



New South Wales

Threatened Species Legislation Amendment Bill 2004

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Threatened Species Conservation Act 1995* (the *TS Act*), the *Fisheries Management Act 1994* and various other threatened species legislation as follows:

- (a) Provision will be made for the biodiversity certification by the Minister of the native vegetation reform package, and of environmental planning instruments (*EPIs*) that seek to promote conservation of threatened species. The Minister must also take likely social and economic consequences and certain other factors into account in deciding whether to confer biodiversity certification on an EPI.
- (b) While biodiversity certification of the native vegetation reform package is in force, land within the area of operations of a catchment management authority has the benefit of that certification. Clearing of native vegetation authorised by a property vegetation plan will not need to be licensed under provisions of the *National Parks and Wildlife Act 1974* (the *NPW Act*) that prevent harm to threatened species. The obtaining of development consent

for the clearing of native vegetation on the land will not require preparation of a species impact statement or consultation between Ministers.

- (c) When an EPI has biodiversity certification, development or an activity under the EPI will be deemed not likely to significantly affect threatened species for the purposes of Parts 4 and 5 of the *Environmental Planning and Assessment Act 1979* (the **EPA Act**), thereby removing the need to address the test of significance for threatened species and the need for preparation of a species impact statement.
- (d) Existing exemptions in respect of routine agricultural activities will be replaced by provisions that adopt exemptions for routine agricultural management activities that parallel exemptions under the *Native Vegetation Act 2003* (the **NV Act**). The exemption provisions will be extended to operate as a defence to the offence of harming protected fauna (not just threatened fauna, as at present). The new provisions will include regulation making powers to extend, vary or limit these exemptions.
- (e) An additional regulation making power will be inserted in the TS Act to authorise the making of regulations to deem development or an activity to constitute, or not constitute, development or an activity that is likely to significantly affect threatened species. The regulations will operate for the purposes of Part 6 (Licensing) of the TS Act and Parts 4 and 5 of the EPA Act.
- (f) The existing statutory priorities for the preparation of recovery plans and threat abatement plans will be replaced with provisions for the Director-General to prepare and adopt a Threatened Species Priorities Action Statement, which will establish priorities for the recovery of threatened species and for threat abatement for key threatening processes. Recovery plans and threat abatement plans will be required to be prepared in accordance with the priorities established by a Priorities Action Statement.
- (g) Various amendments will be made to the procedures for nomination and listing of threatened species, including amendments to achieve the following:
 - (i) The Minister will be able to refer a proposed final listing determination by the Scientific Committee back to the Committee for further consideration for reasons of a scientific nature.
 - (ii) The Scientific Committee will be required to consider and determine listing proposals by reference to criteria prescribed by the regulations and to reference the relevant criteria in its reasons for a determination.

- (iii) The validity of a final determination will not be open to challenge on the ground that statutory timeframes were not met.
- (iv) A legal challenge to the validity of a final determination will not be permitted more than 3 months after the final determination is notified.
- (v) The Natural Resources Commission (*NRC*) will be able to refer a species to the Scientific Committee for a listing determination.
- (vi) The NRC and the Minister will be able to give advice and make recommendations to the Scientific Committee as to priorities in the consideration of nominations for listing.
- (vii) The NRC will be authorised to obtain the advice of the Scientific Committee on matters of a scientific nature.
- (h) An additional category of “critically endangered” will be established for listing of species and ecological communities.
- (i) The nomination and listing provisions of the *Fisheries Management Act 1994* will be amended for greater consistency with the procedures under the TS Act (in particular so that the Schedules of threatened species will be amended by the Fisheries Scientific Committee rather than by the Minister as at present).
- (j) A Threatened Species Social and Economic Advisory Council will be established to advise the Minister, the Director-General and the NRC on likely social and economic impacts of listing determinations and related matters.
- (k) The existing Biological Diversity Advisory Council will be re-established with an expert (rather than stakeholder) membership, and altered functions with respect to advising the Minister, the Director-General and the NRC on likely impacts on biological diversity resulting from listing decisions, and related matters.
- (l) Investigative powers of authorised officers under Chapter 7 of the *Protection of the Environment Operations Act 1997* will be conferred on authorised officers under the NPW Act for the purposes of functions under that Act, the *Threatened Species Conservation Act 1995*, the *Wilderness Act 1987* and the *Marine Parks Act 1997*.
- (m) Amendments will be made to create a presumption that a person who causes damage to the habitat of a threatened species knew that the land concerned was habitat of that kind if the person did not obtain required development consent or approval under Part 4 or 5 of the EPA Act or failed to comply with such a consent or approval.

- (n) The NPW Act will be amended to provide that, for purposes of offences concerning harm and threats to protected fauna or threatened species, the landholder of the land concerned is presumed to have carried out the offending activity unless it was carried out by some other person and the landholder did not cause or permit it to be carried out. A further provision is included to create an offence of causing or permitting an act or omission that constitutes such an offence.

Outline of provisions

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

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation with the exception of specified amendments, which commence on the date of assent.

Clause 3 is a formal provision that gives effect to the amendments to the *Threatened Species Conservation Act 1995*, the *Fisheries Management Act 1994* and other threatened species legislation set out in Schedules 1–3.

Schedules 1–3 contain the amendments described in the Overview.

