to take such steps as are specified in the order, within such time as is so specified (or such further time as the court on application may allow):
 - (a) to prevent, control, abate or mitigate any damage to animals or plants caused by the commission of the offence, or
 - (b) to make good any resulting damage to animals or plants or their habitat, or
 - (c) if the offence relates to damage to the habitat of a threatened species or ecological community or to an area of outstanding biodiversity value—to retire biodiversity credits of a specified number and class (if applicable), or
 - (d) to prevent the continuance or recurrence of the offence.
- (2) The court may order the offender to provide security to the court or to the Environment Agency Head for the performance of any obligation imposed under this section.
- (3) An order under subsection (2) must specify:
 - (a) the amount of the security required to be provided, and
 - (b) the kind of security required to be provided, and
 - (c) the manner and form in which the security is to be provided.

13.20 Orders for costs, expenses and compensation at time offence proved

- (1) The court may, if it appears to the court that:
 - (a) a public authority has incurred costs and expenses in connection with:
 - (i) the prevention, control, abatement or mitigation of any damage to animals or plants caused by the commission of the offence, or
 - (ii) making good any resulting damage to animals or plants or their habitat, or
 - (b) a person (including a public authority) has, by reason of the commission of the offence, suffered loss of or damage to property or has incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage,order the offender to pay to the public authority or person the costs and expenses so incurred, or compensation for the loss or damage so suffered, as the case may be, in such amount as is fixed by the order.
- (2) An order made by the Land and Environment Court under subsection (1) is enforceable as if it were an order made by the Court in Class 4 proceedings under the *Land and Environment Court Act 1979*.
- (3) The Local Court may not make an order under subsection (1) for the payment of an amount that exceeds the amount for which an order may be made by the court when exercising jurisdiction under the *Civil Procedure Act 2005*. An order made by the court is enforceable as if it were an order made by the court when exercising jurisdiction under that Act.

13.21 Recovery of costs, expenses and compensation after offence proved

- (1) If, after the court finds the offence proved:
 - (a) a public authority has incurred costs and expenses in connection with:
 - (i) the prevention, control, abatement or mitigation of any damage to animals or plants caused by the commission of the offence, or

- (ii) making good any resulting damage to animals or plants or their habitat, or
 - (b) a person (including a public authority) has, by reason of the commission of the offence, suffered loss of or damage to property or has incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage,
the person or public authority may recover from the offender the costs and expenses incurred or the amount of the loss or damage in the Land and Environment Court.
- (2) The amount of any such costs and expenses (but not the amount of any such loss or damage) may be recovered as a debt.

13.22 Orders regarding costs and expenses of investigation

- (1) The court may, if it appears to the court that the Office of Environment and Heritage has reasonably incurred costs and expenses during the investigation of the offence, order the offender to pay to the Environment Agency Head the costs and expenses so incurred in such amount as is fixed by the order.
- (2) An order made by the Land and Environment Court under subsection (1) is enforceable as if it were an order made by the Court in Class 4 proceedings under the *Land and Environment Court Act 1979*. An order made by the Local Court under subsection (1) is enforceable as if it were an order made by the court when exercising jurisdiction under the *Civil Procedure Act 2005*.
- (3) In this section:
costs and expenses, in relation to the investigation of an offence, means the costs and expenses:
 - (a) in conducting any inspection, test, measurement or analysis, or
 - (b) of transporting, storing or disposing of evidence, during the investigation of the offence.

13.23 Orders regarding monetary benefits

- (1) The court may order the offender to pay, as part of the penalty for committing the offence, an additional penalty of an amount the court is satisfied, on the balance of probabilities, represents the amount of any monetary benefits acquired by the offender, or accrued or accruing to the offender, as a result of the commission of the offence.
- (2) The amount of an additional penalty for an offence is not subject to any maximum amount of penalty provided elsewhere by or under this Act.
- (3) The regulations may prescribe a protocol to be used in determining the amount that represents the monetary benefit acquired by the offender or accrued or accruing to the offender.
- (4) In this section:
monetary benefits means monetary, financial or economic benefits.
the court does not include the Local Court.

13.24 Additional orders

- (1) **Orders**
The court may do any one or more of the following:
 - (a) order the offender to take specified action to publicise the offence (including the circumstances of the offence) and its consequences and any other orders made against the person,

- (b) order the offender to take specified action to notify specified persons or classes of persons of the offence (including the circumstances of the offence) and its consequences and of any orders made against the person (including, for example, the publication in an annual report or any other notice to shareholders of a company or the notification of persons aggrieved or affected by the offender's conduct),
- (c) order the offender to carry out a specified project for the restoration or enhancement of the terrestrial environment in a public place or for the public benefit,
- (d) order the offender to carry out a specified environmental or other audit of activities carried on by the offender,
- (e) order the offender to pay a specified amount to a specified organisation, for the purposes of a specified project for the restoration or enhancement of the terrestrial environment,
- (f) order the offender to attend, or to cause an employee or employees or a contractor or contractors of the offender to attend, a training or other course specified by the court,
- (g) order the offender to establish, for employees or contractors of the offender, a training course of a kind specified by the court,
- (h) if the Environment Agency Head is a party to the proceedings, order the offender to provide a financial assurance, of a form and amount specified by the court, to the Environment Agency Head, if the court orders the offender to carry out a specified work or program for the restoration or enhancement of the terrestrial environment.

The Local Court is not authorised to make an order referred to in paragraph (c), (d), (e) or (h).

- (2) Without limiting subsection (1) (c), the court may order the offender to carry out any social or community activity for the benefit of the community or persons that are adversely affected by the offence (a *restorative justice activity*) that the offender has agreed to carry out. However, the Local Court is not authorised to make an order under this subsection.

(3) **Machinery**

The court may, in an order under this section, fix a period for compliance and impose any other requirements the court considers necessary or expedient for enforcement of the order.

(4) **Failure to publicise or notify**

If the offender fails to comply with an order under subsection (1) (a) or (b), the prosecutor or a person authorised by the prosecutor may take action to carry out the order as far as may be practicable, including action to publicise or notify:

- (a) the original contravention, its consequences, and any other penalties imposed on the offender, and
- (b) the failure to comply with the order.

(5) **Cost of publicising or notifying**

The reasonable cost of taking action referred to in subsection (4) is recoverable by the prosecutor or person taking the action, in a court of competent jurisdiction, as a debt from the offender.

(6) **Financial assurances**

Sections 302–307 of the *Protection of the Environment Operations Act 1997* apply (subject to the regulations) to a financial assurance provided by an offender under an order made under this section in the same way as they apply to a financial assurance given by a holder of a licence under a condition of a licence under Part 9.4 of that Act.

13.25 Offence of failing to comply with court order

A person who fails to comply with an order under this Division (except an order for the payment of money) is guilty of an offence.

Maximum penalty (includes additional daily penalty): Tier 4 penalty.

Division 4 Enforceable undertakings

13.26 Enforcement of undertakings

- (1) The Environment Agency Head may accept a written undertaking given by a person for the purposes of this Division in connection with a matter in relation to which the Environment Agency Head has a function under this Act.
- (2) Without limiting subsection (1), an undertaking that the Environment Agency Head may accept includes an undertaking to carry out a restorative justice activity.
- (3) The person may withdraw or vary the undertaking at any time, but only with the consent in writing of the Environment Agency Head. The consent of the Environment Agency Head is required even if the undertaking purports to authorise withdrawal or variation of the undertaking without that consent.
- (4) The Environment Agency Head may apply to the Land and Environment Court for an order under subsection (5) if the Environment Agency Head considers that the person who gave the undertaking has breached any of its terms.
- (5) The Court may make all or any of the following orders if it is satisfied that the person has breached a term of the undertaking:
 - (a) an order directing the person to comply with that term of the undertaking,
 - (b) an order directing the person to pay to the State an amount not exceeding the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach,
 - (c) any order that the Court thinks appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach,
 - (d) an order suspending or revoking any biodiversity conservation licence held by the person,
 - (e) an order requiring the person to prevent, control, abate or mitigate any actual or likely damage to animals or plants caused by the breach,
 - (f) an order requiring the person to make good any actual or likely damage to animals or plants caused by the breach,
 - (g) any other order the Court considers appropriate.

Note. Part 5A of the *Local Land Services Act 2013* also authorises Local Land Services to exercise the functions of the Environment Agency Head under this Division to enter into enforceable undertakings for the purposes of the management of native vegetation.

Division 5 Evidentiary provisions

13.27 Onus of proof of reasonable excuse

The onus of proof of reasonable excuse in any proceedings for an offence under this Act or the regulations lies on the person charged with the offence.

13.28 Documentary evidence generally

Any instrument purporting:

- (a) to be an instrument issued, made or given for the purposes of this Act, and
 - (b) to have been signed by the person authorised to issue, make or give the instrument, or by another person acting as delegate or on behalf of the person,
- is admissible in any proceedings under this Act and (in the absence of evidence to the contrary) is to be taken to be such an instrument and to have been so signed.

13.29 Certificate evidence of certain matters

The following are admissible in legal proceedings as evidence of the matters stated:

- (a) a document issued by the Environment Agency Head stating particulars included in a public register under Division 2 of Part 9

Consultation note. Additional evidentiary provisions (similar to those contained in section 197 of the National Parks and Wildlife Act or section 261 of the Protection of the Environment Operations Act) will be included in this section.

Part 14 Miscellaneous

14.1 Act to bind Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

14.2 Biodiversity Conservation Advisory Panel

- (1) There is established by this Act a Biodiversity Conservation Advisory Panel (the *Advisory Panel*).
- (2) The function of the Advisory Panel is to advise the Minister for the Environment on any matter on which that Minister requests advice that relates to the management of biodiversity conservation.
- (3) The Advisory Panel is subject to the control and direction of the Minister for the Environment in relation to the work it undertakes, but is not subject to the control and direction of the Minister in relation to the content of any advice given by the Advisory Panel.
- (4) The Advisory Panel is to consist of not less than 5, and not more than 8, members appointed by the Minister for the Environment. The members of the Advisory Panel are to have such qualifications and expertise that the Minister for the Environment considers appropriate for the work of the Panel.
- (5) The Minister for the Environment is to appoint one of the members of the Advisory Panel as the Chairperson of the Panel.
- (6) The Advisory Panel may consult with, obtain advice from, or request the assistance of any person who has expertise relevant to the work of the Panel.
- (7) The regulations may make provision for or with respect to the members and procedure of the Advisory Panel.

14.3 Delegation of functions by Minister or Environment Agency Head

- (1) The Minister for the Environment may delegate the exercise of any function of the Minister under this Act (other than this power of delegation) to:
 - (a) the Environment Agency Head or any person employed in the Office of Environment and Heritage, or
 - (b) any person, or any class of persons, authorised for the purposes of this section by the regulations.
- (2) The Environment Agency Head may delegate the exercise of any function of the Agency Head under this Act (other than this power of delegation) to:
 - (a) any person employed in the Office of Environment and Heritage, or
 - (b) any person, or any class of persons, authorised for the purposes of this section by the regulations.

14.4 Exclusion of personal liability

- (1) In this section:
protected person means any of the following:
 - (a) the Minister for the Environment,
 - (b) the Environment Agency Head or any other employee of the Office of Environment and Heritage,
 - (c) a member of the Threatened Species Scientific Committee,

- (d) a member of the Biodiversity Conservation Advisory Panel,
- (e) a person acting under the direction of any of the above persons.

A protected person does not include the Biodiversity Conservation Trust (or any employee or agent of the Trust) or anyone appointed as the Trust Manager of the Biodiversity Stewardship Payments Fund in the place of the Trust.

- (2) Anything done or omitted to be done by a protected person does not subject the protected person personally to any action, liability, claim or demand if the thing was done, or omitted to be done, in good faith for the purpose of exercising the functions of the protected person under this Act.
- (3) However, any such liability attaches instead to the Crown.

14.5 Fees and other charges payable to Environment Agency Head

- (1) Any fee or other charge payable to the Environment Agency Head under this Act may be recovered by the Environment Agency Head as a debt due to the Crown in a court of competent jurisdiction.
- (2) The Environment Agency Head may refund or waive the whole or any part of a fee or other charge payable to the Environment Agency Head under this Act.

14.6 Relationship between this Act and Part 7A of the Fisheries Management Act 1994

- (1) The Minister for the Environment may, by order made with the concurrence of the Minister administering the *Fisheries Management Act 1994*:
 - (a) declare a species of fish to be a species of animal for the purposes of this Act if it is an invertebrate and it is a species that may inhabit a terrestrial environment at some stage of its biological development, or
 - (b) declare a species of marine vegetation to be a species of plant for the purposes of this Act if it is a species that may inhabit freshwater or a terrestrial environment at some stage of its biological development.
- (2) Any species of fish or marine vegetation that is the subject of an order in force under this section is taken to be a species of an animal or plant for the purposes of this Act, in accordance with the terms of the order.
- (3) The Minister for the Environment and the Minister administering the *Fisheries Management Act 1994* may consult with each other, the Chairpersons of the Scientific Committee and the Fisheries Scientific Committee and other persons or bodies for the purpose of determining whether an order under this section should be made and the terms of the order.
- (4) If the Ministers are unable to resolve any dispute between them as to the making or the terms of an order under this section, the matter is to be referred to the Premier for resolution. The decision of the Premier in relation to the matter is to be given effect to by the Ministers.
- (5) An order under this section is to be published on the NSW legislation website.
- (6) In this section:
 - fish* has the same meaning as in the *Fisheries Management Act 1994*.
 - freshwater* has the same meaning as in the *Fisheries Management Act 1994*.
 - marine vegetation* has the same meaning as in the *Fisheries Management Act 1994*.

14.7 Native title rights and interests

This Act does not affect the operation of the *Native Title Act 1993* of the Commonwealth or the *Native Title (New South Wales) Act 1994* in respect of the

recognition of native title rights and interests within the meaning of the Commonwealth Act or in any other respect.

14.8 Service or giving of documents

- (1) A document that is authorised or required by or under this Act to be given to or served on any person may be given or served by:
 - (a) in the case of a natural person:
 - (i) delivering it to the person personally, or
 - (ii) sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or
 - (iii) sending it by facsimile transmission to the facsimile number of the person, or
 - (iv) sending it by electronic transmission (including for example by email) to the person in accordance with arrangements indicated by the person as appropriate for transmitting documents to the person, or
 - (b) in the case of a body corporate:
 - (i) leaving it with a person apparently of or above the age of 16 years at, or sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or
 - (ii) sending it by facsimile transmission to the facsimile number of the body corporate, or
 - (iii) sending it by electronic transmission (including for example by email) to the person in accordance with arrangements indicated by the person as appropriate for transmitting documents to the person.
- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising or requiring a document to be given or served on a person in any other manner.

14.9 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may:
 - (a) amend or substitute Schedule 5 (Protected animals) or Schedule 6 (Protected native plants), and
 - (b) regulate the breeding of protected animals, and

Consultation note. It is proposed that the regulations will continue the current restriction in section 105A of the *National Parks and Wildlife Act 1974* that a person cannot carry on the business of an emu breeder unless licensed to do so by the Environment Agency Head.
 - (c) make provision for or with respect to the registration of persons who deal in protected animals or plants and of premises used by those persons, and
 - (d) require the keeping of records by persons who deal in protected animals or plants, and
 - (e) make provision for or with respect to the preparation of plant management plans in relation to any commercial activity that may adversely affect

- protected native plants or threatened species of plants (including provision with respect to tagging of plants that are sold), and
- (f) make further provision for or with respect to the biodiversity offsets scheme, including making provision:
 - (i) for the retirement of biodiversity credits, and
 - (ii) for arrangements between participants in the biodiversity offsets scheme or between those participants and other persons in connection with the scheme, and
 - (iii) for the resolution of disputes arising in connection with the operation of the scheme, and
 - (g) make provision for or with respect to conservation brokers, being persons who provide or offer to provide any of the following services (whether or not for fee or reward):
 - (i) the identification of potential biodiversity stewardship sites or management actions,
 - (ii) the negotiation of a biodiversity stewardship agreement on behalf of a land owner,
 - (iii) assistance with buying or selling biodiversity credits,
 - (iv) any other related service in connection with the biodiversity offsets scheme, and
 - (h) require the Environment Agency Head to establish programs for the collection, monitoring and assessment of information on biodiversity.
- (3) The regulations may create offences punishable by a penalty not exceeding \$110,000.

14.10 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

Note. Part 5A of the Local Land Services Act 2013 requires the review under this Act to be undertaken in conjunction with the review under that Act of the native vegetation land management provisions of that Part.
- (2) The Minister is to include public consultation as a part of the review.
- (3) The review is to be undertaken as soon as possible after the period of 5 years from the commencement of a majority of the provisions of this Act.
- (4) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Threatened species

(Section)

Part 1 Critically endangered species

Division 1 Animals

Vertebrates

Amphibians

Hylidae

- | | |
|--|--------------------------|
| * <i>Litoria castanea</i> (Steindachner, 1867) | Yellow-spotted Tree Frog |
| * <i>Litoria spenceri</i> Dubois, 1984 | Spotted Tree Frog |
| * <i>Litoria piperata</i> Tyler & Davis, 1985 | Peppered Tree Frog |

Myobatrachidae

- | | |
|---|--------------------------|
| * <i>Pseudophryne corroboree</i> Moore, 1953 | Southern Corroboree Frog |
| * <i>Pseudophryne pengilleyi</i> Wells and Wellington, 1985 | Northern Corroboree Frog |

Reptiles

Chelidae

- | | |
|-------------------------------|---------------------------------|
| <i>Myucheles</i> (Cann, 1997) | Bellinger River Snapping Turtle |
|-------------------------------|---------------------------------|

Birds

Accipitridae

- | | |
|--|-------------|
| * <i>Erythroriorchis radiatus</i> (Latham, 1801) | Red Goshawk |
|--|-------------|

Turnicidae

- | | |
|--|-----------------------------|
| * <i>Turnix melanogaster</i> (Gould, 1837) | Black-breasted Button-quail |
|--|-----------------------------|

Burhinidae

- | | |
|---|--------------------|
| <i>Esacus magnirostris</i> Vieillot, 1818 | Beach Stone-curlew |
|---|--------------------|

Charadriidae

- | | |
|---|---------------|
| <i>Thinornis rubricollis</i> (Gmelin, 1789) | Hooded Plover |
|---|---------------|

Cacatuidae

- | | |
|--|--|
| <i>Calyptrorhynchus banksii banksii</i> (Latham, 1790) | Red-tailed Black-Cockatoo (coastal subspecies) |
|--|--|

Psittacidae

- | | |
|---|-----------------------|
| * <i>Cyclopsitta diophthalma coxeni</i> Gould, 1867 | Coxen's Fig-Parrot |
| * <i>Neophema chrysogaster</i> (Latham, 1790) | Orange-bellied Parrot |

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Biodiversity Conservation Bill 2016 [NSW]
Schedule 1 Threatened species

Maluridae

- * *Amytornis textilis modestus* (North, 1902) Thick-billed Grasswren (eastern subspecies)

Meliphagidae

- * *Anthochaera phrygia* (Shaw, 1794) Regent Honeyeater
* *Manorina melanotis* (Wilson, 1911) Black-eared Miner

Pachycephalidae

- * *Pachycephala rufogularis* Gould, 1841 Red-lored Whistler

Mammals

Muridae

- Pseudomys desertor* Troughton, 1932 Desert Mouse
* *Pseudomys fumeus* Brazenor, 1934 Smoky Mouse

Invertebrates

Mollusca

Charopidae

- * *Mystivagor mastersi* (Brazier, 1872) Masters Charopid Land Snail
* *Pseudocharopa ledgbirdi* (Etheridge, 1889) Mount Lidgbird Charopid Land Snail
* *Pseudocharopa whiteleggei* (Etheridge, 1889) Whitelegge's Land Snail

Helicarionidae

- * *Gudeoconcha sophiae magnifica* Iredale, 1944 Magnificent Helicarionid Land Snail

Arthropoda

Insecta

Phasmatodea

Phasmatidae

- * *Dryococelus australis* (Montrouzier, 1855) Lord Howe Island Phasmid

Lepidoptera

Lycaenidae

- Jalmenus eubulus* Miskin, 1876

Editorial note. *Hibbertia* sp. Turrumurra (A.Robinson s.n. NSW981514), referred to in Gazette No 69 of 15 August 2014, page 2877, is provisionally listed in the Part in accordance with Division 4 of Part 2 of this Act. A provisional listing of a species ceases to have effect if the Scientific Committee makes a final determination

to list, or not to list, the species or on the expiration of 12 months after the provisional listing, whichever first occurs.