Schedule 1 Amendment of Threatened Species Conservation Act 1995 No 101

Schedule 1 [64] and [65] make the amendments referred to in paragraphs (a), (b) and (c) of the Overview.

Schedule 1 [63] makes the amendment referred to in paragraph (e) of the Overview.

Schedule 1 [22], [26], [32]–[34], [39], [55] and [57]–[64] make the amendments referred to in paragraph (f) of the Overview.

Schedule 1 [20], [23], [25], [35], [37], [47] and [69] make the amendments referred to in paragraph (g) of the Overview.

Schedule 1 [4]–[16], [18], [19], [21], [24], [30], [38], [40]–[46], [48]–[54], [56], [68] and [73]–[76] make the amendments referred to in paragraph (h) of the Overview.

Schedule 1 [70] and [71] make the amendments referred to in paragraphs (j) and (k) of the Overview.

Schedule 1 [17], [29], [31] and [36] makes amendments to the grounds for listing of threatened species, populations and ecological communities, and provides for listing decisions to be made in accordance with, and for reasons for decisions to reference, criteria prescribed by the regulations, for consistency with parallel provisions of Commonwealth legislation.

Schedule 1 [77] and [78] enact savings and transitional provisions.

Schedule 1 [1]–[3] and [72] make amendments that are minor, ancillary or consequential on other amendments made by Schedule 1.

Schedule 2 Amendment of Fisheries Management Act 1994 No 38

Schedule 2 [27] and [42] make the amendments referred to in paragraphs (a), (b) and (c) of the Overview.

Schedule 2 [28] and [29] make the amendments referred to in paragraph (d) of the Overview.

Schedule 2 [39] makes the amendment referred to in paragraph (e) of the Overview.

Schedule 2 [16], [30], [32], [34]–[36], [38] and [44] make the amendments referred to in paragraph (f) of the Overview.

Schedule 2 [7], [9], [10], [12], [13], [15], [17]–[19], [21]–[23], [33], [37], [41] and [43] make the amendments referred to in paragraphs (g) and (i) of the Overview.

Schedule 2 [2]–[6], [8], [14], [20], [24], [25], [31], [40] and [45]–[47] make the amendments referred to in paragraph (h) of the Overview.

Schedule 2 [26] makes the amendment referred to in paragraph (m) of the Overview.

Schedule 2 [11] makes amendments to the grounds for listing of threatened species, populations and ecological communities, and provides for listing decisions to be made in accordance with, and for reasons for decisions to reference, criteria prescribed by the regulations, for consistency with parallel provisions of Commonwealth legislation.

Schedule 2 [48] and [49] enact savings and transitional provisions.

Schedule 2 [1] makes a consequential amendment.

Schedule 3 Amendment of other threatened species legislation

Schedule 3.1 [1], [8] and [10]–[15] and 3.2 make the amendments referred to in paragraph (l) of the Overview.

Schedule 3.1 [3]–[5] make the amendments referred to in paragraph (b) of the Overview.

Schedule 3.1 [7] makes the amendment referred to in paragraph (d) of the Overview.

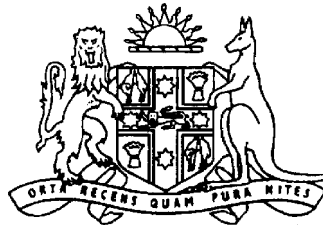
Schedule 3.1 [6] makes the amendment referred to in paragraph (m) of the Overview.

Schedule 3.1 [9] makes the amendment referred to in paragraph (n) of the Overview.

Schedule 3.1 [16] and [17] enact savings and transitional provisions.

Schedule 3.3 makes an amendment referred to in paragraph (b) of the Overview.

Schedule 3.1 [2], 3.4 and 3.5 make minor or consequential amendments.



New South Wales

Threatened Species Legislation Amendment Bill 2004

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No. , 2004

A Bill for

An Act to amend the *Threatened Species Conservation Act 1995* and other threatened species legislation to make provision for critically endangered species and ecological communities and to make further provision for conservation of threatened species, threatened species recovery and threat abatement processes and integration with natural resource management and land use planning; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Threatened Species Legislation Amendment Act 2004</i> .	3 4
2 Commencement	5
(1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).	6 7
(2) Schedule 3.1 [1], [8] and [10]–[17] and 3.2 commence on the date of assent.	8 9
3 Amendments	10
The Acts and Regulation specified in the Schedules to this Act are amended as set out in those Schedules.	11 12

Schedule 1 Amendment of Threatened Species Conservation Act 1995 No 101

(Section 3)

[1] Section 4 Definitions

Omit the definition of *Advisory Council* from section 4 (1).

[2] Section 4 (1)

Omit the definition of *Director-General*. Insert instead:

Department means the Department of Environment and Conservation.

Director-General means the Director-General of the Department.

[3] Section 4 (1)

Insert in alphabetical order:

BDAC means the Biological Diversity Advisory Council established under Part 9A.

catchment action plan or *CAP* means a catchment action plan approved under Part 4 of the *Catchment Management Authorities Act 2003*.

critically endangered ecological community means an ecological community specified in Part 2 of Schedule 1A.

critically endangered species means a species specified in Part 1 of Schedule 1A.

critically endangered species and ecological communities means species and ecological communities specified in Schedule 1A and *critically endangered species or ecological community* means a species or ecological community respectively specified in that Schedule.

environmental planning instrument or *EPI* means an environmental planning instrument under the *Environmental Planning and Assessment Act 1979*.

NPW Act means the *National Parks and Wildlife Act 1974*.

NRC means the Natural Resources Commission established under the *Natural Resources Commission Act 2003*.

	<i>Priorities Action Statement</i> means a Threatened Species Priorities Action Statement under Part 5A.	1 2
	<i>SEAC</i> means the Social and Economic Advisory Council established under Part 9A.	3 4
	<i>vulnerable ecological community</i> means an ecological community specified in Part 2 of Schedule 2.	5 6
[4]	Section 4 (1), definition of “list”	7
	Insert “, 1A” after “Schedule 1”.	8
[5]	Section 4 (1), definition of “threatened ecological community”	9
	Insert “, Part 2 of Schedule 1A” after “Schedule 1”.	10
[6]	Section 4 (1), definition of “threatened species”	11
	Omit the definition. Insert instead:	12
	<i>threatened species</i> means a species specified in Part 1 or 4 of Schedule 1, Part 1 of Schedule 1A or Part 1 of Schedule 2.	13 14
[7]	Section 4 (1), definition of “threatened species, populations and ecological communities”	15 16
	Insert “, 1A” after “Schedules 1”.	17
[8]	Section 4 (1), definition of “threatened species, population or ecological community”	18 19
	Omit “either of those Schedules”. Insert instead “any of those Schedules”.	20
[9]	Part 2, Introductory note	21
	Insert after the first dot point relating to Schedule 1:	22
	<ul style="list-style-type: none">in Schedule 1A, of critically endangered species and ecological communities, and	23 24
[10]	Part 2, Introductory note	25
	Insert “and vulnerable ecological communities” after “in Schedule 2, of vulnerable species”.	26 27

[11] Part 2, Introductory note	1
Omit “lists of endangered populations and endangered ecological communities and threatening processes”.	2 3
Insert instead “lists of critically endangered species, endangered populations, endangered and critically endangered ecological communities and threatening processes”.	4 5 6
[12] Part 2, Introductory note	7
Omit “Division 4 describes the process by which species that are endangered may be listed provisionally in Schedule 1”.	8 9
Insert instead “Division 4 describes the process by which species that are endangered or critically endangered may be listed provisionally in Schedule 1 or 1A”.	10 11 12
[13] Section 6 Lists of endangered and critically endangered species, populations and ecological communities	13 14
Insert after section 6 (4):	15
(4A) Part 1 of Schedule 1A contains a list of critically endangered species for the purposes of this Act.	16 17
(4B) Part 2 of Schedule 1A contains a list of critically endangered ecological communities for the purposes of this Act.	18 19
[14] Section 6 (5) and (6)	20
Insert “or critically endangered” after “endangered” wherever occurring.	21
[15] Section 7	22
Omit the section. Insert instead:	23
7 Schedule 2 list of vulnerable species and ecological communities	24 25
(1) Part 1 of Schedule 2 contains a list of vulnerable species for the purposes of this Act.	26 27
(2) Part 2 of Schedule 2 contains a list of vulnerable ecological communities for the purposes of this Act.	28 29

(3)	Any vulnerable species that is a listed threatened species under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> of the Commonwealth is marked with an asterisk to show that it is considered to be a threatened species nationally.	1 2 3 4 5
(4)	Any vulnerable ecological community that is a listed threatened ecological community under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> of the Commonwealth is marked with an asterisk to show that it is considered to be a threatened ecological community nationally.	6 7 8 9 10 11
[16]	Section 9 Listing of nationally threatened species and ecological communities	12 13
	Insert “, 1A” after “Schedule 1” wherever occurring.	14
[17]	Part 2 Listing of threatened species, populations and ecological communities and key threatening processes	15 16
	Omit Division 2 of Part 2. Insert instead:	17
	Division 2 Eligibility for listing	18
	10 Listing of species	19
(1)	A species is eligible to be listed as a <i>species presumed extinct</i> 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.	20 21 22 23 24 25
(2)	A species is eligible to be listed as a <i>critically endangered species</i> 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.	26 27 28 29 30
(3)	A species is eligible to be listed as an <i>endangered species</i> if, in the opinion of the Scientific Committee:	31 32
(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	33 34 35