Division 2 Plants

Plants

Areceaceae

Lepidorrhachis mooreana (F. Muell.) O.F. Cook Little Mountain Palm

Convolvulaceae

* *Calystegia affinis* Endl.

Dilleniaceae

* *Hibbertia* sp. Bankstown (R.T. Miller & C.P. Gibson s.n.
18/10/2006)

Hibbertia sp. Turramurra (A.Robinson s.n. NSW981514)

Euphorbiaceae

* *Fontainea oraria* Jessup & Guymer

Fabaceae

Bossiaea fragrans K.L. McDougall

* *Pultenaea* sp. Genowlan Point (Allen s.n., 29 Nov. 1997)

* *Pultenaea elusa* (J.D. Briggs & Crisp) R.P.J. de Kok

Gentianaceae

* *Gentiana bredboensis* L.G. Adams

* *Gentiana wingecarribiensis* L. Adams Wingecarribee Gentian

Haloragaceae

Myriophyllum implicatum Orchard

Lamiaceae

* *Prostanthera marifolia* R. Br.

Myrtaceae

Callistemon megalongensis (Craven & S.M. Douglas) Megalong Valley Bottlebrush
Udovicic & R.D. Spencer

* *Eucalyptus imlayensis* Crisp & Brooker

* *Eucalyptus recurva* Crisp

Eucalyptus sp. Cattai (Gregson s.n., 28 Aug 1954)

Orchidaceae

Caladenia attenuata (Brinsley) D.L. Jones

Corunastylis sp. Charmhaven (NSW896673)

Diuris flavescens D.L. Jones

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Biodiversity Conservation Bill 2016 [NSW]
Schedule 1 Threatened species

- * *Genoplesium insigne* D.L. Jones
Genoplesium littorale D.L. Jones Tuncurry Midge Orchid
- * *Genoplesium plumosum* (Rupp) D.L. Jones & M.A. Clem.
Prasophyllum bagoense D.L. Jones
Prasophyllum canaliculatum D.L. Jones
- * *Prasophyllum fuscum* R. Br. *sensu stricto*
Prasophyllum innubum D.L. Jones
Prasophyllum keltonii D.L. Jones
Prasophyllum sp. Majors Creek (Jones 11084)
Prasophyllum sp. Moama (D.L. Jones 19276)
- * *Prasophyllum uroglossum* Rupp
- * *Pterostylis despectans* (Nicholls) M.A. Clem & D.L. Jones
Pterostylis oreophila Clemesha
Pterostylis ventricosa (D.L. Jones) G.N. Backh.
- * *Pterostylis vernalis* (D.L. Jones) G.N. Backh.
Thelymitra sp. *adorata* (B. Branwhite JAJ1030) J. Jeanes ined. Wyong Sun Orchid
Thelymitra kangaloonica Jeanes
Thelymitra atronitida Jeanes

Poaceae

- * *Elymus multiflorus* subsp. *kingianus* (Endl.) de Lange & R. O. Gardner

Proteaceae

- Banksia conferta* A.S. George subsp. *conferta*
- * *Grevillea caleyi* R. Br.
- * *Grevillea iaspicula* McGill.
Grevillea ilicifolia (R.Br.) R.Br. subsp. *ilicifolia*
- * *Persoonia pauciflora* P.H. Weston North Rothbury Persoonia

Rhamnaceae

- Pomaderris delicata* N.G. Walsh & F. Coates
- * *Pomaderris reperta* N.G. Walsh & F. Coates
Pomaderris walshii J.C. Millott & K.L. McDougall

Rutaceae

- * *Zieria adenophora* Blakely
- * *Zieria buxijugum* J.D. Briggs & J.A. Armstr.
- * *Zieria formosa* J.D. Briggs & J.A. Armstr.

* *Zieria parrisiae* J.D. Briggs & J.A. Armstr.

Sapindaceae

Dodonaea stenozyga F. Muell.

Scrophulariaceae

* *Euphrasia arguta* R. Br.

Sterculiaceae

Lasiopetalum behrii F. Muell.

Division 3 Populations

Nil

Part 2 Endangered species

Division 1 Animals

Vertebrates

Amphibians

Hylidae

- | | |
|--|----------------------------|
| * <i>Litoria aurea</i> (Lesson, 1829) | Green and Golden Bell Frog |
| * <i>Litoria booroolongensis</i> (Moore, 1961) | Booroolong Frog |
| * <i>Litoria raniformis</i> (Keferstein, 1867) | Southern Bell Frog |
| * <i>Litoria verreauxii alpina</i> (Fry, 1915) | Alpine Tree Frog |

Myobatrachidae

- | | |
|--|------------------------|
| * <i>Mixophyes balbus</i> Straughan, 1968 | Stuttering Frog |
| * <i>Mixophyes fleayi</i> Corben & Ingram, 1987 | Fleay's Barred Frog |
| * <i>Mixophyes iteratus</i> Straughan, 1968 | Giant Barred Frog |
| <i>Neobatrachus pictus</i> Peters, 1863 | Painted Burrowing Frog |
| <i>Philoria kundagungan</i> (Ingram & Corben, 1975) | Mountain Frog |
| <i>Philoria loveridgei</i> Parker, 1940 | Loveridge's Frog |
| <i>Philoria pughii</i> Knowles, Mahony, Armstrong and Donnellan, 2004 | a frog |
| <i>Philoria richmondensis</i> Knowles, Mahony, Armstrong and Donnellan, 2004 | a frog |

Reptiles

Agamidae

- | | |
|---|----------------------|
| <i>Ctenophorus mirrityana</i> (McLean, Moussalli, Sass & Stuart-Fox 2013) | Barrier Range Dragon |
|---|----------------------|

public consultation draft

Biodiversity Conservation Bill 2016 [NSW]
Schedule 1 Threatened species

* <i>Tympanocryptis pinguicolla</i> Mitchell, 1948	Grassland Earless Dragon
Cheloniidae	
* <i>Caretta caretta</i> (Linnaeus, 1758)	Loggerhead Turtle
Dermochelyidae	
* <i>Dermochelys coriacea</i> (Vandelli, 1761)	Leatherback Turtle
Gekkonidae	
<i>Oedura rhombifer</i> J.E. Gray, 1845	Zigzag Velvet Gecko
Pygopodidae	
<i>Aprasia inaurita</i> Kluge, 1974	Mallee Worm-lizard
<i>Delma australis</i> Kluge, 1974	Marble-faced Delma
Diplodactylidae	
<i>Diplodactylus platyurus</i> Parker, 1926	Eastern Fat-tailed Gecko
Scincidae	
* <i>Anomalopus mackayi</i> Greer & Cogger, 1985	Five-clawed Worm-skink
<i>Ctenotus pantherinus ocellifer</i> (Peters, 1866)	Leopard Ctenotus
<i>Cyclodomorphus melanops elongatus</i> (Werner, 1910)	Mallee Slender Blue-tongue Lizard
* <i>Cyclodomorphus praealtus</i> Shea, 1995	Alpine She-oak Skink
<i>Cyclodomorphus venustus</i> Shea & Miller, 1995	
* <i>Eulamprus leuraensis</i> Wells & Wellington, 1984	Water skink
Elapidae	
<i>Echiopsis curta</i> (Schlegel, 1837)	Bardick
* <i>Hoplocephalus bungaroides</i> (Schlegel, 1837)	Broad-headed Snake
<i>Pseudonaja modesta</i> (Günther, 1872)	Ringed Brown Snake
Typhlopidae	
<i>Ramphotyphlops endoterus</i> (Waite, 1918)	Interior Blind Snake
Birds	
Megapodiidae	
* <i>Leipoa ocellata</i> Gould, 1840	Malleefowl
Anatidae	
<i>Nettapus coromandelianus</i> (J.F. Gmelin, 1789)	Cotton Pygmy-goose
Procellariidae	
* <i>Macronectes giganteus</i> (J.F. Gmelin, 1789)	Southern Giant Petrel
Diomedidae	
* <i>Diomedea exulans</i> Linnaeus, 1758	Wandering Albatross

public consultation draft

Biodiversity Conservation Bill 2016 [NSW]
Schedule 1 Threatened species

Ciconiidae

Ephippiorhynchus asiaticus (Latham, 1790) Black-necked Stork

Ardeidae

* *Botaurus poiciloptilus* (Wagler, 1827) Australasian Bittern

Falconidae

Falco hypoleucos Gould, 1841 Grey Falcon

Rallidae

* *Gallirallus sylvestris* (P.L. Sclater, 1869) Lord Howe Woodhen

Otididae

Ardeotis australis (J.E. Gray, 1829) Australian Bustard

Pedionomidae

* *Pedionomus torquatus* Gould, 1840 Plains-wanderer

Scolopacidae

Calidris ferruginea (Pontoppidan, 1763) Curlew Sandpiper

Rostratulidae

* *Rostratula australis* (Gould, 1838) Australian Painted Snipe

Burhinidae

Burhinus grallarius (Latham, 1801) Bush Stone-curlew

Haematopodidae

Haematopus longirostris Vieillot, 1817 Pied Oystercatcher

Laridae

Sternula albifrons (Pallas, 1764) Little Tern

Columbidae

Phaps histrionica (Gould, 1841) Flock Bronzewing

* *Geophaps scripta* (Temminck, 1821) Squatter Pigeon

Psittacidae

* *Lathamus discolor* (Shaw, 1790) Swift Parrot

* *Polytelis anthopeplus monarchoides* Schodde, 1993 Regent Parrot (eastern subspecies)

Maluridae

* *Amytornis barbatus barbatus*, Favaloro & McEvey, 1968 Grey Grasswren

Dasyornithidae

* *Dasyornis brachypterus* (Latham, 1801) Eastern Bristlebird

Acanthizidae

Calamanthus fuliginosus (Vigors & Horsfield, 1827) *sensu stricto* Striated Fieldwren

public consultation draft

Biodiversity Conservation Bill 2016 [NSW]
Schedule 1 Threatened species

Estrildidae

- * *Poephila cincta cincta* (Gould, 1837) Black-throated Finch (southern subspecies)

Mammals

Dasyuridae

- Antechinomys laniger* (Gould, 1856) Kultarr
Dasyurus viverrinus (Shaw, 1800) Eastern Quoll

Peramelidae

- * *Isoodon obesulus obesulus* (Shaw, 1797) Southern Brown Bandicoot (eastern)

Vombatidae

- Lasiorhinus latifrons* (Owen, 1845) Southern Hairy-nosed Wombat

Burramyidae

- * *Burramys parvus* Broom, 1896 Mountain Pygmy-possum
Cercartetus concinnus (Gould, 1845) Western Pygmy Possum

Potoroidae

- * *Potorous longipes* Seebeck & Johnston, 1980 Long-footed Potoroo

Macropodidae

- Macropus dorsalis* (Gray, 1837) Black-striped Wallaby
* *Petrogale penicillata* (Gray, 1825) Brush-tailed Rock-wallaby
* *Petrogale xanthopus* Gray, 1855 Yellow-footed Rock-wallaby

Molossidae

- Mormopterus eleryi* Reardon and McKenzie, 2008 Bristle-faced free-tailed bat,
Hairy-nosed Freetail Bat

Muridae

- * *Notomys fuscus* (Jones, 1925) Dusky Hopping-mouse
Pseudomys apodemoides Finlayson, 1932 Silky Mouse
Pseudomys bolami Troughton, 1932 Bolam's Mouse
Pseudomys delicatulus (Gould, 1842) Delicate Mouse
* *Pseudomys oralis* Thomas, 1921 Hastings River Mouse

Marine mammals

Dugongidae

- Dugong dugon* (Müller, 1776) Dugong

Balaenidae

- * *Eubalaena australis* (Desmoulins, 1822) Southern Right Whale

Balaenopteridae

- * *Balaenoptera musculus* (Linnaeus, 1758) Blue Whale

Invertebrates

Annelida

Oligochaeta

Opisthopera

Megascolecidae

- Pericryptodrilus nanus* Jamieson, 1977

Molluscs

Bulimulidae

- * *Placostylus bivaricosus* (Gaskoin, 1855) a land snail

Camaenidae

- Meridolum corneovirens* (Pfeiffer, 1851) a land snail
* *Thersites mitchellae* (Cox, 1864) a land snail

Arthropoda

Insecta

Blattodea

Blaberidae

- Panesthia lata* Walker, 1868 Lord Howe Island wood-feeding
cockroach

Coleoptera

Carabidae

- Nurus atlas* Castelnau, 1867
Nurus brevis Motschulsky, 1865

Lepidoptera

Castniidae

- * *Synemon plana* Walker, 1854 Golden Sun Moth

Hesperiidae

Ocybadistes knightorum (Lambkin & Donaldson, 1994) Black Grass-dart Butterfly

Nymphalidae

Argyreus hyperbius (Linnaeus, 1763) Laced Fritillary or Australian Fritillary

Lycaenidae

* *Paralucia spinifera* Edwards and Common, 1978 Bathurst Copper Butterfly

Noctuidae

* *Phyllodes imperialis* Druce (ANIC 3333) southern subspecies

Odonata

Petaluridae

Petalura gigantea (Leach, 1815) Giant Dragonfly

Petalura litorea Theischinger 1999

Division 2 Fungi

Basidiomycota

Hygrophoraceae

Camarophylloopsis kearneyi A.M. Young

Hygrocybe austropratensis A.M. Young

Hygrocybe collucera A.M. Young, R Kearney & E. Kearney

Hygrocybe griseoramosa A.M. Young, R Kearney & E. Kearney

Hygrocybe lanecovensisi A.M. Young

Division 3 Plants

Acanthaceae

Dipteracanthus australasicus subsp. *corynothecus* (F. Muell. ex Benth.) R. Barker

Harnieria hygrophiloides (F. Muell.) R. M. Barker

* *Isoglossa eranthemoides* (F. Muell.) R. Barker

* *Xerothamnella parvifolia* C. White

Anthericaceae

Caesia parviflora var. *minor* R.J.F. Hend.

Apiaceae

* *Gingidia montana* (Forster & Forster f.) J. Wyndham Dawson

- * *Trachymene scapigera* (Domin) B.L. Burt

Apocynaceae

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

Aponogetonaceae

Aponogeton queenslandicus H. Bruggen

Araceae

Typhonium sp. aff. *brownii* (A.G. Floyd 11/3/1958 North Coast
Regional Botanic Garden Herbarium 585)

Araliaceae

Astrotricha sp. Wallagaraugh (R.O. Makinson 1228)

Astrotricha cordata A. Bean

- * *Astrotricha roddii* Makinson

Araucariaceae

- * *Wollemia nobilis* W. Jones, K. Hill & J. Allen

Asclepiadaceae

- * *Cynanchum elegans* (Benth.) Domin

- * *Marsdenia longiloba* Benth.

- * *Tylophora woollsii* Benth.

Asteraceae

Brachyscome ascendens G.L. Davis

- * *Calotis moorei* P. Short

Calotis pubescens N.G. Walsh & K.L. McDougall

Cratystylis conocephala (F. Muell.) S. Moore

Erodiophyllum elderi F. Muell.

Kippistia suaedifolia F. Muell.

Leptorhynchus orientalis Paul G. Wilson

Leptorhynchus waitzia Sonder

- * *Olearia flocktoniae* Maiden & E. Betche

Ozothamnus vagans (C.T. White) Anderb.

- * *Rutidosia leptorrhynchoides* F. Muell.

Senecio linearifolius var. *dangarensis* Belcher ex I. Thomps.

Senecio spathulatus A. Rich.

Senecio squarrosus A. Rich.

Brassicaceae

Irenepharsus magicus Hewson

- * *Irenepharsus trypherus* Hewson
- * *Lepidium hyssopifolium* Desv.
- * *Lepidium monolocoides* F. Muell.
- * *Lepidium peregrinum* Thell.
- * *Lepidium pseudopapillosum* Thell.

Calomniaceae

Calomnion complanatum (Hook.f. & Wilson)

Campanulaceae

Wahlenbergia scopulicola Carolin ex P.J. Smith

Capparaceae

Capparis canescens Banks ex DC.

Capparis loranthifolia Lindley var. *loranthifolia*

Caryophyllaceae

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

Casuarinaceae

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

Characeae

Nitella partita Nordst.

Chenopodiaceae

- Atriplex sturtii* S. Jacobs
- Dysphania platycarpa* Paul G. Wilson
- Dysphania plantaginella* F. Muell.
- Osteocarpum scleropterum* (F. Muell.) Volkens
- * *Sclerolaena napiformis* Paul G. Wilson
- Threlkeldia inchoata* (J. Black) J. Black

Convolvulaceae

Convolvulus tedmoorei R.W. Johnson

Ipomoea diamantinensis J. Black

Ipomoea polymorpha Roemer & Schultes

Wilsonia rotundifolia Hook.