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| (b) it is not eligible to be listed as a critically endangered species. | 1
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| (4) A species is eligible to be listed as a <i>vulnerable species</i> if, in the opinion of the Scientific Committee: | 3
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| (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 | 5
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| (b) it is not eligible to be listed as an endangered or critically endangered species. | 9
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| 11 Listing of populations | 11 |
| (1) A population is eligible to be listed as an <i>endangered population</i> if, in the opinion of the Scientific Committee, 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. | 12
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| (2) A population is not eligible to be listed as an endangered population if it is a population of a species already listed in Schedule 1 or 1A. | 17
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| 12 Listing of ecological communities | 20 |
| (1) An ecological community is eligible to be listed as a <i>critically endangered ecological community</i> 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. | 21
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| (2) An ecological community is eligible to be listed as an <i>endangered ecological community</i> if, in the opinion of the Scientific Committee: | 27
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| (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 | 30
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| (b) it is not eligible to be listed as a critically endangered ecological community. | 33
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| (3) An ecological community is eligible to be listed as a <i>vulnerable ecological community</i> if, in the opinion of the Scientific Committee: | 35
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(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	1 2 3 4
(b)	it is not eligible to be listed as an endangered or critically endangered ecological community.	5 6
13	Threatening processes eligible for listing as key threatening processes	7 8
(1)	A threatening process is eligible to be listed as a <i>key threatening process</i> if, in the opinion of the Scientific Committee:	9 10 11
(a)	it adversely affects threatened species, populations or ecological communities, or	12 13
(b)	it could cause species, populations or ecological communities that are not threatened to become threatened.	14 15 16
(2)	The regulations may prescribe criteria for the determination of matters under this section.	17 18
[18]	Section 16 Operation of Division	19
	Insert “, 1A” after “Schedule 1” in section 16 (1).	20
[19]	Section 16 (2)	21
	Insert “or critically endangered” after “endangered”.	22
[20]	Section 16 (3)	23
	Insert after section 16 (2):	24
(3)	A proposal that involves the alteration of the listing status of a species or ecological community (by moving the description of the species or ecological community from one Schedule to another or from one Part of a Schedule to another Part of the Schedule) may be dealt with under this Division as a composite proposal, whereby all aspects of the proposal are dealt with together.	25 26 27 28 29 30 31
[21]	Section 17 Scientific Committee responsible for lists	32
	Insert “, 1A” after “Schedule 1” in section 17 (1).	33

[22] Section 17 (2)	1
Omit the subsection.	2
[23] Section 18 Who may initiate action for listing	3
Insert “or the NRC” after “Minister” in section 18 (2).	4
[24] Section 19 Making nomination for inclusion on, omission from or amendment of list	5
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Insert “, 1A” after “Schedule 1” in section 19 (1) and (2) wherever occurring.	7
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[25] Section 19 (6)	9
Insert after section 19 (5):	10
(6) The Scientific Committee is to give notice of a nomination to the Minister and the NRC within 14 days after the nomination is made.	11
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[26] Section 21 Consideration of nomination by Scientific Committee	14
Omit section 21 (1). Insert instead:	15
(1) The Scientific Committee is to determine priorities for its consideration of nominations and in determining those priorities is to have regard to:	16
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(a) the degree of threat, immediacy of threat, taxonomic distinctiveness and such other matters as the Scientific Committee considers relevant, and	19
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(b) any advice or recommendations of the Minister or the NRC concerning those priorities.	22
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(1A) The NRC and the Minister may give advice or make recommendations to the Scientific Committee concerning priorities for the consideration of nominations by the Scientific Committee, and in giving that advice or making those recommendations the NRC and the Minister may consider State-wide issues of concern in biodiversity conservation.	24
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[27] Section 21 (4)	1
Insert “, the NRC” after “Minister”.	2
[28] Section 21 (5)	3
Insert “, 1A” after “Schedule 1”.	4
[29] Section 22 Scientific Committee’s preliminary determination	5
Insert after section 22 (6):	6
(7) The reasons for a preliminary determination are to include reference to such of the criteria prescribed by the regulations under sections 10–13 as may be relevant to the determination.	7 8 9
[30] Section 23 Scientific Committee’s final determination	10
Omit “Schedule 1, 2 or 3, and must give reasons for the determination” from section 23 (1).	11 12
Insert instead “Schedule 1, 1A, 2 or 3 and must give reasons for its decision”.	13 14
[31] Section 23 (1A)	15
Insert after section 23 (1):	16
(1A) The reasons for a determination are to include reference to such of the criteria prescribed by the regulations under sections 10–13 as may be relevant to the determination.	17 18 19
[32] Section 23 (2)	20
Insert “final” before “determination” where firstly occurring.	21
[33] Section 23 (3)–(6)	22
Insert after section 23 (2):	23
(3) Before making a final determination the Scientific Committee must give the Minister notice in writing of the proposed final determination. The Minister then has 2 months to decide whether to refer the proposed final determination back to the Scientific Committee for further consideration under section 23A.	24 25 26 27 28 29
(4) The Scientific Committee is not to proceed to make the proposed final determination unless:	30 31

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- (a) the Minister has notified the Scientific Committee that the Minister has decided not to refer the proposed determination back to the Scientific Committee for further consideration, or 1
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- (b) the Minister has not referred the proposed final determination back to the Scientific Committee for further consideration under section 23A within 2 months after the Minister was given notice of the proposed final determination, or 5
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- (c) if the Minister has referred the proposed final determination back to the Scientific Committee for further consideration under section 23A within that 2 months, the Scientific Committee has decided to proceed with the final determination following that further consideration. 10
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- (5) The Minister may at the request of the Scientific Committee extend and further extend the period of 6 months under subsection (2), to a maximum period of 2 years. 16
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- (6) Failure to make a final determination within the period required by this section or to give notice to the Minister of a proposed final determination within the period required by this section does not affect the validity of the determination. 19
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- [34] Section 23A** 23
- Insert after section 23: 24
- 23A Minister's response to proposed final determination** 25
- (1) Within 2 months after receiving notice from the Scientific Committee of a proposed final determination, the Minister may: 26
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- (a) notify the Scientific Committee that the Minister has decided not to refer the proposed determination back to the Scientific Committee for further consideration, or 29
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- (b) refer the proposed final determination back to the Scientific Committee for further consideration. 32
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- (2) The Minister may only refer a matter back to the Scientific Committee for reasons of a scientific nature provided to the Scientific Committee. In the case of a nomination, the Scientific Committee is to notify the person who made the 34
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	nomination that the matter has been referred back to the Scientific Committee and of the Minister's reasons for doing so.	1 2 3
(3)	If a proposed final determination is referred back to the Scientific Committee for further consideration:	4 5
(a)	the Scientific Committee may, after further considering it, decide to proceed with the final determination, to change the final determination or not to proceed with the final determination, and	6 7 8 9
(b)	the Scientific Committee is to make that decision within 3 months, and	10 11
(c)	the Minister cannot refer the matter back to the Scientific Committee again after it has made that decision.	12 13 14
(4)	Failure to make a decision within the period required by this section does not affect the validity of the decision.	15 16
[35]	Section 24 Publication of final determination	17
	Insert “, the NRC” after “Minister” in section 24 (1) (b).	18
[36]	Section 24 (2A)	19
	Insert after section 24 (2):	20
(2A)	The reasons for a final determination are to include reference to such of the criteria prescribed by the regulations under sections 10–13 as may be relevant to the determination.	21 22 23
[37]	Section 24 (4)	24
	Insert after section 24 (3):	25
(4)	The validity of a final determination cannot be questioned in any legal proceedings except those commenced in a court by any person within 3 months of the date of publication in the Gazette of notice of the making of the final determination.	26 27 28 29
[38]	Section 25 Revision of Schedule on publication of final determination	30 31
	Insert “, 1A” after “Schedule 1” wherever occurring.	32

[39] Section 25A	1
Insert after section 25:	2
25A Lists to be kept under review	3
(1) The Scientific Committee must keep the lists in Schedules 1, 1A, 2 and 3 under review and must, at least every 2 years, determine whether any changes to the lists are necessary.	4 5 6
(2) The NRC or the Minister may give advice or make recommendations to the Scientific Committee concerning priorities for the review of the lists in Schedules 1, 1A, 2 and 3 under this section, and the Scientific Committee is to have regard to any such advice or recommendations.	7 8 9 10 11
(3) The NRC or the Minister may give directions to the Scientific Committee requiring the Scientific Committee to undertake investigations for the purpose of identifying species, populations and communities that are potentially threatened species, populations and communities.	12 13 14 15 16
[40] Part 2, Division 4, heading	17
Insert “or critically endangered” after “endangered” in the heading to Division 4 of Part 2.	18 19
[41] Sections 26–28, 30 and 34	20
Insert “or 1A” after “Schedule 1” wherever occurring.	21
[42] Section 26, note, and sections 27 and 28	22
Insert “or critically endangered” after “endangered” wherever occurring.	23
[43] Section 36 Termination of provisional listing	24
Omit “Schedule 1 ceases”. Insert instead “Schedule 1 or 1A ceases”.	25
[44] Section 36	26
Omit “Schedule 1 or 2” wherever occurring.	27
Insert instead “Schedule 1, 1A or 2”.	28

[45] Section 36A Minor amendments to Schedules	1
Omit “Schedule 1, 2 or 3” wherever occurring.	2
Insert instead “Schedule 1, 1A, 2 or 3”.	3
[46] Section 36A (2) (b)	4
Omit “Part 1 of Schedule 1”. Insert instead “Part 1 of Schedule 1 or 1A”.	5
[47] Section 36B Publication of determination	6
Omit section 36B (1) (b) and (c).	7
[48] Section 36B (4)	8
Insert “, 1A” after “Schedule 1”.	9
[49] Sections 36C Revision of Schedule on publication of determination	10
Insert “, 1A” after “Schedule 1”.	11
[50] Part 3, heading	13
Omit the heading. Insert instead:	14
Part 3 Critical habitat of endangered and critically endangered species, populations and ecological communities	15
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[51] Part 3, Introductory note	18
Omit “endangered species, populations and ecological communities (that is, those species, populations and ecological communities listed for the time being in Schedule 1)”.	19
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Insert instead “endangered or critically endangered species, populations and ecological communities (that is, those species, populations and ecological communities listed for the time being in Schedule 1 or 1A)”.	22
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[52] Part 3, Introductory note	25
Insert “or critically endangered” after “critical habitat of endangered”.	26