Cupressaceae

Callitris baileyi C. White

Cyperaceae

Carex archeri Boott

Carex klaphakei K.L. Wilson

Carex raleighii Nelmes

Cyperus aquatilis R. Br.

Cyperus conicus (R. Br.) Boeck

* *Cyperus semifertilis* S.T. Blake

Eleocharis tetraquetra Nees

Davalliaceae

Arthropteris palisotii (Desv.) Alston

Davidsoniaceae

* *Davidsonia jerseyana* (F. Muell. ex F.M. Bailey) G. Harden & J.B. Williams

* *Davidsonia johnsonii* J.B. Williams & G. Harden

Dilleniaceae

Hibbertia hexandra C. White

Hibbertia procumbens (Labill.) DC.

Hibbertia puberula Toelken

Hibbertia stricta subsp. *furcatula* Toelken

Hibbertia superans Toelken

Hibbertia tenuifolia Toelken

Droseraceae

Aldrovanda vesiculosa L.

Dryopteridaceae

Lastreopsis hispida (Sw.) Tind.

Polystichum moorei H. Christ

Ebenaceae

* *Diospyros mabacea* (F. Muell.) F. Muell.

Diospyros major var. *ebenus* (Sprengel) Bakh.

Elaeocarpaceae

* *Elaeocarpus sedentarius* Maynard & Crayn

Minyon Quandong

* *Elaeocarpus williamsianus* Guymer

Epacridaceae

- * *Epacris hamiltonii* Maiden & E. Betche
- * *Leucopogon confertus* Benth.
Leucopogon fletcheri subsp. *fletcheri* Maiden & E. Betche
- * *Melichrus hirsutus* J.B. Williams ms
- * *Melichrus* sp. Gibberagee (A.S. Benwell & J.B. Williams 97239)
Monotoca rotundifolia J.H. Willis

Eriocaulaceae

- * *Eriocaulon australasicum* (F. Muell.) Korn.
- * *Eriocaulon carsonii* F. Muell.

Euphorbiaceae

- Acalypha eremorum* Muell. Arg.
- Bertya* sp. (Chambigne NR, M. Fatemi 24)
- Bertya* sp. (Clouds Creek, M. Fatemi 4)
- * *Bertya ingramii* T. James
Chamaesyce psammogeton (P.S. Green) P.I. Foster and R.J. Henderson
Euphorbia sarcostemmoides J.H. Willis
Monotaxis macrophylla Benth.

Fabaceae

- Acacia acanthoclada* F. Muell.
- Acacia acrionastes* Pedley
- Acacia atrox* Kodela
- * *Acacia bynoeana* Benth.
Acacia chrysotricha Tind
Acacia dangarensis Tindale & Kodela
- * *Acacia gordonii* (Tind.) Pedley
Acacia jucunda Maiden & Blakely
Acacia notabilis F. Muell.
Acacia petraea Pedley
- * *Acacia pubifolia* Pedley
Acacia rivalis J. Black
- * *Acacia ruppii* Maiden & E. Betche
- * *Acacia terminalis* (Salisb.) J.F. Macbr. subsp. *terminalis*

- * *Almaleea cambagei* (Maiden & E. Betcher) Crisp & P. Weston

Caesalpinia bonduc (L.) Roxb.

Carmichaelia exsul F. Muell.

Cassia brewsteri var. *marksiana* Bailey

Crotalaria cunninghamii R. Br.

Cullen parvum (F. Muell.) J.W. Grimes

Desmodium campylocaulon F. Muell.

Dillwynia glaucula Jobson & P.H. Weston

Indigofera baileyi F. Muell.

- * *Indigofera efoliata* F. Muell.

Indigofera helmsii Peter G. Wilson

Indigofera leucotricha E. Pritzel

Indigofera longibractea J. Black

Pultenaea sp. Olinda (R.G. Coveny 6616)

- * *Pultenaea parviflora* Sieber ex DC.

Pultenaea pedunculata Hook

Senna acclinis (F. Muell.) Randell

Sophora tomentosa L.

Swainsona adenophylla J. Black

Swainsona colutooides F. Muell.

Swainsona flavicarinata J. Black

- * *Swainsona recta* A. Lee

Swainsona viridis J. Black

Flacourtiaceae

Xylosma parvifolium Jessup

Xylosma terrae-reginae C. White & Sleumer

Gentianaceae

- * *Gentiana baeuerlenii* L. Adams

Geraniaceae

Pelargonium sp. (G.W. Carr 10345)

Goodeniaceae

Dampiera fusca Rajput & Carolin

Goodenia occidentalis Carolin

Goodenia nocoleche Pellow & J.L. Porter

Scaevola collaris F. Muell.

Grammitaceae

Grammitis stenophylla B.S. Parris

Gyrostemonaceae

Gyrostemon thesioides (Hook. f.) A.S. George

Haloragaceae

* *Haloragodendron lucasii* (Maiden & E. Betche) Orch.

Lamiaceae

Plectranthus alloplectus S.T. Blake

* *Plectranthus nitidus* P. Forst.

* *Prostanthera askania* B.J. Conn (formerly known as
Prostanthera sp. Strickland State Forest (J.H. Maiden s.n.,
07/1915))

* *Prostanthera junonis* B.J. Conn

* *Prostanthera staurophylla* F. Muell. sensu stricto

* *Westringia kydrensis* Conn

Lauraceae

* *Endiandra floydii* B. Hyland

Endiandra muelleri subsp. *bracteata* B. Hyland

Lindsaeaceae

Lindsaea brachypoda (Baker) Salomon

Lindsaea fraseri Hook.

Lindsaea incisa Prent.

Lobeliaceae

* *Hypsela sessiliflora* F. Wimmer

Loganiaceae

Geniostoma huttonii B.J. Conn

Mitrasacme pygmaea R. Br.

Loranthaceae

* *Amyema plicatula* (Krause) Danser

Muellerina myrtifolia (Cunn. ex Benth.) Barlow

Lythraceae

Rotala tripartita Beesley

Malvaceae

* *Commersonia prostrata* (Maiden & Betche) C.F. Wilkins &
Whitlock

- * *Commersonia rosea* S.A.J. Bell & L.M. Copel.

Sida rohlenae Domin

Marattiaceae

Angiopteris evecta Hoffm.

Marsileaceae

Pilularia novae-hollandiae A. Braun

Menispermaceae

Tinospora smilacina Benth.

Monimiaceae

- * *Daphnandra johnsonii* Schodde

Myrsinaceae

- * *Myrsine richmondensis* Jackes

Myrtaceae

Angophora exul K.D. Hill

- * *Baeckea kandos* A.R. Bean

Choricarpia subargentea (C. White) L. Johnson

Eucalyptus camphora subsp. *relicta* L. Johnson & K. Hill

Eucalyptus castrensis K.D. Hill

- * *Eucalyptus copulans* L. Johnson & K. Hill

Eucalyptus largeana Blakely & Beuzev. Craven Grey Box

Eucalyptus macarthurii H. Deane & Maiden

Eucalyptus magnificata L. Johnson & K. Hill

Eucalyptus microcodon L. Johnson & K. Hill

- * *Eucalyptus pachycalyx* subsp. *banyabba* K.D. Hill

- * *Eucalyptus parvula* L.A.S. Johnson & K.D. Hill

Eucalyptus saxatilis Kirkpatr. & Brooker

- * *Eucalyptus scoparia* Maiden

- * *Eucalyptus* sp. Howes Swamp Creek (M. Doherty 19/7/85, NSW 207054)

- * *Gossia fragrantissima* (F. Muell. ex Benth.) N. Snow & Guymer

Homoranthus binghiensis J.T. Hunter

Homoranthus croftianus J.T. Hunter

Kardomia prominens (A.R. Bean) Peter G. Wilson

Kardomia silvestris (A.R. Bean) Peter G. Wilson

Melaleuca irbyana R.T. Baker

- * *Micromyrtus grandis* J.T. Hunter
- * *Micromyrtus minutiflora* (F. Muell.) Benth.
- * *Syzygium paniculatum* Gaertn.
- * *Triplarina imbricata* (Sm.) A.R. Bean
- * *Triplarina nowraensis* A.R. Bean
- * *Uromyrtus australis* A.J. Scott

Orchidaceae

- * *Caladenia arenaria* Fitzg.
- * *Caladenia concolor* Fitzg.
Caladenia porphyrea D.L. Jones
- * *Caladenia tessellata* Fitzg.
Calochilus pulchellus D.L. Jones
Chiloglottis anaticeps D.L. Jones
Corybas dowlingii D.L. Jones
Dendrobium melaleucaphilum M.A. Clem. & D.L. Jones
- * *Diuris aequalis* F. Muell. ex Fitzg.
Diuris arenaria D.L. Jones
- * *Diuris bracteata* Fitzg.
Diuris disposita D.L. Jones
- * *Diuris ochroma* D.L. Jones
- * *Diuris pedunculata* R. Br.
Diuris sp. aff. *chrysantha* (Byron Bay) (D.L. Jones ORG 2761)
Diuris sp. (Oaklands, D.L. Jones 5380)
Genoplesium baueri R. Br.
- * *Genoplesium rhyoliticum* D.L. Jones & M.A. Clem.
Genoplesium superbum D.L. Jones
Geodorum densiflorum (Lam.) Schltr.
- * *Microtis angusii* D.L. Jones
Oberonia complanata (A. Cunn.) M.A. Clem. & D.L. Jones
- * *Phaius australis* F. Muell.
- * *Prasophyllum affine* Lindl.
- * *Prasophyllum petilum* D.L. Jones & R.J. Bates

* *Pterostylis bicornis* D.L. Jones & M.A. Clem
Greenhood

* *Pterostylis gibbosa* R. Br.

Pterostylis metcalfei D.L. Jones

* *Pterostylis saxicola* D.L. Jones & M.A. Clem.

* *Pterostylis* sp. Botany Bay (A. Bishop J221/1-13)

Sarcochilus dilatatus F. Muell.

Phyllanthaceae

Phyllanthus maderaspatensis L.

Phyllanthus microcladus Muell. Arg.

Picrodendraceae

Pseudanthus ovalifolius F. Muell.

Platyzomataceae

Platyzoma microphyllum R. Br.

Poaceae

Alexfloydia repens B.K. Simon

Austrostipa nullanulla (J. Everett & S.W.L. Jacobs) S.W.L.
Jacobs & J. Everett

* *Austrostipa wakoolica* (Vickery, S.W.L. Jacobs & J. Everett)
S.W.L. Jacobs & J. Everett

* *Deyeuxia appressa* Vickery

* *Digitaria porrecta* S.T. Blake

Distichlis distichophylla (Labill.) Fassett

Elyonurus citreus (R. Br.) Munro ex Benth.

* *Homopholis belsonii* C.E. Hubb

* *Plinthanthesis rodwayi* (C.E. Hubb) S.T. Blake

Rytidosperma vickeryae M. Gray & H. P. Linder

Podocarpaceae

* *Ptherosphaera fitzgeraldii* (F. Muell.) F. Muell. ex Hook. f.

Polygalaceae

Polygala linariifolia Willd.

Polypodiaceae

Belvisia mucronata (Fée) Copel.

Drynaria rigidula (Sw.) Beddome

Primulaceae

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

Proteaceae

- * *Eidothea hardeniana* P.H. Weston & R.M. Kooyman
- * *Grevillea acanthifolia* subsp. *paludosa* Makinson & Albrecht
- * *Grevillea beadleana* McGillivray
- Grevillea divaricata* R. Br.
- * *Grevillea guthrieana* P. Olde & N. Marriott
- Grevillea hilliana* F. Muell.
- * *Grevillea masonii* P. Olde & N. Marriott
- * *Grevillea mollis* P. Olde & Molyneux
- * *Grevillea obtusiflora* R. Br.
- Grevillea parviflora* subsp. *supplicans* Makinson
- Grevillea renwickiana* F. Muell.
- * *Grevillea rivularis* L. Johnson & McGillivray
- * *Grevillea wilkinsonii* R. Makinson
- * *Hakea dohertyi* Haegi
- * *Hakea pulvinifera* L. Johnson
- * *Persoonia bargoensis* P.H. Weston & L.A.S. Johnson
- * *Persoonia glaucescens* Sieber ex Spreng.
- Persoonia hindii* P.H. Weston & L.A.S. Johnson
- * *Persoonia hirsuta* Pers.
- * *Persoonia mollis* subsp. *maxima* Krauss & L. Johnson
- * *Persoonia nutans* R. Br.

Psilotaceae

Psilotum complanatum Sw.

Rhamnaceae

- Pomaderris adnata* N.G. Walsh & F. Coates
- * *Pomaderris brunnea* N.A. Wakef.
- * *Pomaderris cotoneaster* Wakef.
- Pomaderris elachophylla* F. Muell.
- Pomaderris queenslandica* C. White
- * *Pomaderris sericea* Wakef.

Rubiaceae

- Coprosma inopinata* I. Hutton & P.S. Green
- Dentella minutissima* C. White & Francis

Galium australe DC.

Oldenlandia galioides (F. Muell.) F. Muell.

* *Randia moorei* F. Muell. ex Benth.

Triflorensia cameronii (C. T. White) S. T. Reynolds

Rutaceae

* *Acronychia littoralis* T. Hartley & J. Williams

Asterolasia buxifolia Benth.

* *Asterolasia elegans* McDougall & Porteners

Asterolasia sp. "Dungowan Creek" (Beckers s.n. 25 Oct. 1995)

Boronia boliviensis ms

Boronia hapalophylla Duretto, F.J. Edwards & P.G. Edwards

* *Boronia repanda* (F. Muell. ex E. Betche) Maiden & E. Betche

Boronia ruppii Cheel *sensu stricto*

* *Correa lawrenceana* var. *genoensis* Paul G. Wilson

Geijera paniculata (F. Muell.) Druce

* *Leionema lachnaeoides* (A. Cunn.) Paul G. Wilson

Melicope vitiflora (F. Muell.) T.G. Hartley

Phebalium bifidum P.H. Weston & M. Turton

* *Phebalium glandulosum* subsp. *eglandulosum* (Blakely) Paul G. Wilson

Philotheca myoporoides subsp. *obovatifolia* M.J. Bayly

Zieria adenodonta (F. Muell.) J.A. Armstrong

* *Zieria baeuerlenii* J.A. Armstrong

* *Zieria citriodora* J.A. Armstrong

* *Zieria covenyi* J.A. Armstrong

* *Zieria floydii* J.A. Armstrong

* *Zieria granulata* C. Moore ex Benth.

* *Zieria ingramii* J.A. Armstrong

* *Zieria involucrata* R. Br. ex Benth.

* *Zieria lasiocaulis* J.A. Armstrong

* *Zieria obcordata* A. Cunn.

* *Zieria prostrata* J.A. Armstrong

Santalaceae

Santalum murrayanum (Mitchell) Gardner

Sapindaceae

Cupaniopsis serrata (F. Muell.) Radlk.

- * *Diploglottis campbellii* Cheel

Dodonaea microzyga F. Muell. var. *microzyga*

Dodonaea sinuolata subsp. *acrodentata* J. West

Sapotaceae

Niemeyera chartacea (Bailey) C. White

Scrophulariaceae

Centranthera cochinchinensis (Lour.) Merr.

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

Euphrasia orthocheila subsp. *peraspera* W.R. Barker

Euphrasia scabra R. Br.

Lindernia alsinoides R. Br.

Simaroubaceae

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

Sinopteridaceae

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

Solanaceae

Solanum amourense A.R. Bean

Solanum celatum A.R. Bean

Solanum limitare A.R. Bean

Stackhousiaceae

Stackhousia clementii Domin

Thymelaeaceae

Pimelea axiflora F. Muell. ex Meissner subsp. *pubescens* Rye

Pimelea elongata Threlfall

Pimelea serpyllifolia R. Br. subsp. *serpyllifolia*

- * *Pimelea spicata* R. Br.

- * *Pimelea venosa* Threlfall

Tiliaceae

- * *Corchorus cunninghamii* F. Muell.

Urticaceae

Dendrocnide moroides (Wedd.) Chew

Violaceae

Viola cleistogamoides (L. Adams) Seppelt

Zamiaceae

Macrozamia humilis D.L. Jones

Macrozamia johnsonii D.L. Jones & K. Hill

Zannichelliaceae

Zannichellia palustris L.

Division 4 Populations

Animals

Vertebrates

Amphibians

Myobatrachidae

Adelotus brevis (Günther, 1863)

Tusked Frog population in the
Nandewar and New England
Tableland Bioregions

Reptiles

Scincidae

Liopholis whitii (Lacép[egrave]de, 1804)

White's Skink population in the
Broken Hill Complex Bioregion

Birds

Casuariidae

Dromaius novaehollandiae (Latham, 1790)

Emu population in the New South
Wales North Coast Bioregion and
Port Stephens local government area

Megapodiidae

Alectura lathamii Gray, 1831

Australian Brush-turkey population
in the Nandewar and Brigalow Belt
South Bioregions

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Biodiversity Conservation Bill 2016 [NSW]
Schedule 1 Threatened species

Spheniscidae

Eudyptula minor (Forster, 1781)

Little Penguin in the Manly Point Area (being the area on and near the shoreline from Cannae Point generally northward to the point near the intersection of Stuart Street and Oyama Cove Avenue, and extending 100 metres offshore from that shoreline)

Climacteridae

Climacteris affinis Blyth, 1864

White-browed Treecreeper population in Carrathool local government area south of the Lachlan River and Griffith local government area

Mammals

Macropodidae

Peramelidae

Perameles nasuta Geoffroy, 1804

Long-nosed Bandicoot, North Head

Perameles nasuta Geoffroy, 1804

Long-nosed Bandicoot population in inner western Sydney

Pseudocheiridae

Petauroides volans (Kerr, 1792)

Greater Glider population in the Eurobodalla local government area

Petauroides volans (Kerr, 1792)

Greater Glider population in the Mount Gibraltar Reserve area

Invertebrates

Arthropoda

Coleoptera

Chrysomelidae

Menippus darcyi Reid & Nally, 2008

Menippus darcyi population in the Sutherland Shire

Plants

Asclepiadaceae

Marsdenia viridiflora R. Br. subsp. *viridiflora*

Marsdenia viridiflora R. Br. subsp. *viridiflora* population in the Bankstown, Blacktown, Camden, Campbelltown, Fairfield, Holroyd, Liverpool and Penrith local government areas

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Biodiversity Conservation Bill 2016 [NSW]
Schedule 1 Threatened species

Campanulaceae

Wahlenbergia multicaulis Benth.