[53] Sections 37, 38, 40, 41, 43, 47	1
Insert “or critically endangered” after “endangered” wherever occurring.	2
[54] Part 4 Recovery plans for threatened species, populations and ecological communities	3
Insert “or critically endangered” after “endangered” in the Introductory note to Part 4.	4
[55] Section 56 Director-General to prepare recovery plans	5
Omit “is required to prepare” from section 56 (1).	6
Insert instead “may prepare”.	7
[56] Section 56 (1)	8
Insert “or critically endangered” after “endangered” in section 56 (1).	9
[57] Section 56 (1)	10
Omit “, as soon as practicable after it is listed in Schedule 1,”.	11
[58] Section 56 (2)	12
Omit “must”. Insert instead “may”.	13
[59] Section 56 (4)	14
Insert “and may be made for part of a range of a species, population or ecological community” after “community”.	15
[60] Section 56 (5)	16
Omit the subsection (including the note to the subsection).	17
[61] Section 58	18
Omit the section. Insert instead:	19
58 Priorities for recovery plans	20
Priorities in the preparation of recovery plans are to be in accordance with the priorities for recovery established by the relevant Priorities Action Statement.	21
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[62] Section 74 Director-General may prepare threat abatement plans	1
Omit section 74 (3) and (4).	2
[63] Section 76	3
Omit the section. Insert instead:	4
76 Priorities for threat abatement plans	5
Priorities in the preparation of threat abatement plans are to be in accordance with the priorities for threat abatement established by the relevant Priorities Action Statement.	6 7 8
[64] Part 5A	9
Insert after Part 5:	10
Part 5A Threatened Species Priorities Action Statement	11 12
90A What the Statement provides for	13
A Threatened Species Priorities Action Statement (also called a Priorities Action Statement) is a statement that:	14 15
(a) sets out the strategies (<i>recovery and threat abatement strategies</i>) to be adopted for promoting the recovery of each threatened species, population and ecological community to a position of viability in nature and for managing each key threatening process as provided by section 74 (1), and	16 17 18 19 20 21
(b) establishes relative priorities for the implementation of recovery and threat abatement strategies, and	22 23
(c) establishes performance indicators to facilitate reporting on achievements in implementing recovery and threat abatement strategies.	24 25 26
90B Director-General to prepare and adopt Priorities Action Statement	27 28
(1) As soon as practicable after the commencement of this section, the Director-General is to prepare and adopt a Priorities Action Statement for the purposes of this Act.	29 30 31

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- (2) The Director-General is to review the Priorities Action Statement every 3 years and may make changes to the Priorities Action Statement pursuant to any such review by adopting amendments to the Statement. 1
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- (3) In preparing or reviewing a Priorities Action Statement, the Director-General is to seek advice from the NRC, the Scientific Committee, BDAC, SEAC and such other State government agencies as the Director-General considers appropriate. 5
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- 90C Publication of draft statement or amendments** 10
- (1) Before adopting a Priorities Action Statement or any amendment to the statement, the Director-General must first prepare a draft of the statement or amendment and must then: 11
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- (a) publish notice of the preparation of the draft statement or amendment in a newspaper circulating generally throughout the State, and 14
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- (b) publish notice of the preparation of the draft statement or amendment on the website of the Department. 17
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- (2) The notice must: 19
- (a) state that the draft statement or amendment has been prepared, and 20
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- (b) specify the address of the place at which copies of the draft statement or amendment can be inspected, and 22
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- (c) invite persons to make written submissions to the Director-General about the draft statement or amendment, and 24
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- (d) specify the address of the place to which submissions about the draft statement or amendment may be forwarded and the date by which submissions must be made. 27
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- 90D Consideration of submissions by Director-General** 31
- (1) The Director-General must consider all written submissions received by the Director-General on or before the date specified in the notice. 32
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- (2) The Director-General may alter the draft statement or amendment to take account of those submissions. 35
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(3) The Director-General may then adopt the Priorities Action Statement or amendment.	1 2
90E Review to include report on achievements	3
As part of each review of the Priorities Action Statement, the Director-General is to include in the Priorities Action Statement a report on achievements in implementing the strategies established by the Priorities Action Statement during the period to which the review applies.	4 5 6 7 8
[65] Section 113A	9
Omit the section. Insert instead:	10
113A Regulations	11
(1) The regulations may provide that development or an activity of a specified type constitutes, or does not constitute, development that is likely to significantly affect threatened species, populations or ecological communities, or their habitats.	12 13 14 15 16
(2) Any such regulations have effect (despite the provisions of this Act or any other Act) for the purposes of the operation of:	17 18
(a) Part 6 (Licensing) of this Act, and	19
(b) Parts 4 and 5 of the <i>Environmental Planning and Assessment Act 1979</i> (including the operation of those Parts as applying under any other Act).	20 21 22
Note. Exceptions for the carrying out of routine agricultural management activities are provided for in section 118G of the <i>National Parks and Wildlife Act 1974</i> .	23 24 25
[66] Section 114 Director-General may make stop work order	26
Insert after section 114 (4) (a):	27
(a1) clearing of native vegetation as authorised by a property vegetation plan approved under the <i>Native Vegetation Act 2003</i> if that approval is given while biodiversity certification of the native vegetation reform package is in force under Division 4 of Part 7 of this Act, or	28 29 30 31 32

[67] Part 7, Divisions 4 and 5	1
Insert after Division 3 of Part 7:	2
Division 4 Biodiversity certification of native vegetation reform package	3 4
126B Native vegetation reform package	5
For the purposes of this Division, the <i>native vegetation reform package</i> is the package of reforms comprising the following:	6 7 8
(a) the <i>Native Vegetation Act 2003</i> and the regulations under that Act,	9 10
(b) State-wide standards and targets for natural resource management issues recommended under the <i>Natural Resources Commission Act 2003</i> and adopted by the Government,	11 12 13 14
(c) catchment action plans under the <i>Catchment Management Authorities Act 2003</i> ,	15 16
(d) protocols and guidelines adopted or made under the regulations under the <i>Native Vegetation Act 2003</i> , the <i>Catchment Management Authorities Act 2003</i> and the <i>Natural Resources Commission Act 2003</i> .	17 18 19 20
126C Biodiversity certification of native vegetation reform package	21
The Minister may by order published in the Gazette confer biodiversity certification on the native vegetation reform package for the purposes of this Act.	22 23 24
126D Effect of biodiversity certification	25
While biodiversity certification of the native vegetation reform package is in force, all land within the area of operations of each catchment management authority has the benefit of that biodiversity certification.	26 27 28 29
Note. Biodiversity certification has the following effects:	30
(a) the clearing of native vegetation as authorised by a property vegetation plan that is approved for land while the land has the benefit of biodiversity certification is a defence to a prosecution for certain offences under Part 8A of the NPW Act, and	31 32 33 34

- (b) development consent to clearing of native vegetation on land that has the benefit of biodiversity certification does not require the preparation of a species impact statement or consultation between Ministers. (See section 14 (4) of the *Native Vegetation Act 2003*.)