Tadgell's Bluebell in the local government areas of Auburn, Bankstown, Baulkham Hills, Canterbury, Hornsby, Parramatta and Strathfield

Casuarinaceae

Allocasuarina diminuta subsp. *mimica* L.A.S. Johnson

Allocasuarina diminuta subsp. *mimica* population in the Sutherland Shire and Liverpool City local government areas

Allocasuarina inophloia (F. Muell. & F.M. Bailey) L.A.S. Johnson

Stringybark She-Oak population in the Clarence Valley local government area

Cupressaceae

Callitris endlicheri (Parl.) Bailey

Black Cypress Pine, Woronora Plateau population

Fabaceae

Acacia pendula A. Cunn. ex G. Don

Acacia pendula population in the Hunter catchment

Acacia prominens Cunn. ex Don

Gosford Wattle, Hurstville and Kogarah Local Government Areas

Chorizema parviflorum Benth.

Chorizema parviflorum Benth. in the Wollongong and Shellharbour Local Government Areas

Glycine clandestina (broad leaf form) (Pullen 13342)

Glycine clandestina (broad leaf form) in the Nambucca Local Government Area

Lespedeza juncea subsp. *sericea* (Thunb.) Steenis

Lespedeza juncea subsp. *sericea* in the Wollongong Local Government Area

Pultenaea villifera Sieber ex DC.

Pultenaea villifera Sieber ex DC. population in the Blue Mountains local government area

Lamiaceae

Prostanthera saxicola R. Br.

Prostanthera saxicola population in Sutherland and Liverpool local government areas

Myrtaceae

Darwinia fascicularis subsp. *oligantha*

Darwinia fascicularis subsp. *oligantha* population in the Baulkham Hills and Hornsby Local Government Areas

Eucalyptus camaldulensis Dehnh.

Eucalyptus camaldulensis population in the Hunter catchment

Eucalyptus oblonga DC.

Eucalyptus oblonga population at Bateau Bay, Forresters Beach and Tumbi Umbi in the Wyong local government area

public consultation draft

Biodiversity Conservation Bill 2016 [NSW]
Schedule 1 Threatened species

<i>Eucalyptus parramattensis</i> C. Hall. subsp. <i>parramattensis</i>	<i>Eucalyptus parramattensis</i> C. Hall. subsp. <i>parramattensis</i> in Wyong and Lake Macquarie local government areas
<i>Eucalyptus seeana</i> Maiden	<i>Eucalyptus seeana</i> population in the Greater Taree local government area
<i>Gossia acmenoides</i> (F. Muell) N. Snow & Guymer	<i>Gossia acmenoides</i> population in the Sydney Basin Bioregion south of the Georges River

Orchidaceae

<i>Cymbidium canaliculatum</i> R. Br.	<i>Cymbidium canaliculatum</i> population in the Hunter Catchment
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Rhamnaceae

<i>Pomaderris prunifolia</i> Fenzl	<i>P. prunifolia</i> in the Parramatta, Auburn, Strathfield and Bankstown Local Government Areas
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Rutaceae

<i>Leionema lamprophyllum</i> (F. Muell.) Paul G. Wilson subsp. <i>obovatum</i> F.M. Anderson	<i>Leionema lamprophyllum</i> subsp. <i>obovatum</i> population in the Hunter Catchment
<i>Zieria smithii</i> Jackson	Low growing form of <i>Z. smithii</i> , Diggers Head

Sterculiaceae

<i>Keraudrenia corollata</i> var. <i>denticulata</i> C. T. White	<i>Keraudrenia corollata</i> var. <i>denticulata</i> in the Hawkesbury local government area
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Part 3 Vulnerable species

Division 1 Animals

Vertebrates

Amphibians

Hylidae

<i>Litoria brevipalmata</i> Tyler, Martin & Watson, 1972	Green-thighed Frog
<i>Litoria daviesae</i> Mahony, Knowles, Foster & Donnellan, 2001	
* <i>Litoria littlejohni</i> A.M. White, Whitford and Mahoney, 1994	Littlejohn's Tree Frog
* <i>Litoria olongburensis</i> Liem & Ingram, 1977	Olongburra Frog
<i>Litoria subglandulosa</i> Tyler & Anstis, 1983	Glandular Frog

Myobatrachidae

<i>Assa darlingtoni</i> (Loveridge, 1933)	Pouched Frog
<i>Crinia sloanei</i> Littlejohn, 1958	Sloane's Froglet

public consultation draft

Biodiversity Conservation Bill 2016 [NSW]
Schedule 1 Threatened species

<i>Crinia tinnula</i> Straughan & Main, 1966	Wallum Froglet
* <i>Heleioporus australiacus</i> (Shaw & Nodder, 1795)	Giant Burrowing Frog
<i>Philoria sphagnicolus</i> (Moore, 1958)	Sphagnum Frog
<i>Pseudophryne australis</i> (Gray, 1835)	Red-crowned Toadlet

Reptiles

Cheloniidae

* <i>Chelonia mydas</i> (Linnaeus, 1758)	Green Turtle
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Chelidae

* <i>Elseya belli</i> (Gray, 1844)	Bell's Turtle
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Gekkonidae

* <i>Christinus guentheri</i> (Boulenger, 1885)	Lord Howe Island Southern Gecko
<i>Lucasium stenodactylum</i> (Boulenger, 1896)	Crowned Gecko
<i>Strophurus elderi</i> (Stirling & Zietz, 1893)	Jewelled Gecko
* <i>Underwoodisaurus sphyrurus</i> (Ogilby, 1892)	Border Thick-tailed Gecko

Pygopodidae

* <i>Aprasia parapulchella</i> Kluge, 1974	Pink-tailed Legless Lizard
* <i>Delma impar</i> (Fischer, 1882)	Striped Legless Lizard

Varanidae

<i>Varanus rosenbergi</i> Mertens, 1957	Rosenberg's Goanna
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Scincidae

* <i>Coeranoscincus reticulatus</i> (Günther, 1873)	Three-toed Snake-tooth Skink
<i>Ctenotus brooksi</i> (Loveridge, 1933)	Wedgesnout Ctenotus
<i>Lerista xanthura</i> Storr, 1976	Yellow-tailed Plain Slider
* <i>Oligosoma lichenigera</i> (O'Shaughnessy, 1874)	Lord Howe Island Skink
<i>Tiliqua multifasciata</i> Sternfeld, 1919	Centralian Blue-tongued Lizard
<i>Tiliqua occipitalis</i> (Peters, 1863)	Western Blue-tongued Lizard

Boidae

<i>Antaresia stimsoni</i> (Smith, 1985)	Stimson's Python
<i>Aspidites ramsayi</i> (Macleay, 1882)	Woma

Elapidae

<i>Cacophis harriettae</i> Krefft, 1869	White-crowned Snake
<i>Demansia torquata</i> (Günther, 1862)	Collared Whip Snake
<i>Hoplocephalus bitorquatus</i> (Jan, 1859)	Pale-headed Snake
<i>Hoplocephalus stephensii</i> Krefft, 1869	Stephens' Banded Snake

public consultation draft

Biodiversity Conservation Bill 2016 [NSW]
Schedule 1 Threatened species

Simoselaps fasciolatus (Gunther, 1872)

Narrow-banded Snake

Suta flagellum (McCoy, 1878)

Little Whip Snake

Birds

Anseranatidae

Anseranas semipalmata (Latham, 1798)

Magpie Goose

Anatidae

Oxyura australis Gould, 1837

Blue-billed Duck

Stictonetta naevosa (Gould, 1841)

Freckled Duck

Procellariidae

Ardenna carneipes (Gould, 1844)

Flesh-footed Shearwater

* *Macronectes halli* Mathews, 1912

Northern Giant-petrel

* *Pterodroma leucoptera leucoptera* (Gould, 1844)

Gould's Petrel

* *Pterodroma neglecta neglecta* (Schlegel, 1863)

Kermadec Petrel (west Pacific subspecies)

Pterodroma nigripennis (Rothschild, 1893)

Black-winged Petrel

Pterodroma solandri (Gould, 1844)

Providence Petrel

Puffinus assimilis Gould, 1838

Little Shearwater

Oceanitidae

* *Fregatta grallaria* (Vieillot, 1818)

White-bellied Storm-Petrel

Diomedeidae

* *Diomedea antipodensis* Robertson & Warham, 1992

Antipodean Albatross

* *Diomedea gibsoni* Robertson & Warham, 1992

Gibson's Albatross

* *Phoebastria fusca* (Hilsenberg, 1822)

Sooty Albatross

* *Thalassarche cauta* (Gould, 1841)

Shy Albatross

* *Thalassarche melanophris* (Temminck, 1828)

Black-browed Albatross

Phaethontidae

Phaethon rubricauda Boddaert, 1783

Red-tailed Tropicbird

Sulidae

Sula dactylatra Lesson, 1831

Masked Booby

Ardeidae

Ixobrychus flavicollis (Latham, 1790)

Black Bittern

Falconidae

Falco subniger G.R. Gray, 1843

Black Falcon

public consultation draft

Biodiversity Conservation Bill 2016 [NSW]
Schedule 1 Threatened species

Accipitridae

<i>Circus assimilis</i> Jardine & Selby, 1828	Spotted Harrier
<i>Hamirostra melanosternon</i> (Gould, 1841)	Black-breasted Buzzard
<i>Hieraaetus morphnoides</i> (Gould, 1841)	Little Eagle
<i>Lophoictinia isura</i> (Gould, 1838)	Square-tailed Kite
<i>Pandion cristatus</i> (Vieillot, 1816)	Eastern Osprey

Gruidae

<i>Grus rubicunda</i> (Perry, 1810)	Brolga
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Rallidae

<i>Amaurornis moluccana</i> (Wallace, 1865)	Pale-vented Bush-hen
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Turnicidae

<i>Turnix maculosus</i> (Temminck, 1815)	Red-backed Button-quail
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Scolopacidae

<i>Calidris alba</i> (Pallas, 1764)	Sanderling
<i>Calidris tenuirostris</i> (Horsfield, 1821)	Great Knot
<i>Limicola falcinellus</i> (Pontoppidan, 1763)	Broad-billed Sandpiper
<i>Limosa limosa</i> (Linnaeus, 1758)	Black-tailed Godwit
<i>Xenus cinereus</i> (Güldenstädt, 1775)	Terek Sandpiper

Jacanidae

<i>Irediparra gallinacea</i> (Temminck, 1828)	Comb-crested Jacana
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Haematopodidae

<i>Haematopus fuliginosus</i> Gould, 1845	Sooty Oystercatcher
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Charadriidae

<i>Charadrius leschenaultii</i> Lesson, 1826	Greater Sand-plover
<i>Charadrius mongolus</i> Pallas, 1776	Lesser Sand-plover

Laridae

<i>Gygis alba</i> (Sparrman, 1786)	White Tern
<i>Onychoprion fuscata</i> (Linnaeus, 1766)	Sooty Tern
<i>Procelsterna cerulea</i> (Bennett, 1840)	Grey Ternlet

Columbidae

<i>Ptilinopus magnificus</i> (Temminck, 1821)	Wompoo Fruit-dove
<i>Ptilinopus regina</i> Swainson, 1825	Rose-crowned Fruit-dove
<i>Ptilinopus superbus</i> (Temminck, 1809)	Superb Fruit-dove

public consultation draft

Biodiversity Conservation Bill 2016 [NSW]
Schedule 1 Threatened species

Cacatuidae

<i>Callocephalon fimbriatum</i> (Grant, 1803)	Gang-gang Cockatoo
<i>Calyptorhynchus banksii samueli</i> Mathews, 1917	Red-tailed Black-Cockatoo (inland subspecies)
<i>Calyptorhynchus lathami</i> (Temminck, 1807)	Glossy Black-Cockatoo
<i>Lophochroa leadbeateri</i> (Vigors, 1831)	Major Mitchell's Cockatoo

Psittacidae

<i>Glossopsitta porphyrocephala</i> (Dietrichsen, 1837)	Purple-crowned Lorikeet
<i>Glossopsitta pusilla</i> (Shaw, 1790)	Little Lorikeet
<i>Neophema pulchella</i> (Shaw, 1792)	Turquoise Parrot
<i>Neophema splendida</i> (Gould, 1841)	Scarlet-chested Parrot
<i>Pezoporus wallicus wallicus</i> (Kerr, 1792)	Eastern Ground Parrot
* <i>Polytelis swainsonii</i> (Desmarest, 1826)	Superb Parrot

Strigidae

<i>Ninox connivens</i> (Latham, 1801)	Barking Owl
<i>Ninox strenua</i> (Gould, 1838)	Powerful Owl

Tytonidae

<i>Tyto longimembris</i> (Jerdon, 1839)	Eastern Grass Owl
<i>Tyto novaehollandiae</i> (Stephens, 1826)	Masked Owl
<i>Tyto tenebricosa</i> (Gould, 1845)	Sooty Owl

Podargidae

<i>Podargus ocellatus</i> Quoy & Gaimard, 1830	Marbled Frogmouth
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Halcyonidae

<i>Todiramphus chloris</i> (Boddaert, 1783)	Collared Kingfisher
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Menuridae

<i>Menura alberti</i> Bonaparte, 1850	Albert's Lyrebird
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Atrichornithidae

<i>Atrichornis rufescens</i> (Ramsay, 1867)	Rufous Scrub-bird
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Climacteridae

<i>Climacteris picumnus victoriae</i> Mathews, 1912	Brown Treecreeper (eastern subspecies)
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Maluridae

<i>Amytornis striatus</i> (Gould, 1840)	Striated Grasswren
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Acanthizidae

<i>Calamanthus campestris</i> (Gould, 1841)	Rufous Fieldwren
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public consultation draft

Biodiversity Conservation Bill 2016 [NSW]
Schedule 1 Threatened species

<i>Chthonicola sagittata</i> (Latham, 1801)	Speckled Warbler
<i>Hylacola cautus</i> Gould, 1843	Shy Heathwren
<i>Pyrrholaemus brunneus</i> Gould, 1841	Redthroat
Meliphagidae	
<i>Certhionyx variegatus</i> Lesson, 1830	Pied Honeyeater
<i>Epthianura albifrons</i> (Jardine & Selby, 1828)	White-fronted Chat
<i>Grantiella picta</i> (Gould, 1838)	Painted Honeyeater
<i>Lichenostomus cratitius</i> (Gould, 1841)	Purple-gaped Honeyeater
<i>Lichenostomus fasciogularis</i> (Gould, 1854)	Mangrove Honeyeater
<i>Melithreptus gularis gularis</i> (Gould, 1837)	Black-chinned Honeyeater (eastern subspecies)
Petroicidae	
<i>Drymodes brunneopygia</i> Gould, 1841	Southern Scrub-robin
<i>Melanodryas cucullata cucullata</i> (Latham, 1801)	Hooded Robin (south-eastern form)
<i>Petroica boodang</i> (Lesson, 1838)	Scarlet Robin
<i>Petroica phoenicea</i> Gould, 1837	Flame Robin
<i>Petroica rodinogaster</i> (Drapiez, 1819)	Pink Robin
Pomatostomidae	
<i>Pomatostomus halli</i> Cowles, 1964	Hall's Babbler
<i>Pomatostomus temporalis temporalis</i> (Vigors & Horsfield, 1827)	Grey-crowned Babbler (eastern subspecies)
Psophodidae	
<i>Cinclosoma castanotum</i> Gould, 1840	Chestnut Quail-thrush
Neosittidae	
<i>Daphoenositta chrysoptera</i> (Latham, 1801)	Varied Sittella
Pachycephalidae	
<i>Pachycephala inornata</i> Gould, 1841	Gilbert's Whistler
<i>Pachycephala olivacea</i> Vigors & Horsfield, 1827	Olive Whistler
<i>Pachycephala pectoralis contempta</i> Hartert, 1898	Golden Whistler (Lord Howe Is. subsp.)
Monarchidae	
<i>Carterornis leucotis</i> (Gould, 1850)	White-eared Monarch
Campephagidae	
<i>Coracina lineata</i> (Swainson, 1825)	Barred Cuckoo-shrike

public consultation draft

Biodiversity Conservation Bill 2016 [NSW]
Schedule 1 Threatened species

Artamidae

* *Strepera graculina crissalis* Sharpe, 1877 Pied Currawong (Lord Howe Is. subsp.)

Timaliidae

Zosterops lateralis tephroleurus Gould, 1855 Silvereye (Lord Howe Is. subsp.)

Estrildidae

Stagonopleura guttata (Shaw, 1796) Diamond Firetail

Mammals

Burramyidae

Cercartetus nanus (Desmarest, 1818) Eastern Pygmy-possum

Dasyuridae

* *Dasyurus maculatus* (Kerr, 1792) Spotted-tailed Quoll
Ningau iyonneae Kitchener, Stoddart & Henry, 1983 Southern Ningau
Phascogale tapoatafa (Meyer, 1793) Brush-tailed Phascogale
Planigale maculata (Gould, 1851) Common Planigale
Sminthopsis leucopus (Gray, 1842) White-footed Dunnart
Sminthopsis macroura (Gould, 1845) Stripe-faced Dunnart

Phascolarctidae

Phascolarctos cinereus (Goldfuss, 1817) Koala

Petauridae

Petaurus australis Shaw, 1791 Yellow-bellied Glider
Petaurus norfolcensis (Kerr, 1792) Squirrel Glider

Potoroidae

Aepyprymnus rufescens (Gray, 1837) Rufous Bettong
* *Potorous tridactylus* (Kerr, 1792) Long-nosed Potoroo

Macropodidae

Macropus parma Waterhouse, 1845 Parma Wallaby
Thylogale stigmatica (Gould, 1860) Red-legged Pademelon

Pteropodidae

Nyctimene robinsoni Thomas, 1904 Eastern Tube-nosed Bat
* *Pteropus poliocephalus* Temminck, 1825 Grey-headed Flying-fox
Syconycteris australis (Peters, 1867) Common Blossom-bat

Emballonuridae

Saccolaimus flaviventris (Peters, 1867) Yellow-bellied Sheathtail-bat

public consultation draft

Biodiversity Conservation Bill 2016 [NSW]
Schedule 1 Threatened species

Molossidae

<i>Mormopterus beccarii</i> Peters, 1881	Beccari's Freetail-bat
<i>Mormopterus norfolkensis</i> (Gray, 1839)	Eastern Freetail-bat

Vespertilionidae

* <i>Chalinolobus dwyeri</i> Ryan, 1966	Large-eared Pied Bat
<i>Chalinolobus nigrogriseus</i> (Gould, 1856)	Hoary Wattled Bat
<i>Chalinolobus picatus</i> (Gould, 1852)	Little Pied Bat
<i>Falsistrellus tasmaniensis</i> (Gould, 1858)	Eastern False Pipistrelle
<i>Kerivoula papuensis</i> Dobson, 1878	Golden-tipped Bat
<i>Miniopterus australis</i> (Tomes, 1858)	Little Bentwing-bat
<i>Miniopterus schreibersii oceanensis</i> Maeda, 1982	Eastern Bentwing-bat
<i>Myotis macropus</i> (Gould, 1855)	Southern Myotis
<i>Nyctophilus bifax</i> Thomas, 1915	Eastern Long-eared Bat
* <i>Nyctophilus corbeni</i> Parnaby, 2009	Corben's Long-eared Bat
<i>Scoteanax rueppellii</i> (Peters, 1866)	Greater Broad-nosed Bat
<i>Vespadelus baverstocki</i> (Kitchener, Jones & Caputi, 1987)	Inland Forest Bat
<i>Vespadelus troughtoni</i> (Kitchener, Jones & Caputi, 1987)	Eastern Cave Bat

Muridae

<i>Leggadina forresti</i> (Thomas, 1906)	Forrest's Mouse
<i>Mastacomys fuscus</i> Thomas, 1882	Broad-toothed Rat
<i>Pseudomys gracilicaudatus</i> (Gould, 1845)	Eastern Chestnut Mouse
<i>Pseudomys hermannsburgensis</i> (Waite, 1896)	Sandy Inland Mouse
* <i>Pseudomys pilligaensis</i> Fox & Briscoe, 1980	Pilliga Mouse
<i>Rattus villosissimus</i> (Waite, 1898)	Long-haired Rat

Marine mammals

Otariidae

<i>Arctocephalus forsteri</i> (Lesson, 1828)	New Zealand Fur-seal
<i>Arctocephalus pusillus doriferus</i> Jones, 1925	Australian Fur-seal

Physeteridae

<i>Physeter macrocephalus</i> Linnaeus, 1758	Sperm Whale
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Balaenopteridae

* <i>Megaptera novaeangliae</i> (Borowski, 1781)	Humpback Whale
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Division 2 Fungi

Basidiomycota

Hygrophoraceae

Hygrocybe anomala var. *ianthinomarginata* A.M. Young

Hygrocybe aurantipes A.M. Young

Hygrocybe reesia A.M. Young

Hygrocybe rubronivea A.M. Young

Division 3 Plants

Apiaceae

Xanthosia scopulicola J.M. Hart & Henwood

Apocynaceae

* *Parsonsia dorrigoensis* J.B. Williams ms

* *Tylophora linearis* P.I. Forst.

Araliaceae

* *Astrotricha crassifolia* Blakely

Asteliaceae

* *Neoastelia spectabilis* J.B. Williams

Asteraceae

* *Ammobium craspedioides* Benth.

* *Brachyscome muelleroides* G. L. R. Davis

* *Brachyscome papillosa* G. L. R. Davis

* *Calotis glandulosa* F. Muell.

* *Euchiton nitidulus* (Hook. f.) A. Anderb.

* *Olearia cordata* Lander

* *Ozothamnus tesselatus* (Maiden & R. Baker) Anderberg

* *Picris evae* Lack

* *Rutidosia heterogama* Philipson

* *Rutidosia leiolepis* F. Muell.

* *Senecio garlandii* F. Muell. ex Belcher

Brassicaceae

* *Lepidium aschersonii* Thell.

Callitrichaceae

- * *Callitriche cyclocarpa* Hegelm.

Casuarinaceae

- * *Allocasuarina simulans* L. Johnson

Chenopodiaceae

- * *Atriplex infrequens* Paul G. Wilson
- * *Maireana cheelii* (R. Anderson) Paul G. Wilson

Convolvulaceae

Wilsonia backhousei Hook. f.

Corokiaceae

- * *Corokia whiteana* L.S. Smith

Corynocarpaceae

- * *Corynocarpus rupestris* Guymer subsp. *rupestris*

Cunoniaceae

- * *Acrophyllum australe* (Cunn.) Hoogl.

Cupressaceae

- * *Callitris oblonga* A. Rich. & Rich.

Cyperaceae

Cyperus rupicola S.T. Blake

- * *Eleocharis obicis* L.A.S. Johnson & O.D. Evans
- Lepidosperma evansianum* K.L. Wilson

Dilleniaceae

- * *Hibbertia marginata* Conn

Doryanthaceae

Doryanthes palmeri W. Hill ex Benth.

Epacridaceae

- * *Budawangia gnidioides* (Summerh.) Telford
- Epacris purpurascens* var. *purpurascens* R. Br.
- * *Epacris sparsa* R. Br.
- * *Leucopogon exolasius* (F. Muell.) F. Muell. ex Benth.
- * *Styphelia perileuca* J. Powell

Ericaceae

Dracophyllum macranthum E.A.Br. & N. Streiber
Gaultheria viridicarpa subsp. *merinoensis* J.B. Williams ms

- * *Gaultheria viridicarpa* J.B. Williams ms subsp. *viridicarpa*

Euphorbiaceae

- * *Baloghia marmorata* C. White
- * *Bertya opponens* (F. Muell. ex Benth) Guymmer
- * *Fontainea australis* Jessup & Guymmer

Fabaceae

- Acacia ausfeldii* Regel.
- Acacia bakeri* Maiden
- Acacia baueri* subsp. *aspera* (Maiden & E. Betche) Pedley
- * *Acacia carneorum* Maiden
- Acacia chunies-rossiae* Maiden
- * *Acacia constablei* Tind.
- * *Acacia courtii* Tind. & Herscovitch
- * *Acacia curranii* Maiden
- * *Acacia flocktoniae* Maiden
- * *Acacia georgensis* Tind.
- * *Acacia macnuttiana* Maiden & Blakely
- * *Acacia phasmoides* J.H. Willis
- * *Acacia pubescens* (Vent.) R. Br.
- * *Acacia pycnostachya* F. Muell.
- Archidendron hendersonii* (F. Muell.) Nielsen
- Bossiaea bombayensis* K.L. McDougall
- * *Bossiaea oligosperma* A. Lee
- * *Desmodium acanthocladum* F. Muell.
- Dillwynia tenuifolia* Sieber ex DC.
- * *Kennedia retrorsa* Hemsley
- * *Phyllota humifusa* Benth.
- * *Pultenaea aristata* Sieber ex DC.
- * *Pultenaea baeuerlenii* F. Muell.
- * *Pultenaea glabra* Benth.
- Pultenaea humilis* Benth. ex Hook. F.
- Pultenaea maritima* de Kok
- * *Pultenaea parrisiae* J.D. Briggs & Crisp
- Rhynchosia acuminatissima* Miq.

- * *Sophora fraseri* Benth.
- * *Swainsona murrayana* Wawra
- * *Swainsona plagiotropis* F. Muell.
- * *Swainsona pyrophila* J. Thompson
- Swainsona sericea* (A. Lee) J. Black ex H. Eichler
- Tephrosia filipes* Benth.

Gentianaceae

- * *Gentiana wissmannii* J. Williams

Goodeniaceae

- * *Velleia perfoliata* R. Br.

Haloragaceae

- * *Haloragis exalata* F. Muell. subsp. *exalata*
- * *Haloragis exalata* subsp. *velutina* Orch.

Juncaginaceae

- Maundia triglochinosides* F. Muell.

Lamiaceae

- * *Prostanthera cineolifera* R. Baker & H.G. Smith
- * *Prostanthera cryptandroides* Cunn. ex Benth. subsp. *cryptandroides*
- * *Prostanthera densa* A.A. Ham.
- * *Prostanthera discolor* R. Baker
- * *Prostanthera palustris* B.J. Conn
- Prostanthera spinosa* F. Muell.
- * *Prostanthera stricta* R. Baker
- * *Westringia davidii* Conn

Lauraceae

- * *Cryptocarya foetida* R. Baker
- * *Endiandra hayesii* Kosterm.

Malvaceae

- * *Commersonia procumbens* (Maiden & Betche) Guymer

Meliaceae

- * *Owenia cepiodora* F. Muell.

Menispermaceae

- * *Tinospora tinosporoides* (F. Muell.) Forman

Myrtaceae

- * *Angophora inopina* K.D. Hill
- * *Angophora robur* L. Johnson & K. Hill
- Callistemon linearifolius* (Link) DC.
- * *Darwinia biflora* (Cheel) B. Briggs
- Darwinia glaucophylla* B.G. Briggs
- Darwinia peduncularis* B. Briggs
- Eucalyptus aggregata* Deane & Maiden Black Gum
- * *Eucalyptus alligatrix* L.A.S. Johnson & K.D. Hill subsp.
 alligatrix
- Eucalyptus approximans* Maiden
- * *Eucalyptus aquatica* (Blakely) L. Johnson & K. Hill
- * *Eucalyptus benthamii* Maiden & Cabbage
- Eucalyptus boliviana* J.B. Williams & K.D. Hill
- * *Eucalyptus caleyi* subsp. *ovendenii* L. Johnson & K. Hill
- * *Eucalyptus camfieldii* Maiden
- * *Eucalyptus cannonii* R. Baker
- * *Eucalyptus canobolensis* (L.A.S. Johnson & K.D. Hill) J.T.
 Hunter
- Eucalyptus corticosa* L.A.S. Johnson
- Eucalyptus dissita* K.D. Hill
- Eucalyptus fracta* K.D. Hill
- * *Eucalyptus glaucina* Blakely
- * *Eucalyptus kartzoffiana* L. Johnson & Blaxell
- * *Eucalyptus langleyi* L. Johnson & Blaxell
- Eucalyptus leucoxyton* F. Muell. subsp. *pruinosa* (F. Muell. Boland Yellow Gum
 Ex. Miq.)
- * *Eucalyptus mckieana* Blakely
- * *Eucalyptus nicholii* Maiden & Blakely
- Eucalyptus oresbia* Hunter and Bruhl
- * *Eucalyptus parramattensis* subsp. *decadens* L. Johnson &
 Blaxell
- * *Eucalyptus pulverulenta* Sims
- * *Eucalyptus pumila* Cabbage
- * *Eucalyptus robertsonii* subsp. *hemisphaerica* L. Johnson & K.
 Hill
- * *Eucalyptus rubida* subsp. *barbigerorum* L. Johnson & K. Hill

Eucalyptus sturgissiana L. Johnson & Blaxell

- * *Eucalyptus tetrapleura* L. Johnson
- * *Homoranthus darwinioides* (Maiden & E. Bêche) Cheel
- * *Homoranthus lunatus* Craven & S.R. Jones
- * *Homoranthus prolixus* Craven & S.R. Jones
- * *Kunzea cambagei* Maiden & E. Bêche
- * *Kunzea rupestris* Blakely
- * *Leptospermum deanei* J. Thompson
- * *Leptospermum thompsonii* J. Thompson
- * *Melaleuca biconvexa* Byrnes
- * *Melaleuca deanei* F. Muell.
- Melaleuca groveana* Cheel & C. White
- * *Micromyrtus blakelyi* J. Green
- * *Syzygium hodgkinsoniae* (F. Muell.) L. Johnson
- * *Syzygium moorei* (F. Muell.) L. Johnson

Olacaceae

- * *Olex angulata* A.S. George

Orchidaceae

- * *Bulbophyllum globuliforme* Nicholls
- Chiloglottis platyptera* D.L. Jones
- * *Cryptostylis hunteriana* Nicholls
- * *Diuris praecox* D.L. Jones
- Diuris tricolor* Fitzg.
- * *Diuris venosa* Rupp
- * *Genoplesium vernale* D.L. Jones
- Oberonia titania* Lindl.
- Peristeranthus hillii* (F. Muell.) T.E. Hunt.
- Prasophyllum pallens* D.L. Jones
- * *Prasophyllum retroflexum* D.L. Jones
- Pterostylis chaetophora* M.A. Clem. & D.L. Jones
- * *Pterostylis cobarensis* M.A. Clem.
- * *Pterostylis cucullata* R. Br.
- Pterostylis elegans* D.L. Jones
- Pterostylis nigricans* L. Jones & M.A. Clem.

- * *Pterostylis pulchella* Messmer
- * *Rhizanthella slateri* (Rupp) M.A. Clem. and P.J. Cribb
- * *Sarcochilus fitzgeraldii* F. Muell.
- * *Sarcochilus hartmannii* F. Muell.
- * *Sarcochilus weinthalii* (F.M. Bailey) Dockrill

Poaceae

- * *Amphibromus fluitans* Kirk
- Ancistrachne maidenii* (A.A. Ham.) Vickery
- * *Arthraxon hispidus* (Thunb.) Makino
- * *Austrostipa metatoris* (J. Everett & S.W.L. Jacobs) S.W.L. Jacobs & J. Everett
- * *Dichanthium setosum* S.T. Blake
- Paspalidium grandispiculatum* B.K Simon
- * *Rytidosperma pumilum* (Kirk) Linder

Polygonaceae

- Muehlenbeckia costata* K.L. Wilson and Makinson ms
- * *Persicaria elatior* (R. Br.) Sojak

Proteaceae

- * *Floydia praealta* (F. Muell.) L. Johnson & B. Briggs
- * *Grevillea banyabba* P. Olde & N. Marriott
- * *Grevillea evansiana* McKee
- Grevillea juniperina* R. Br. subsp. *juniperina*
- * *Grevillea kennedyana* F. Muell.
- * *Grevillea molyneuxii* D.J. McGillivray
- * *Grevillea parviflora* R. Br. subsp. *parviflora*
- * *Grevillea quadricauda* P. Olde & N. Marriott
- * *Grevillea rhizomatosa* P. Olde & N. Marriott
- * *Grevillea scortechinii* subsp. *sarmentosa* (Blakely & McKie) McGillivray
- * *Grevillea shiressii* Blakely
- * *Hakea archaeoides* W.R. Barker
- * *Hakea fraseri* R. Br.
- * *Hicksbeachia pinnatifolia* F. Muell.
- * *Isopogon fletcheri* F. Muell.
- * *Macadamia tetraphylla* L. Johnson

* *Persoonia acerosa* Sieber ex Schultes & Schultes f.

* *Persoonia marginata* Cunn. ex R. Br.

Ranunculaceae

* *Clematis fawcettii* F. Muell.

* *Ranunculus anemoneus* F. Muell.

Restionaceae

* *Baloskion longipes* (L.A.S. Johnson & O.D. Evans) B.G. Briggs & L.A.S. Johnson

Rhamnaceae

Discaria nitida Tortosa

Pomaderris bodalla N.G. Walsh & F. Coates

* *Pomaderris gilmourii* var. *cana* N. Walsh

Pomaderris notata S.T. Blake

* *Pomaderris pallida* Wakef.

* *Pomaderris parrisiae* N. Walsh

Rubiaceae

* *Asperula asthenes* Airy Shaw & Turrill

Rutaceae

* *Boronia deanei* Maiden & E. Betche

* *Boronia granitica* Maiden & E. Betche

* *Boronia umbellata* P. Weston

* *Bosistoa transversa* J. F. Bailey & C. T. White *sensu lato*

* *Correa baeuerlenii* F. Muell.

* *Leionema ralstonii* (F. Muell.) Paul G. Wilson

* *Leionema sympetalum* (Paul G. Wilson) Paul G. Wilson

* *Nematolepis rhytidophylla* (Alb. & N.G. Walsh) Paul G. Wilson

* *Zieria murphyi* Blakely

* *Zieria tuberculata* J.A. Armstrong

Santalaceae

* *Thesium australe* R. Br.

Sapindaceae

* *Dodonaea procumbens* F. Muell.

Lepiderema pulchella Radlk.

Sapotaceae

Niemeyera whitei (Aubrev.) Jessup

Scrophulariaceae

Derwentia blakelyi B. Briggs & Ehrend

* *Euphrasia bella* S. T. Blake

* *Euphrasia bowdeniae* W.R. Barker

Euphrasia ciliolata W.R. Barker

Solonaceae

* *Solanum karsense* Symon

Sterculiaceae

* *Lasiopetalum joyceae* Blakely

* *Lasiopetalum longistamineum* Maiden & Betche

Surianaceae

* *Cadellia pentastylis* F. Muell.

Symplocaceae

* *Symplocos baeuerlenii* R. Baker

Thymelaeaceae

* *Pimelea curviflora* R. Br. var. *curviflora*

Tremandraceae

* *Tetradthea glandulosa* Smith

* *Tetradthea juncea* Smith

Winteraceae

* *Tasmannia glaucifolia* J. Williams

* *Tasmannia purpurascens* (Vick.) A.C. Smith

Division 4 Populations

Schedule 2 Threatened ecological communities

(Section ?)