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126E Suspension and revocation of certification

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- (1) The Minister may by order published in the Gazette suspend or revoke biodiversity certification of the native vegetation reform package if the Minister is of the opinion that the package or its current or likely future implementation will result in a failure to conserve threatened species, populations and ecological communities.
- (2) The Minister may by order published in the Gazette suspend or revoke biodiversity certification of the native vegetation reform package in its application to a particular catchment management authority if the Minister is of the opinion that the catchment management authority:
- (a) has failed to properly exercise its functions under the native vegetation reform package, or
- (b) has otherwise failed to exercise its functions in a manner that promotes the conservation of threatened species, populations and ecological communities.
- (3) During the suspension or following the revocation of biodiversity certification of the native vegetation reform package in its application to a particular catchment management authority, land within the area of operations of the catchment management authority does not have the benefit of the biodiversity certification of the native vegetation reform package.
- (4) The Minister is only entitled to form an opinion for the purposes of this section:
- (a) based on the outcomes of any audit undertaken by the NRC, or
- (b) based on the results of an investigation conducted by the Director-General, or
- (c) in such other circumstances as may be prescribed by the regulations.

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126F	Notification of certification, variation, suspension or revocation	1
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	Notice of the grant of biodiversity certification under this Division or of any suspension or revocation of that certification under this Division is to be given:	3
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	(a) to the Director-General of the Department of Infrastructure, Planning and Natural Resources, and	6
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	(b) on the website of the Department of Environment and Conservation.	8
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Division 5	Biodiversity certification of environmental planning instruments	10
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126G	Biodiversity certification	12
(1)	The Minister may by order published in the Gazette confer biodiversity certification on an EPI if satisfied that the EPI seeks to promote conservation of threatened species, populations and ecological communities.	13
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(2)	In deciding whether to confer biodiversity certification on an EPI the Minister must also have regard to the following considerations:	17
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	(a) the likely social and economic consequences of implementation of the EPI,	20
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	(b) the most efficient and effective use of available resources for the conservation of threatened species, populations and ecological communities,	22
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	(c) the principles of ecologically sustainable development,	25
	(d) conservation outcomes resulting from any reservation or proposed reservation of land under Part 4 of the NPW Act or the entering into of a conservation agreement relating to the land under that Act, or resulting from any other action to secure the protection of land for conservation purposes,	26
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	(e) conservation outcomes resulting from the operation outside the area of operation of the EPI of strategies, plans, agreements and other instruments (whether or not they are EPIs).	32
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- (3) An EPI cannot be biodiversity certified unless: 1
 - (a) notice is given of proposed biodiversity certification of 2
the EPI in the course of the public exhibition of a draft 3
of the EPI under section 66 of the *Environmental 4
Planning and Assessment Act 1979* or by public 5
exhibition following a procedure that substantially 6
accords with the procedure for public exhibition 7
required by that section, and 8
 - (b) copies of submissions made in response to an invitation 9
for submissions in the course of that public exhibition 10
have been provided to the Minister. 11
 - (4) The Minister may issue guidelines for the purpose of assisting 12
in the preparation of EPIs for biodiversity certification. 13
- 126H Certification can be conditional** 14
- (1) Biodiversity certification of an EPI can be subject to 15
conditions, including conditions that limit the certification to 16
specified threatened species, populations and communities or 17
to a specified part of the land to which the EPI applies. 18
 - (2) Unless limited by the conditions of certification, biodiversity 19
certification of an EPI applies to the whole of the land to 20
which the EPI applies, and to all threatened species, 21
populations and ecological communities. 22
- 126I Effect of biodiversity certification** 23
- (1) Any development for which development consent is required 24
under the provisions of a biodiversity certified EPI is, for the 25
purposes of Part 4 of the *Environmental Planning and 26
Assessment Act 1979* taken to be development that is not 27
likely to significantly affect any threatened species, 28
population or ecological community, or its habitat. 29
 - (2) An activity to which Part 5 of the *Environmental Planning 30
and Assessment Act 1979* applies that a biodiversity certified 31
EPI provides can be carried out without the need for 32
development consent is, for the purposes of that Part, taken to 33
be an activity that is not likely to significantly affect any 34
threatened species, population or ecological community, or its 35
habitat. 36