Part 1 Critically endangered ecological communities

Agnes Banks Woodland in the Sydney Basin Bioregion (as described in the final determination of the Scientific Committee to list the ecological community)

- * Artesian Springs Ecological Community in the Great Artesian Basin (as described in the final determination of the Scientific Committee to list the ecological community)
- * Blue Gum High Forest in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)
- * Cumberland Plain Woodland in the Sydney Basin Bioregion (as described in the final determination of the Scientific Committee to list the ecological community)
- Elderslie Banksia Scrub Forest (as described in the final determination of the Scientific Committee to list the ecological community)
- Gnarled Mossy Cloud Forest on Lord Howe Island (as described in the final determination of the Scientific Committee to list the ecological community)
- * Hunter Valley Weeping Myall Woodland of the Sydney Basin Bioregion (as described in the final determination of the Scientific Committee to list the ecological community)
- Hygrocybeae Community of Lane Cove Bushland Park in the Sydney Basin Bioregion (as described in the final determination of the Scientific Committee to list the ecological community)
- Kincumber Scribbly Gum Forest in the Sydney Basin Bioregion (as described in the final determination of the Scientific Committee to list the ecological community)
- Lagunaria* Swamp Forest on Lord Howe Island (as described in the final determination of the Scientific Community to list the ecological community)
- Mallee and Mallee-Broombush dominated woodland and shrubland, lacking *Triodia*, in the NSW South Western Slopes Bioregion (as described in the final determination of the Scientific Committee to list the ecological community)
- Marsh Club-rush Sedgeland in the Darling Riverine Plains Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)
- * New England Peppermint (*Eucalyptus nova-anglica*) Woodland on Basalts and Sediments in the New England Tableland Bioregion (as described in the final determination of the Scientific Community to list the ecological community)
- Porcupine Grass – Red Mallee – Gum Coolabah hummock grassland/low sparse woodland in the Broken Hill Complex Bioregion (as described in the final determination of the Scientific Committee to list the ecological community)
- Shale Sandstone Transition Forest in the Sydney Basin Bioregion (as described in the final determination of the Scientific Committee to list the ecological community)
- Sun Valley Cabbage Gum Forest in the Sydney Basin Bioregion (as described in the final determination of the Scientific Committee to list the ecological community)

Part 2 Endangered ecological communities

Acacia loderi Shrublands (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Acacia melvillei Shrubland in the Riverina and Murray-Darling Depression Bioregions (as described in the final determination of the Scientific Committee to list the ecological community)

- Allocasuarina luehmannii* Woodland in the Riverina and Murray-Darling Depression Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)
- Araluen Scarp Grassy Forest in the South East Corner Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)
- Bangalay Sand Forest of the Sydney Basin and South East Corner Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)
- Ben Halls Gap National Park Sphagnum Moss Cool Temperate Rainforest (as described in the final determination of the Scientific Committee to list the ecological community)
- * Blue Mountains Basalt Forest in the Sydney Basin Bioregion (as described in the final determination of the Scientific Committee to list the ecological community)
- Blue Mountains Shale Cap Forest in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)
- Brigalow within the Brigalow Belt South, Nandewar and Darling Riverine Plains Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)
- Brigalow-Gidgee woodland/shrubland in the Mulga Lands and Darling Riverine Plains Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)
- Brogo Wet Vine Forest in the South East Corner Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)
- Byron Bay Dwarf Graminoid Clay Heath Community (as described in the final determination of the Scientific Committee to list the ecological community)
- Cadellia pentastylis* (Ooline) community in the Nandewar and Brigalow Belt South Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)
- Carbeen Open Forest community in the Darling Riverine Plains and Brigalow Belt South Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)
- Carex Sedgeland of the New England Tableland, Nandewar, Brigalow Belt South and NSW North Coast Bioregions (as described in the final determination of the Scientific Committee to list the ecological community)
- Castlereagh Swamp Woodland Community (as described in the final determination of the Scientific Committee to list the ecological community)
- Central Hunter Grey Box—Ironbark Woodland in the New South Wales North Coast and Sydney Basin Bioregions (as described in the final determination of the Scientific Committee to list the ecological community)
- Central Hunter Ironbark—Spotted Gum—Grey Box Forest in the New South Wales North Coast and Sydney Basin Bioregions (as described in the final determination of the Scientific Committee to list the ecological community)
- Coastal Cypress Pine Forest in the New South Wales North Coast Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)
- Coastal Saltmarsh in the New South Wales North Coast, Sydney Basin and South East Corner Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)
- Coastal Upland Swamp in the Sydney Basin Bioregion (as described in the final determination of the Scientific Committee to list the ecological community)
- Cooks River/Castlereagh Ironbark Forest in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)
- Coolac-Tumut Serpentine Shrubby Woodland in the NSW South Western Slopes and South Eastern Highlands Bioregions (as described in the final determination of the Scientific Committee to list the ecological community)
- Coolibah-Black Box Woodland in the Darling Riverine Plains, Brigalow Belt South, Cobar Penplain and Mulga Lands Bioregions (as described in the final determination of the Scientific Committee to list the ecological community)

public consultation draft

Biodiversity Conservation Bill 2016 [NSW]
Schedule 2 Threatened ecological communities

Dry Rainforest of the South East Forests in the South East Corner Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Duffys Forest Ecological Community in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

- * Eastern Suburbs Banksia Scrub in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Freshwater Wetlands on Coastal Floodplains of the New South Wales North Coast, Sydney Basin and South East Corner Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Fuzzy Box Woodland on alluvial soils of the South Western Slopes, Darling Riverine Plains and Brigalow Belt South Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Genowlan Point *Allocasuarina nana* heathland (as described in the final determination of the Scientific Committee to list the ecological community)

Grey Box—Grey Gum Wet Sclerophyll Forest in the NSW North Coast Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Halosarcia lylei low open-shrubland in the Murray Darling Depression Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Howell Shrublands in the New England Tableland and Nandewar Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2 published in the Gazette on 2 December 2011)

Hunter Floodplain Red Gum Woodland in the NSW North Coast and Sydney Basin Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Hunter Lowland Redgum Forest in the Sydney Basin and New South Wales North Coast Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Hunter Valley Vine Thicket in the NSW North Coast and Sydney Basin Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Illawarra Lowlands Grassy Woodland in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Illawarra Subtropical Rainforest in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Inland Grey Box Woodland in the Riverina, NSW South Western Slopes, Cobar Penneplain, Nandewar and Brigalow Belt South Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Kurnell Dune Forest in the Sutherland Shire and City of Rockdale (as described in the final determination of the Scientific Committee to list the ecological community)

Kurri Sand Swamp Woodland in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Littoral Rainforest in the New South Wales North Coast, Sydney Basin and South East Corner Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Low woodland with heathland on indurated sand at Norah Head (as described in the final determination of the Scientific Committee to list the ecological community)

Lower Hunter Spotted Gum—Ironbark Forest in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Lowland Grassy Woodland in the South East Corner Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Lowland Rainforest in the NSW North Coast and Sydney Basin Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

public consultation draft

Biodiversity Conservation Bill 2016 [NSW]
Schedule 2 Threatened ecological communities

Lowland Rainforest on Floodplain in the New South Wales North Coast Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Maroota Sands Swamp Forest (as described in the final determination of the Scientific Committee to list the ecological community)

McKies Stringybark/Blackbutt Open Forest in the Nandewar and New England Tableland Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Melaleuca armillaris Tall Shrubland in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Milton Ulladulla Subtropical Rainforest in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Moist Shale Woodland in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Montane Peatlands and Swamps of the New England Tableland, NSW North Coast, Sydney Basin, South East Corner, South Eastern Highlands and Australian Alps Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Mt Canobolas *Xanthoparmelia* Lichen Community (as described in the final determination of the Scientific Committee to list the ecological community)

Mount Gibraltar Forest in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Mount Kaputar high elevation and dry rainforest land snail and slug community in the Nandewar and Brigalow Belt South Bioregions (as described in the final determination of the Scientific Committee to list the ecological community)

Myall Woodland in the Darling Riverine Plains, Brigalow Belt South, Cobar Peneplain, Murray-Darling Depression, Riverina and NSW South Western Slopes bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Native Vegetation on Cracking Clay Soils of the Liverpool Plains (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Newnes Plateau Shrub Swamp in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

O'Hares Creek Shale Forest (as described in the final determination of the Scientific Committee to list the ecological community)

Pittwater and Wagstaffe Spotted Gum Forest in the Sydney Basin Bioregion (as described in the final determination of the Scientific Committee to list the ecological community)

Quorrobolong Scribbly Gum Woodland in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Ribbon Gum—Mountain Gum—Snow Gum Grassy Forest/Woodland of the New England Tableland Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

River-Flat Eucalypt Forest on Coastal Floodplains of the New South Wales North Coast, Sydney Basin and South East Corner Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Robertson Basalt Tall Open-forest in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Robertson Rainforest in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Sandhill Pine Woodland in the Riverina, Murray-Darling Depression and NSW South Western Slopes Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

* Semi-evergreen Vine Thicket in the Brigalow Belt South and Nandewar Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Shale Gravel Transition Forest in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Southern Highlands Shale Woodlands in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Southern Sydney sheltered forest on transitional sandstone soils in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Subtropical Coastal Floodplain Forest of the New South Wales North Coast Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Swamp Oak Floodplain Forest of the New South Wales North Coast, Sydney Basin and South East Corner Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Swamp Sclerophyll Forest on Coastal Floodplains of the New South Wales North Coast, Sydney Basin and South East Corner Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Sydney Freshwater Wetlands in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

- * Sydney Turpentine-Ironbark Forest (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Tableland Basalt Forest in the Sydney Basin and South Eastern Highlands Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Tablelands Snow Gum, Black Sallee, Candlebark and Ribbon Gum Grassy Woodland in the South Eastern Highlands, Sydney Basin, South East Corner and NSW South Western Slopes Bioregions (as described in the final determination of the Scientific Committee to list the ecological community)

The Shorebird community occurring on the relict tidal delta sands at Taren Point (as described in the final determination of the Scientific Committee to list the ecological community)

Themeda grassland on seacliffs and coastal headlands in the NSW North Coast, Sydney Basin and South East Corner Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Umina Coastal Sandplain Woodland in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Upland Wetlands of the Drainage Divide of the New England Tableland Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Warkworth Sands Woodland in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Western Sydney Dry Rainforest in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

- * White Box Yellow Box Blakely's Red Gum Woodland (as described in the determination of the Scientific Committee under Division 5 of Part 2)

White Gum Moist Forest in the NSW North Coast Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Part 3 Vulnerable ecological communities

Blue Mountains Swamps in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Castlereagh Scribbly Gum Woodland in the Sydney Basin Bioregion (as described in the final determination of the Scientific Committee to list the ecological community)

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Biodiversity Conservation Bill 2016 [NSW]
Schedule 2 Threatened ecological communities

Hunter Valley Foothills Slaty Gum Woodland in the Sydney Basin Bioregion (as described in the final determination of the Scientific Committee to list the ecological community)

Lower Hunter Valley Dry Rainforest in the Sydney Basin and NSW North Coast Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Schedule 3 Extinct species and collapsed ecological communities

(Section ?)

Part 1 Extinct species

Animals

Vertebrates

Reptiles

Elapidae

Oxyuranus microlepidotus (McCoy, 1879) Fierce Snake

Birds

Rallidae

* *Porphyrio albus* (Shaw, 1790) White Gallinule

Columbidae

* *Columba vitiensis godmanae* (Mathews, 1915) White-throated Pigeon (Lord Howe Is. subsp.)

Psittacidae

* *Psephotus pulcherrimus* (Gould, 1845) Paradise Parrot

* *Cyanoramphus novaezelandiae subflavescens* Salvadori, 1891 Red-crowned Parakeet (Lord Howe Is. subsp.)

* *Pezoporus occidentalis* (Gould, 1861) Night Parrot

Strigidae

* *Ninox novaeseelandiae albaria* Ramsay, 1888 Southern Boobook (Lord Howe Is. subsp.)

Acanthizidae

* *Gerygone insularis* Ramsey, 1878 Lord Howe Gerygone

Rhipiduridae

* *Rhipidura fuliginosa* (Sparrman, 1787) New Zealand Fantail (Lord Howe Is. subsp.)

Sturnidae

* *Aplonis fusca hulliana* Mathews, 1912 Tasman Starling (Lord Howe Is. subsp.)

Timaliidae

* *Zosterops strenuus* Gould, 1855 Robust White-eye

Turdidae

* *Turdus poliocephalus vinitinctus* (Gould, 1855) Island Thrush (Lord Howe Is. subsp.)

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Biodiversity Conservation Bill 2016 [NSW]
Schedule 3 Extinct species and collapsed ecological communities

Estrildidae

- * *Neochmia ruficauda* (Gould, 1837) Star Finch

Mammals

Dasyuridae

- * *Dasyercus cristicauda* (Krefft, 1867) Mulgara
* *Dasyurus geoffroii* Gould, 1841 Western Quoll
* *Phascogale calura* Gould, 1844 Red-tailed Phascogale

Myrmecobiidae

- * *Myrmecobius fasciatus* Waterhouse, 1836 Numbat

Peramelidae

- * *Chaeropus ecaudatus* (Ogilby, 1838) Pig-footed Bandicoot
* *Isoodon auratus auratus* (Ramsay, 1887) Golden Bandicoot (mainland)
* *Perameles bougainville fasciata* Gray, 1841 Western Barred Bandicoot (mainland)
* *Macrotis lagotis* (Reid, 1837) Bilby

Vombatidae

- * *Lasiorhinus krefftii* (Owen, 1872) Northern Hairy-nosed Wombat

Potoroidae

- * *Bettongia gaimardi* (Desmarest, 1822) Tasmanian Bettong
* *Bettongia lesueur graii* (Gould, 1841) Boodie, Burrowing Bettong (mainland)
* *Bettongia penicillata penicillata* Gray, 1837 Brush-tailed Bettong (South-East Mainland)
* *Bettongia tropica* Wakefield, 1967 Northern Bettong

Macropodidae

- * *Lagorchestes leporides* (Gould, 1841) Eastern Hare-wallaby
* *Onychogalea fraenata* (Gould, 1841) Bridled Nailtail Wallaby
* *Onychogalea lunata* (Gould, 1841) Crescent Nailtail Wallaby

Vespertilionidae

- * *Nyctophilus howensis* McKean, 1973 Lord Howe Island Bat

Muridae

- * *Conilurus albipes* (Lichtenstein, 1829) White-footed Tree-rat
* *Leporillus apicalis* (Gould, 1853) Lesser Stick-nest Rat
* *Leporillus conditor* (Sturt, 1848) Greater Stick-nest Rat
* *Notomys cervinus* (Gould, 1853) Fawn Hopping-mouse
* *Notomys longicaudatus* (Gould, 1844) Long-tailed Hopping-mouse
* *Notomys mitchellii* (Ogilby, 1838) Mitchell's Hopping-mouse

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Biodiversity Conservation Bill 2016 [NSW]
Schedule 3 Extinct species and collapsed ecological communities

- * *Pseudomys australis* Gray, 1832 Plains Rat
- * *Pseudomys gouldii* (Waterhouse, 1839) Gould's Mouse

Invertebrates

Arthropoda

Insecta

Coleoptera

Curculionidae

- Hybomorphus melanosomus* (Saunders & Jekel, 1855) Lord Howe Island ground weevil

Plants

Acanthaceae

- * *Rhaphidospora bonneyana* (F. Muell.) R. Barker

Aizoaceae

Glinus orygioides F. Muell.

- * *Trianthema cypseleoides* (Fenzl) Benth.

Amaranthaceae

Ptilotus extenuatus Benl

Asteraceae

- * *Acanthocladium dockeri* F. Muell.

Blumea lacera (Burman f.) DC.

- * *Olearia oliganthema* F. Muell. ex Benth.

- * *Senecio behrianus* Sonder & F. Muell.

- * *Senecio georgianus* DC.

- * *Rhaponticum australe* (Gaudich.) Sojak

Austral Cornflower

Brassicaceae

Lepidium foliosum Desv.

Stenopetalum velutinum F. Muell.

Chenopodiaceae

Atriplex acutiloba R. Anderson

Maireana lanosa (Lindley) Paul G. Wilson

Osteocarpum pentapterum (F. Muell. & Tate) Volkens

Dennstaedtiaceae

Hypolepis elegans Carruth.

Euphorbiaceae

* *Amperea xiphoclada* var. *pedicellata* R.F.J. Hend.

Gyrostemonaceae

* *Codonocarpus pyramidalis* (F. Muell.) F. Muell.

Haloragaceae

Haloragis stricta R. Br. ex Benth.

Orchidaceae

* *Caladenia rosella* G.W. Carr

* *Thelymitra epipactoides* F. Muell.

Polygalaceae

Comesperma scoparium Drummond

Proteaceae

Grevillea nematophylla F. Muell.

* *Persoonia laxa* L. Johnson & P. Weston

Rhamnaceae

Pomaderris paniculosa F. Muell. ex Reissek subsp. *paniculosa*

Rosaceae

* *Aphanes pentamera* Rothm.

Rubiaceae

Knoxia sumatrensis (Retz.) DC.

Rutaceae

Micromelum minutum (Forster f.) Wight & Arn.

Philotheca angustifolia (Paul G. Wilson) Paul G. Wilson
subsp. *angustifolia*

Sapindaceae

Dodonaea stenophylla F. Muell.

Scrophulariaceae

* *Euphrasia ruptura* W.R. Barker

Solanaceae

Solanum bauerianum Endl.

Tremandraceae

Tetratheca pilosa Labill. subsp. *pilosa*

Part 2 Collapsed ecological communities

Schedule 4 Key threatening processes

(Section #)

Aggressive exclusion of birds from woodland and forest habitat by abundant Noisy Miners, *Manorina melanocephala* (Latham, 1802)

Alteration of habitat following subsidence due to longwall mining

Alteration to the natural flow regimes of rivers and streams and their floodplains and wetlands (as described in the final determination of the Scientific Committee to list the threatening process)

Anthropogenic Climate Change

Bushrock removal (as described in the final determination of the Scientific Committee to list the threatening process)

Clearing of native vegetation (as defined and described in the final determination of the Scientific Committee to list the key threatening process)

Competition and grazing by the feral European Rabbit, *Oryctolagus cuniculus* (L.)

Competition and habitat degradation by Feral Goats, *Capra hircus* Linnaeus 1758

Competition from feral honey bees, *Apis mellifera* L.

Death or injury to marine species following capture in shark control programs on ocean beaches (as described in the final determination of the Scientific Committee to list the key threatening process)

Entanglement in or ingestion of anthropogenic debris in marine and estuarine environments (as described in the final determination of the Scientific Committee to list the key threatening process)

Forest eucalypt dieback associated with over-abundant psyllids and Bell Miners

Herbivory and environmental degradation caused by feral deer

High frequency fire resulting in the disruption of life cycle processes in plants and animals and loss of vegetation structure and composition

Importation of Red Imported Fire Ants *Solenopsis invicta* Buren 1972

Infection by Psittacine Circoviral (beak and feather) Disease affecting endangered psittacine species and populations

Infection of frogs by amphibian chytrid causing the disease chytridiomycosis

Infection of native plants by *Phytophthora cinnamomi*

Introduction and establishment of Exotic Rust Fungi of the order Pucciniales pathogenic on plants of the family Myrtaceae

Introduction of the Large Earth Bumblebee *Bombus terrestris* (L.)

Invasion and establishment of exotic vines and scramblers

Invasion and establishment of Scotch Broom (*Cytisus scoparius*)

Invasion and establishment of the Cane Toad (*Bufo marinus*)

Invasion, establishment and spread of Lantana (*Lantana camara* L. *sens. lat*)

Invasion of native plant communities by African Olive *Olea europaea* subsp. *cuspidata* (Wall. ex G. Don) Cif.

Invasion of native plant communities by *Chrysanthemoides monilifera*

Invasion of native plant communities by exotic perennial grasses

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Biodiversity Conservation Bill 2016 [NSW]
Schedule 4 Key threatening processes

Invasion of the Yellow Crazy Ant, *Anoplolepis gracilipes* (Fr. Smith) into NSW

Loss and degradation of native plant and animal habitat by invasion of escaped garden plants, including aquatic plants

Loss of hollow-bearing trees

Loss or degradation (or both) of sites used for hill-topping by butterflies

Predation and hybridisation by Feral Dogs, *Canis lupus familiaris*

Predation by *Gambusia holbrooki* Girard, 1859 (Plague Minnow or Mosquito Fish) (as described in the final determination of the Scientific Committee to list the threatening process)

Predation by the European Red Fox *Vulpes vulpes* (Linnaeus, 1758)

Predation by the Feral Cat *Felis catus* (Linnaeus, 1758)

Predation by the Ship Rat *Rattus rattus* on Lord Howe Island

Predation, habitat degradation, competition and disease transmission by Feral Pigs, *Sus scrofa* Linnaeus 1758

Removal of dead wood and dead trees

Schedule 5 Protected animals

(Section #)

Note. Some protected animals specified in this Schedule may also be a threatened species or a part of a threatened ecological community. Provisions of this Act relating to the protection of protected animals generally also apply to animals that are a threatened species or a part of a threatened ecological community.

Any mammal, bird, reptile or amphibian, other than any of the following:

Mammals

Carnivora other than Pinnipedia	Bears, lions, dogs, etc
Insectivora	Moles, hedgehogs
Artiodactyla	Cloven hoofed animals
Perissodactyla	Horses, donkeys, etc
Primates	Apes, monkeys
Subungulates	Elephants
<i>Lepus europaeus</i>	Hare
<i>Oryctolagus cuniculus</i>	Rabbit
<i>Scirius palmarum</i>	Indian Palm Squirrel

In this Schedule:

amphibian means any frog or other member of the class amphibia that is native to Australia and includes the eggs and the young of an amphibian.

bird means any bird that is native to, or is of a species that periodically or occasionally migrates to, Australia, and includes the eggs and the young of a bird.

mammal means any mammal, whether native, introduced or imported, and includes an aquatic or amphibious mammal, the eggs and the young of a mammal, but does not include any introduced or imported domestic mammal or any rat or mouse not native to Australia.

reptile means a snake, lizard, crocodile, tortoise, turtle or other member of the class reptilia (whether native, introduced or imported), and includes the eggs and the young of a reptile.

Schedule 6 Protected native plants

(Sections #)

Note. Some protected native plants specified in this Schedule may also be a threatened species or a part of a threatened ecological community. Provisions of this Act relating to the protection of protected native plants generally also apply to plants that are a threatened species or a part of a threatened ecological community.

Part 1 Plant parts used in the cut-flower industry

Scientific Name	Common Name(s)
Group 1	
Group 2	
<i>Adiantum</i> spp.	Maidenhair Fern
<i>Archontophoenix cunninghamiana</i>	Bangalow Palm (foliage only)
<i>Baeckea linifolia</i>	Weeping Baeckea
<i>Baeckea virgata</i>	Twiggy Heath Myrtle, Tall Baeckea
<i>Banksia spinulosa</i>	Hairpin Banksia
<i>Cassinia aureonitens</i>	Yellow Cassinia
<i>Caustis</i> spp., native to NSW	Curly Sedges, Old Man's Whiskers
<i>Cordyline stricta</i>	Narrow-leaved Palm Lily
<i>Crowea exalata</i>	Crowea
<i>Crowea saligna</i>	Crowea
<i>Davallia pyxidata</i>	Hare's Foot Fern
<i>Dodonaea lobulata</i>	Lobed-leaved Hop Bush
<i>Eriostemon</i> spp. native to NSW	
<i>Gahnia sieberiana</i>	Red-fruited Saw Sedge
<i>Isopogon</i> spp., native to NSW	Drumsticks, Cone Bushes
<i>Kunzea ambigua</i>	Tick Bush
<i>Kunzea capitata</i>	Pink Kunzea
<i>Leptospermum lanigerum</i>	Woolly Tea-tree
<i>Leptospermum rotundifolium</i>	Round-leaf Tea-tree
<i>Livistona australis</i> (foliage only)	Cabbage Tree Palm, Fan Palm
<i>Lomatia silaifolia</i>	Crinkle Bush
<i>Persoonia</i> spp., native to NSW (except <i>P. pinifolia</i>)	Geebungs
<i>Petrophile</i> spp., native to NSW	Conesticks
<i>Phebalium squamulosum</i>	Scaly Phebalium
<i>Philothea</i> spp., native to NSW (except <i>P. obovalis</i>)	Philothea
<i>Ptilotus exaltatus</i>	Tall Mulla Mulla

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Biodiversity Conservation Bill 2016 [NSW]
Schedule 6 Protected native plants

Scientific Name	Common Name(s)
<i>Ptilotus obovatus</i>	Smoke Bush, Cotton Bush
<i>Pycnosorus</i> spp., native to NSW	Billy-buttons
<i>Restio tetraphyllus</i>	Tassel-rush
<i>Sprengelia incarnata</i>	Pink Swamp Heath
<i>Sticherus flabellatus</i>	Shiny Fan-fern, Umbrella Fern
<i>Swainsona formosa</i>	Sturt's Desert Pea
<i>Tmesipteris</i> spp., native to NSW	Ferns
<i>Xanthorrhoea</i> spp. (foliage only)	Grass Trees
<i>Xylomelum</i> spp., native to NSW	Woody Pear
Zamiaceae, native to NSW	Cycads
Group 3	
<i>Actinotus</i> spp., native to NSW (except <i>A. minor</i>)	Flannel Flower
<i>Boronia</i> spp., native to NSW	Boronias
<i>Doryanthes excelsa</i> (foliage only)	Giant Lilies
<i>Eriostemon australasius</i>	Wax Flower
<i>Lycopodium</i> spp., native to NSW	Mountain Moss
<i>Persoonia pinifolia</i>	Pine-leaved Geebung
<i>Philothea obovalis</i>	Wax Flower
Group 4	
<i>Blandfordia</i> spp.	Christmas Bells
<i>Doryanthes excelsa</i> (flowers only)	Giant Lily
<i>Xanthorrhoea</i> spp. (flowers only)	Grass Tree
Group 5	
<i>Boronia deanei</i>	Dean's Boronia
<i>Boronia umbellata</i>	Boronia
<i>Craspedia</i> spp., native to NSW	Billy Buttons
<i>Dicranopteris linearis</i>	
<i>Doryanthes palmeri</i>	Spear Lily
<i>Grevillea longifolia</i>	Fern-leaf Grevillea
<i>Isopogon fletcheri</i>	
<i>Leptospermum spectabile</i>	
<i>Macrozamia johnsonii</i>	Cycad
<i>Macrozamia pauli-guilielmi</i> ssp. <i>flexuosa</i>	Cycad
<i>Persoonia</i> spp.	Geebung
<i>Phebalium bifidum</i>	
<i>Phebalium glandulosum</i> ssp. <i>eglandulosum</i>	

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Biodiversity Conservation Bill 2016 [NSW]
Schedule 6 Protected native plants

Scientific Name	Common Name(s)
<i>Philotheca ericifolia</i>	
<i>Philotheca obovatifolia</i>	Native Daphne, Long-leaf Wax Flower
<i>Telopea</i> spp., native to NSW	Waratah

Part 2 Whole plants

Scientific Name	Common Name(s)
Group 1	
<i>Asplenium australasicum</i>	Bird's Nest Fern
<i>Asplenium polyodon</i>	Sickle Spleenwort, Mare's Tail Fern
<i>Asplenium harmanii</i>	Fern
<i>Cyathea</i> spp.	Tree Ferns
<i>Dicksonia</i> spp.	Tree Ferns
<i>Platyserium</i> spp., native to NSW	Elkhorn and Staghorn Ferns
Group 2	
<i>Dendrobium aemulum</i>	Ironbark Orchid, White Feather Orchid
<i>Dendrobium gracilicaule</i>	
<i>Dendrobium linguiforme</i>	Tongue Orchid
<i>Dendrobium speciosum</i> var. <i>hillii</i>	King Orchid, Rock Lily, Tar-beri
<i>Xanthorrhoea</i> spp.	Grass Trees
Zamiaceae, native to NSW	Cycads
Group 3	
Areaceae, native to NSW	Palms
<i>Cymbidium suave</i>	Snake Orchid
<i>Oberonia complanata</i>	
<i>Oberonia titania</i>	
<i>Pandanus</i> spp., native to NSW	Pandanus
<i>Taeniophyllum muelleri</i>	
<i>Todea barbara</i>	King Fern
Group 4	
Orchidaceae, native to NSW	Orchids
Group 5	
<i>Wollemia nobilis</i>	Wollemi Pine

Schedule 7 Provisions relating to members and procedure of Threatened Species Scientific Committee

1 Provisions relating to members of Scientific Committee

- (1) Subject to this Act, a member of the Scientific Committee holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (2) A person who serves as a member of the Scientific Committee for 2 consecutive periods is not eligible to be a member of the Scientific Committee for 3 years after the end of those consecutive periods.
- (3) In determining the term of office to be provided for by a member's instrument of appointment, the Minister is to have regard to the desirability of maintaining some continuity of membership of the Scientific Committee.
- (4) A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.
- (5) The office of a member becomes vacant if the member:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) is removed from office by the Minister under this section or by the Governor under Part 6 of the *Government Sector Employment Act 2013*, or
 - (e) is absent from 4 consecutive meetings of the Scientific Committee of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Scientific Committee or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Scientific Committee for having been absent from those meetings, or
 - (f) becomes a mentally incapacitated person, or
 - (g) ceases to have the qualification required for the member's appointment.
- (6) The Minister may remove a member from office.
- (7) Part 4 of the *Government Sector Employment Act 2013* does not apply to or in respect of the appointment of a member.
- (8) If by or under any Act provision is made:
 - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,

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

2 Chairperson and Deputy Chairperson

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

3 Disclosure of pecuniary interests

- (1) If:
 - (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Scientific Committee, and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Scientific Committee.
- (2) A disclosure by a member at a meeting of the Scientific Committee that the member:
 - (a) is a member, or is in the employment, of a specified company or other body, or
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (3) Particulars of any disclosure made under this clause must be recorded by the Scientific Committee in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee (if any) determined by the Scientific Committee.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Scientific Committee otherwise determines:
 - (a) be present during any deliberation of the Scientific Committee with respect to the matter, or
 - (b) take part in any decision of the Scientific Committee with respect to the matter.
- (5) For the purposes of the making of a determination by the Scientific Committee under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
 - (a) be present during any deliberation of the Scientific Committee for the purpose of making the determination, or
 - (b) take part in the making by the Scientific Committee of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Scientific Committee.

4 Procedure of Scientific Committee

- (1) The procedure for the calling of meetings of the Scientific Committee and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Scientific Committee.
- (2) The quorum for a meeting of the Scientific Committee is 6 members.
- (3) The Chairperson of the Scientific Committee or, in the absence of the Chairperson, the Deputy Chairperson or, in the absence of both the Chairperson and the Deputy Chairperson, another member elected to chair the meeting, is to preside at a meeting of the Scientific Committee. The person presiding at a meeting has a deliberative vote but not a casting vote.

- (4) A decision supported by a majority of the votes cast at a meeting of the Scientific Committee at which a quorum is present is the decision of the Scientific Committee.
- (5) The Scientific Committee may invite suitably qualified persons to attend meetings to advise or inform the Scientific Committee on any matter.

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

- (1) The Scientific Committee may, if it thinks fit, transact any of its business by the circulation of papers among all the members for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Scientific Committee.
- (2) The Scientific Committee may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
 - (a) the approval of a resolution under subclause (1), or
 - (b) a meeting held in accordance with subclause (2),the Chairperson and each other member have the same voting rights as they have at an ordinary meeting of the Scientific Committee.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meeting of the Scientific Committee.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

6 Service of documents on Scientific Committee

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

- (a) lodged at the head office of the Office of Environment and Heritage, or
- (b) sent by post to the head office of that Office, or
- (c) sent by facsimile transmission or other electronic means notified by the Scientific Committee as being an available means of communication, or
- (d) sent by any means provided for the service of documents by another Act or law.

Schedule 8 Members and procedure of Board of Biodiversity Conservation Trust

(Section 10.3)

1 Definitions

In this Schedule:

Board means the Board of the Biodiversity Conservation Trust.

Chairperson means the Chairperson of the Board.

Deputy Chairperson means the Deputy Chairperson of the Board.

member means any member of the Board.

2 Members of Board

- (1) The persons appointed as members of the Board are to be persons who, in the opinion of the Minister for the Environment, have skills and experience in one or more of the following areas:
 - (a) increasing public knowledge, understanding and appreciation of the importance of biodiversity by private landholders and other community members,
 - (b) protection and conservation of biodiversity,
 - (c) management of natural resources, including agricultural land,
 - (d) agricultural land production systems,
 - (e) land use planning and operation of local councils,
 - (f) marketing and fundraising,
 - (g) economics and financial management (including investment fund management),
 - (h) information technology,
 - (i) governance and administration,
 - (j) decision-making and leadership.
- (2) The Minister for the Environment is to ensure, as far as is possible, that the composition of the Board is such that the members of the Board together have all of the skills and experience specified in subclause (1).
- (3) At least one of the members of the Board must be an Aboriginal person.
- (4) A government sector employee is eligible to be appointed as a member of the Board.
- (5) The Minister for the Environment may publicly advertise for nominations for appointment of persons as members of the Board.
- (6) The Minister for the Environment is to consult the Minister for Planning and the Minister for Primary Industries in relation to the appointment of members of the Board.

3 Terms of office of members

Subject to this Schedule and the regulations, a member holds office for such period (not exceeding 5 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

4 Remuneration

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member (being at a rate that does not exceed any rate prescribed by the regulations).

5 Vacancy in office of member

- (1) The office of a member becomes vacant if the member:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) is removed from office by the Minister under this clause, or
 - (e) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or by post, except on leave granted by the Minister or unless the member is excused by the Minister for having been absent from those meetings, or
 - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (g) becomes a mentally incapacitated person, or
 - (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Minister may remove a member from office at any time.
- (3) If the office of any appointed member becomes vacant, a person is, subject to this Act and the regulations, to be appointed to fill the vacancy.

6 Chairperson and Deputy Chairperson

- (1) A Chairperson and Deputy Chairperson are to be elected by the members of the Board.
- (2) The Chairperson or Deputy Chairperson vacates office as Chairperson or Deputy Chairperson if the person:
 - (a) ceases to be a member of the Board, or
 - (b) resigns from that office by instrument in writing addressed to the Board, or
 - (c) is removed from office by a vote of the Board.
- (3) If the office of Chairperson or Deputy Chairperson becomes vacant, a non-government member is to be elected by the members to fill the vacancy.

7 Disclosure of pecuniary interests

- (1) If:
 - (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board, and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

- (2) A disclosure by a member at a meeting of the Board that the member:
- (a) is a member, or is in the employment, of a specified company or other body, or
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person that may arise after the date of the disclosure and that is required to be disclosed under subclause (1).
- (3) Particulars of any disclosure made under this clause must be recorded by the Board in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Board.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Board otherwise determines:
- (a) be present during any deliberation of the Board with respect to the matter, or
 - (b) take part in any decision of the Board with respect to the matter.
- (5) For the purposes of the making of a determination by the Board under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the Board for the purpose of making the determination, or
 - (b) take part in the making by the Board of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Board.
- (7) This clause applies to a member of a committee of the Board and the committee in the same way as it applies to a member of the Board and the Board.

8 Effect of certain other Acts

- (1) The provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to a member.
- (2) If by or under any Act provision is made:
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,
- the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

9 Personal liability

A matter or thing done or omitted to be done by the Board, a member of the Board or a person acting under the direction of the Board does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.

10 General procedure

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

11 Quorum

The quorum for a meeting of the Board is a majority of its members for the time being.

12 Presiding member

- (1) The Chairperson (or, in the absence of the Chairperson, the Deputy Chairperson, or in the absence of both the Chairperson and the Deputy Chairperson, a person elected by the members of the Board who are present at a meeting of the Board) is to preside at a meeting of the Board.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

13 Voting

A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

14 Transaction of business outside meetings or by telephone etc

- (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Board made at a meeting of the Board.
- (2) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone or other electronic means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
 - (a) the approval of a resolution under subclause (1), or
 - (b) a meeting held in accordance with subclause (2),the Chairperson and each other member have the same voting rights as they have at an ordinary meeting of the Board.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Board.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by electronic means.

15 Seal of Trust

- (1) The seal of the Trust is to be kept by a member of the Board, or a member of staff of the Trust, authorised by the Board to keep it.
- (2) The seal of the Trust is to be affixed to a document only:
 - (a) in the presence of that member of the Board or of the staff of the Trust who is authorised to do so by the Board generally or in a particular case or class of cases, and
 - (b) with an attestation by the signature of that member of the Board or member of staff of the fact of the affixing of the seal.

Schedule 9 Savings, transitional and other provisions

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act, the *Local Land Services Amendment Act 2016* or any Act that amends this Act.
- (2) Any such provision has effect despite anything to the contrary in this Schedule. The regulations may make separate savings and transitional provisions or amend this Schedule to consolidate the savings and transitional provisions.
- (3) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (4) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 General provisions consequent on enactment of this Act and the Local Land Services Amendment Act 2016

2 Definition

In this Schedule:

former Act means any of the following Acts or parts of Acts:

- (a) *Native Vegetation Act 2003*,
- (b) *Threatened Species Conservation Act 1995*,
- (c) *Nature Conservation Trust Act 2001*,
- (d) that part of the *National Parks and Wildlife Act 1974* that is repealed by this Act.

3 References to former Act

- (1) A reference in any Act or in any instrument made under an Act (other than in this Act or an instrument made under this Act):
 - (a) to a former Act is to be read as including a reference to this Act, or
 - (b) to a provision of a former Act is to be read as including a reference to a corresponding provision of this Act.
- (2) This clause has effect subject to this Schedule and to any contrary intention in the provision in which the relevant reference occurs.

4 General saving

- (1) If anything done under a former Act before the repeal of the former Act and still having effect immediately before that repeal could have been done under this Act if

this Act had been in force when the thing was done, the thing done continues to have effect as if it had been done under this Act.

- (2) This clause has effect subject to this Schedule and to any contrary intention.

Part 3 Specific provisions consequent on enactment of this Act

Consultation note. Detailed savings and transitional provisions will be drafted when the Bill is reasonably settled. The matters will include (but are not limited to) the following:

- (a) Preservation (in relating to clearing native vegetation) of anything authorised by a property vegetation plan approved under the *Native Vegetation Act 2003*, being an act that had the benefit of biodiversity certification of the native vegetation reform package under Division 4 of Part 7 of the *Threatened Species Conservation Act 1995* when the plan was approved (including clearing under private land conservation agreements under the repealed legislation).
- (b) Deeming existing areas declared as critical habit under the *Threatened Species Conservation Act 1995* to be declared areas of outstanding biodiversity value.
- (c) Deeming (until they expire) existing licences under the *Threatened Species Conservation Act 1995* or the *National Parks and Wildlife Act 1974* that authorise acts (such as those that would otherwise constitute harm to animals or plants or their habitat) to be biodiversity conservation licences.
- (d) Preserving the effect of the joint management agreement for shark meshing (bather protection) made under Division 2 of Part 7 of the *Threatened Species Conservation Act 1995*.
- (e) Deeming strategies in the Threatened Species Priorities Action Statement under section 90A of the repealed TSC Act (for species and ecological communities listed in this Act on its commencement) to be strategies in the Biodiversity Conservation Program under this Act.
- (f) Deeming key threatening processes listed in Schedule 3 to the repealed TSC Act to be key threatening processes on the public register of key threatening processes under Part 9 of this Act.
- (g) Deeming the Biodiversity Stewardship Payments Fund to be a continuation of the Biobanking Trust Fund (and thereby acquiring its outstanding assets and liabilities).
- (h) Continuation of the operation of existing biodiversity offsets arrangements (including continuation of the operation of biodiversity certified land and biobanking statements under the repealed TSC Act).
- (i) Preserving existing private land conservation agreements under the *National Parks and Wildlife Act 1974* or under the *Nature Conservation Trust Act 2001* (and continuing their operation under either the former repealed provisions or by the application of the new provisions of this Act).

Schedule 10 Repeal of Acts and regulations

The following Acts and regulations are repealed:

- (a) *Threatened Species Conservation Act 1995* No 101,
- (b) *Threatened Species Conservation Regulation 2010*,
- (c) *Threatened Species Conservation (Biodiversity Banking) Regulation 2008*,
- (d) *Nature Conservation Trust Act 2001* No 10.

Schedule 11 Amendment of Acts and instruments

Consultation note. This Schedule makes consequential amendments to a number of key principal Acts. Consequential amendments to other Acts and instruments to be drafted.

11.1 Environmental Planning and Assessment Act 1979 No 203

- [1] **Section 4 Definitions of “critical habitat”, “ecological community”, “endangered ecological community”, “endangered population”, “endangered species”, “habitat”, “population”, “recovery plan”, “species”, “species impact statement”, “threat abatement plan”, “threatened species”, “threatened species, populations and ecological communities and threatened species, population or ecological community”, “threatening process”, “vulnerable ecological community”, “vulnerable species”**

Omit the definitions.

- [2] **Section 4 (6A)**

Omit the subsection.

- [3] **Section 5 Objects**

Omit “, populations” from section 5 (a) (vi).

- [4] **Section 5AA**

Insert after section 5:

5AA Application of Biodiversity Conservation Act 2016 and Part 7A of Fisheries Management Act 1994

This Act has effect subject to relevant provisions of the *Biodiversity Conservation Act 2016* and Part 7A of the *Fisheries Management Act 1994* that relate to the operation of this Act in connection with the terrestrial and aquatic environment.

- [5] **Section 5A Significant effect on threatened species, populations or ecological communities, or their habitats, section 5B Planning authorities to have regard to register of critical habitat, section 5C Application of Act with respect to threatened species conservation—fish and marine vegetation, section 5D Application of Act to vulnerable ecological communities**

Omit the sections.

- [6] **Section 26 Contents of environmental planning instruments**

Omit “, populations” from section 26 (1) (e1).

- [7] **Section 26 (1A) and (1B)**

Omit the subsections.

- [8] **Section 26 (4)**

Omit the subsection. Insert instead:

- (4) An environmental planning instrument that makes provision for or with respect to protecting or preserving trees or other vegetation may make provision:
- (a) for authorising the council (or other person or body) to determine the trees or other vegetation included in or excluded from the relevant provisions, and

- (b) for requiring a permit, approval or other authorisation to remove or otherwise affect trees or other vegetation that is granted by the council (or other person or body), and
- (c) for an appeal to the Court against a refusal to grant any such permit, approval or other authorisation.

[9] Section 26, note

Omit the note.

[10] Section 76 Development that does not need consent

Omit section 76 (3) (a) (i). Insert instead:

- (i) is a declared area of outstanding biodiversity value under the *Biodiversity Conservation Act 2016* or declared critical habitat under Part 7A of the *Fisheries Management Act 1994*, or

[11] Section 78A Application

Omit section 78A (8) and (8A). Insert instead:

- (8) A development application for State significant development or designated development is to be accompanied by an environmental impact statement prepared by or on behalf of the applicant in the form prescribed by the regulations.

[12] Section 79B Consultation and concurrence

Omit section 79B (3), (4), (5), (6), (7), (8A) and (8B).

[13] Section 79B (10)

Omit “or by subsection (3)”.

[14] Section 79C Evaluation

Omit the second note to section 79C (1).

[15] Section 89I Biobanking—special provisions

Omit the section.

[16] Section 89J Approvals etc legislation that does not apply

Omit section 89J (1) (e).

[17] Section 96 Modification of consents—generally

Omit section 96 (5).

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

Omit section 96AA (1B).

[19] Section 105A Transitional—amendment to list of vulnerable species

Omit the section.

[20] Section 110C Determining authorities to have regard to register of critical habitat

Omit the section.

- [21] **Section 110D Transitional—amendment of list of vulnerable species**
Omit the section.
- [22] **Section 111 Duty to consider environmental impact**
Omit section 111 (2) and (4) and the note.
- [23] **Section 112 Decision of determining authority in relation to certain activities**
Omit “(including critical habitat) or threatened species, populations or ecological communities, or their habitats” from section 112 (1).
- [24] **Section 112 (1B) and (1C)**
Omit the subsections.
- [25] **Section 112 (4)**
Omit “(including critical habitat) or threatened species, populations or ecological communities, or their habitats” wherever occurring.
- [26] **Section 112A Determining authorities to have regard to recovery plans and threat abatement plans**
Omit the section.
- [27] **Section 112B Consultation with Minister for the Environment if Minister is determining authority**
Omit the section.
- [28] **Section 112C Concurrence of or consultation with Chief Executive of the Office of Environment and Heritage if Minister is not determining authority**
Omit the section.
- [29] **Section 112D Matters to be considered by Chief Executive of the Office of Environment and Heritage as concurrence authority**
Omit the section.
- [30] **Section 112E Matters to be considered by Minister or Chief Executive of the Office of Environment and Heritage when consulted**
Omit the section.
- [31] **Section 115N Special provisions relating to threatened species conservation**
[consequential amendments to be made]
- [32] **Section 115O Determination with respect to environmental assessment**
[consequential amendments to be made to section 115O (3) (d)]
- [33] **Section 115Q Re-assessment of designated fishing activity**
[consequential amendments to be made to section 115Q (1) (c)].
- [34] **Section 115RA Shark meshing**
[consequential amendment to be made to section 115RA (1)].
- [35] **Section 115S Transitional—amendment to list of vulnerable species**
Omit the section.

[36] Section 115ZC Biobanking—special provisions

Omit the section.

[37] Section 115ZG Approvals etc legislation that does not apply

Omit section 115ZG (1) (e).

[38] Section 115ZG (3)

Omit “or the *Threatened Species Conservation Act 1995*” from section 115ZG (3) (a).
[references to threatened species Act to be updated—see section 89J (e) and 115ZG (e)]

[39] Section 115ZG (3) (b)

Omit “, Division 1 (Stop work orders) of Part 7 of the *Threatened Species Conservation Act 1995*”.

[40] Section 115ZG (3) (c1)

Insert after section 115ZG (3) (c):

- (c1) an order or direction under Part 11 (Regulatory compliance mechanisms) of the *Biodiversity Conservation Act 2016* (or an order under that Part as applied by Part 5A of the *Local Land Services Act 2013*),

11.2 Fisheries Management Act 1994 No 38

[1] Section 220BA Relationship of Part to Biodiversity Conservation Act 2016

Omit “*Threatened Species Conservation Act 1995*” wherever occurring. Insert instead “*Biodiversity Conservation Act 2016*”.

[2] Part 7A Threatened species conservation

Consultation note. Other consequential amendments required to be made to this Part. The following Division seeks to maintain the current arrangements under the Planning Act relating to threatened species of fish and marine vegetation following the proposed transfer to the Biodiversity Conservation Act (with changes) of provisions relating to threatened species of animals and plants (the Planning Act does not contain separate provisions for threatened fish and marine vegetation but merely applies to fish and marine vegetation the provisions in that Act relating to animals and plants). Accordingly, the proposed changes to biodiversity assessment under the Planning Act in relation to animals and plants will not apply to fish or marine vegetation.

Insert after Division 11 of Part 7A:

Division 12 Application of Planning Act

221ZT Application of Division

This Division applies to the following:

- (a) the grant or refusal of a development consent under Part 4 of the Planning Act (other than a complying development certificate),
(b) environmental assessment under Part 5 of the Planning Act.

221ZU Definitions

- (1) In this Division:

activity means an activity within the meaning of Part 5 of the Planning Act.
development means development within the meaning of the Planning Act.

Fisheries Agency Head means the Secretary of the Department of Industry, Skills and Regional Development.

Planning Act means the *Environmental Planning and Assessment Act 1979*.

threatened ecological communities do not include vulnerable ecological communities (except so much of any such community as comprises a threatened species).

- (2) For the purposes of this Division, development or an activity is **likely to significantly affect threatened species** if:
- (a) it is likely to significantly affect threatened species, populations or ecological communities, or their habitats, or
 - (b) it is carried out in critical habitat.

221ZV Determination of whether proposed development or activity likely to significantly affect threatened species, population or ecological community

The following is to be taken into account for the purposes of determining under this Division whether a proposed development or activity is likely to significantly affect threatened species, populations or ecological communities (unless it is carried out in critical habitat):

- (a) in the case of a threatened species, whether the proposed development or activity is likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction,
- (b) in the case of an endangered population, whether the proposed development or activity is likely to have an adverse effect on the life cycle of the species that constitutes the endangered population such that a viable local population of the species is likely to be placed at risk of extinction,
- (c) in the case of an endangered ecological community or critically endangered ecological community, whether the proposed development or activity:
 - (i) is likely to have an adverse effect on the extent of the ecological community such that its local occurrence is likely to be placed at risk of extinction, or
 - (ii) is likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction,
- (d) in relation to the habitat of a threatened species, population or ecological community:
 - (i) the extent to which habitat is likely to be removed or modified as a result of the proposed development or activity, and
 - (ii) whether an area of habitat is likely to become fragmented or isolated from other areas of habitat as a result of the proposed development or activity, and
 - (iii) the importance of the habitat to be removed, modified, fragmented or isolated to the long-term survival of the threatened species, population or ecological community in the locality,
- (e) whether the proposed development or activity is likely to have an adverse effect on any critical habitat (either directly or indirectly),
- (f) whether the proposed development or activity is consistent with a Priorities Action Statement,

- (g) whether the proposed development constitutes or is part of a key threatening process or is likely to result in the operation of, or increase the impact of, a key threatening process.

The assessment guidelines under section 220ZZA apply to the determination of whether any such proposed development or activity is likely to significantly affect threatened species.

221ZW When species impact statement required for development consent under Part 4 of Planning Act

- (1) If proposed development is likely to significantly affect threatened species, populations or ecological communities, an application for development consent under Part 4 of the Planning Act (or an environmental impact statement accompanying the application) is to include or be accompanied by a species impact statement.

- (2) This section does not apply to State significant development.

Note. Section 78A (8) (formerly section 78A (8A)) of the Planning Act requires an application for State significant development to be accompanied by an environmental impact statement.

221ZX Significant effect on environment requiring EIS includes significant effect on threatened species, populations and ecological communities for purposes of Part 5 of Planning Act

- (1) For the purposes of Part 5 of the Planning Act, an activity is to be regarded as an activity likely to significantly affect the environment if it is likely to significantly affect threatened species, populations or ecological communities.

- (2) In that case, an environmental impact statement prepared under Part 5 of the Planning Act is to include or be accompanied by a species impact statement.

- (3) If the likely significant effect on threatened species, populations or ecological communities is the only likely significant effect on the environment, a species impact statement may be obtained under Part 5 of the Planning Act instead of an environmental impact statement and that Part applies as if references to an environmental impact statement were references to a species impact statement.

221ZY Consultation with Minister for Primary Industries if a Minister is consent authority under Part 4 or determining authority under Part 5 of Planning Act

- (1) This section applies to the following:

(a) development (not being State significant development or complying development) that requires development consent under Part 4 of the Planning Act when a Minister is the consent authority,

(b) an activity that requires environmental impact assessment under Part 5 of the Planning Act when a Minister is the determining authority.

- (2) For the purposes of determining the application for that development consent or of that environmental impact assessment, the Minister concerned is to consult the Minister for Primary Industries if the development or activity is likely to significantly affect threatened species, populations or ecological communities.

- (3) In so consulting, the Minister for Primary Industries is to provide the Minister who is the consent authority or the determining authority with any recommendations made by the Fisheries Agency Head.

221ZZ Concurrency of or consultation with Fisheries Agency Head if a Minister is not consent authority under Part 4 or determining authority under Part 5 of Planning Act

- (1) This section applies to the following:
 - (a) development (not being State significant development or complying development) that requires development consent under Part 4 of the Planning Act when a Minister is not the consent authority,
 - (b) an activity that requires environmental impact assessment under Part 5 of the Planning Act when a Minister is not the determining authority.
- (2) The consent authority is not to grant development consent if the development is likely to significantly affect threatened species, populations or ecological communities, unless the consent authority has obtained the concurrence of the Fisheries Agency Head.
- (3) The determining authority is not to carry out the activity, or grant an approval to carry out the activity, if the activity is likely to significantly affect threatened species, populations or ecological communities, unless the determining authority has obtained the concurrence of the Fisheries Agency Head.
- (4) However, if the Minister for Primary Industries considers that it is appropriate, that Minister may elect to act in the place of the Fisheries Agency Head. The Minister for Primary Industries is required, in giving any concurrence, to consult that Agency Head, to provide the consent authority or the determining authority with any recommendations made by that Agency Head and to give public notice of any such recommendation that the Minister for Primary Industries has not accepted.
- (5) In determining whether to give a concurrence under this section, the Fisheries Agency Head or Minister for Primary Industries (as the case requires) is to have regard to the following:
 - (a) any species impact statement prepared for the development or activity and submissions made in response to it,
 - (b) any assessment report prepared by or on behalf of the proponent,
 - (c) any Priorities Action Statement,
 - (d) whether the development or activity is likely to reduce the long-term viability of the threatened species, populations or ecological communities in the region,
 - (e) the facilitation of ecologically sustainable development.
- (6) A concurrence under this section may be conditional on the taking of action that the Fisheries Agency Head or Minister for Primary Industries (as the case requires) considers will significantly benefit threatened species, populations or ecological communities and to which the person required to take the action has agreed. Any such action may (without limitation) include the provision of biodiversity offsets.
- (7) The terms of a concurrence under this section may be varied by the person who gave the concurrence at the request of the consent authority or determining authority concerned.
- (8) A consent authority that grants consent, or a determining authority that grants approval, to the carrying out of development or an activity for which a concurrence under this section has been granted must grant the consent or approval subject to any conditions of the concurrence. This does not affect the right of the consent authority or determining authority to impose other

conditions not inconsistent with the conditions of the concurrence or to refuse consent or approval.

221ZZA Regulations relating to amendments of threatened species etc lists

The regulations may make provision for or with respect to the effect of amendments to the lists of threatened species, populations and ecological communities during an environmental assessment to which this Division applies.

11.3 Land and Environment Court Act 1979 No 204

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

Omit section 17 (ea), (eb), (g) and (k). Insert in appropriate order:

- (ea) appeals to the Court under the *Biodiversity Conservation Act 2016*,
- (eb) appeals to the Court under Part 5A of the *Local Land Services Act 2013*,

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

[consequential amendments and addition of Part 5A of LLS Act].....

11.4 Land Tax Management Act 1956 No 26

[1] Section 10 Land exempted from tax

Omit section 10 (1) (p), (p1) and p2). Insert instead:

- () *[to be drafted - existing exemptions under repealed Acts to be maintained for former agreements as continued in force and extended to biodiversity stewardship agreements and conservation agreements that have effect in perpetuity under the Biodiversity Conservation Act]*

[2] Section 10 (2C)

Omit the subsection. Insert instead:

- (2C) ...*[consequential changes to be drafted]*

11.5 Local Government Act 1993 No 30

[1] Section 555 What land is exempt from all rates?

Omit section 555 (1) (b1) and (b2). Insert instead:

- () *[to be drafted - existing exemptions under repealed Acts to be maintained for former agreements as continued in force and extended to biodiversity stewardship agreements and conservation agreements that have effect in perpetuity under the Biodiversity Conservation Act and to land held by Biodiversity Conservation Trust]*

[2] Section 555 (3)

[consequential changes to be drafted]

11.6 National Parks and Wildlife Act 1974 No 80

Consultation note. Consequential amendments to this Act (and to other Acts as a result of the amendments to this Act) are not complete.

- [1] **Long title**
Omit “fauna, native plants and”.
- [2] **Section 5 (1), definitions of “amphibian”, “bird”, “critical habitat”, “critically endangered species”, “game animal”, “game bird”, “mammal”, “reptile”**
Omit the definitions.
- [3] **Section 5 (1), definition of “national parks legislation”**
Omit paragraph (b).
- [4] **Section 5 (3)**
Omit the subsection.
- [5] **Section 5 (4)**
Omit the subsection.
- [6] **Section 23 Functions and duties of Council**
Omit section 23 (1) (a) (v).
- [7] **Sections 70, 71 wildlife refuges and conservation areas**
[consequential amendments to be drafted]
- [8] **Part 6A Stop work orders, interim protection orders and remediation directions**
[consequential omissions to be drafted—Div 2 interim protection orders to be limited to cultural significance (including aboriginal cultural significance)—same restriction for Div 1 stop work order].
- [9] **Part 7 Fauna**
Omit the Part.
- [10] **Part 7A Marine mammals—special provisions**
Omit the Part.
- [11] **Part 8 Native plants**
Omit the Part.
- [12] **Part 8A Threatened species, populations and ecological communities, and their habitats, and critical habitat**
Omit the Part.
- [13] **Part 9 Licensing in respect of fauna, native plants and threatened species**
Omit the Part.
- [14] **Section 154 Regulations**
[consequential amendments to be drafted]
- [15] **Section 156B Powers of authorised officers**
[amendments to be drafted to apply new investigative powers under Biodiversity Conservation Act instead of applying powers under Chapter 7 of the POEO Act.]

- [16] **Section 171 Authority to harm or pick**
[consequential amendments to be drafted]
- [17] **Schedule 8A Marine Mammals Advisory Committee**
Omit the Schedule.
- [18] **Schedule 11 Unprotected fauna**
Omit the Schedule.
- [19] **Schedule 12 Threatened interstate fauna**
Omit the Schedule.
- [20] **Schedule 13 Protected native plants**
Omit the Schedule.

11.7 Natural Resources Commission Act 2003 No 102

Section 3 Objects

Omit section 3 (c).

11.8 Protection of the Environment Administration Act 1991 No 60

Section 6 Objectives of the Authority

Insert “social,” before “economic and environmental” in section 6 (2).

11.9 Public Finance and Audit Act 1983 No 152

Schedule 2 Statutory bodies

Insert in alphabetical order:

Biodiversity Conservation Trust

11.10 Rural Fires Act 1997 No 65

Section 100C Carrying out of bush fire hazard reduction work

Omit section 100C (5) (e). Insert instead:

(e) Part 5A of the *Local Land Services Act 2013*,