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- (3) This section applies only to development or an activity on land to which the certification of the EPI applies and only to threatened species, populations or ecological communities (and their habitat) to which the certification applies. 1
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- 126J Period of certification and extension** 5
- (1) Biodiversity certification of an EPI remains in force for such period as the Minister determines and specifies in the certification. If no period is specified, biodiversity certification remains in force for 10 years. 6
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- (2) Prior to the expiration of biodiversity certification of an EPI, the Minister may by order published in the Gazette extend by a period of up to 10 years the period for which that certification remains in force, but only if the Minister has reviewed the EPI to take account of any new listing of a species, population or ecological community or the discovery of a species, population or ecological community not previously known in an area. 10
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- (3) This section does not prevent further biodiversity certification of an EPI under this Division. 18
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- 126K Suspension and revocation of certification** 20
- The Minister may by order published in the Gazette suspend or revoke the certification of an EPI if the Minister is of the opinion that: 21
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- (a) the EPI fails (or will, as a result of any proposed amendment of the EPI, fail) to make appropriate provision for the conservation of threatened species, populations and ecological communities, or 24
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- (b) the consent authority under the EPI has failed to adequately comply with a direction by the Minister to review the EPI in response to any new listing of a species, population or ecological community or the discovery of a species, population or ecological community not previously known in an area. 28
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- 126L Notification of certification, suspension or revocation** 34
- Notice of the grant of biodiversity certification under this Division or of the extension, suspension or revocation of that certification is to be given: 35
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- (a) to the Director-General of the Department of Infrastructure, Planning and Natural Resources, and 1
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 - (b) on the website of the Department of Environment and Conservation, and 3
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 - (c) to each local council that is the council of an area of which land to which the EPI applies forms part. 5
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- 126M Concurrence can be conditional on voluntary conservation action** 7
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- (1) The Director-General may grant concurrence under section 79B or 112C of the *Environmental Planning and Assessment Act 1979* conditional on the taking of specified action (**voluntary action**, as provided by subsection (2)) that the Director-General considers will significantly benefit threatened species conservation, but only if the Director-General is satisfied that the person who proposes to carry out the development or activity to which the concurrence relates has agreed to take the voluntary action and agrees to the imposition of the condition. 9
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 - (2) The voluntary action that can be required by a condition imposed under this section is any one or more of the following: 19
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 - (a) the reservation of land under Part 4 of the NPW Act or the entering into of a conservation agreement relating to the land under that Act, 22
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 - (b) action to secure the protection of land for conservation purposes by a method that the Director-General considers satisfactory, 25
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 - (c) action to restore threatened species habitat on land referred to in paragraph (a) or (b), 28
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 - (d) the contribution of money for a purpose referred to in paragraph (a)–(c). 30
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 - (3) In determining whether to confer biodiversity certification on an EPI, the Minister is entitled to have regard to the conservation benefits that will result from the taking of action in accordance with a condition proposed to be imposed under this section (as if those benefits would result from the implementation of the EPI). 32
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- (4) When such a condition is imposed as a condition of concurrence in respect of development, the consent authority for the development must also impose the condition on its consent for the development. 1
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- (5) The annual report of the Department is to include details of land or money contributed pursuant to a condition imposed under this section. 5
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- 126N Director-General may accredit persons to prepare threatened species assessments and surveys** 8
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- (1) The Director-General is to institute arrangements for the accreditation of suitably qualified and experienced persons to undertake and prepare surveys and assessments for use in connection with: 10
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- (a) biodiversity certification of EPIs under this Division, or 14
- (b) any assessment of the matters referred to in section 5A (Significant effect on threatened species, populations or ecological communities, or their habitats) of the *Environmental Planning and Assessment Act 1979*. 15
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- (2) An applicant for accreditation must furnish the Director-General with such information as the Director-General requires to effectively determine the application and the application must be accompanied by the fee fixed by the Director-General for the consideration of the application. 19
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- (3) An accreditation is to be for the period specified by the Director-General in the instrument of accreditation, and the accreditation (or any renewal of it) may be given subject to the conditions and restrictions (if any) specified in the instrument of accreditation. 24
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- (4) Without limiting subsection (3), an accreditation is to include conditions that require surveys and assessments to be undertaken and prepared in accordance with standards approved from time to time by the Director-General by order published in the Gazette. 29
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- (5) The Director-General may vary conditions or restrictions (if any) attaching to an accreditation and may suspend or cancel an accreditation. 34
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[68] Section 128 Functions of Scientific Committee	1
Insert “or critically endangered” after “endangered” in section 128 (2) (c).	2
[69] Section 128 (2) (g)	3
Insert “and the NRC” after “Minister” where firstly occurring.	4
[70] Sections 137–139	5
Omit the sections.	6
[71] Part 9A	7
Insert after Part 9:	8
 Part 9A Advisory Councils	9
 141A References to Minister and Director-General	10
(1) In this Part, a reference to the Minister includes a reference to the Minister administering the <i>Fisheries Management Act 1994</i> and a reference to the Director-General includes a reference to the Director-General of the Department of Primary Industries.	11 12 13 14 15
(2) If a provision of this Part (or applied by this Part) requires or authorises the Minister or the Director-General to take any action or decide any matter, the provision is taken only to require or authorise:	16 17 18 19
(a) the Minister administering this Act and the Minister administering the <i>Fisheries Management Act 1994</i> , or	20 21
(b) the Director-General and the Director-General of the Department of Primary Industries,	22 23
to take the action jointly or decide the matter jointly.	24
(3) However, any such action may be taken separately, or any such decision may be made separately, in respect of any matter if those Ministers or officers so agree.	25 26 27

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- 141B Biological Diversity Advisory Council** 1
- (1) There is to be a Biological Diversity Advisory Council (*BDAC*). 2
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- (2) The Minister is to determine by instrument in writing the membership and the terms and conditions of appointment of members of *BDAC*. 4
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- (3) The members of *BDAC* are to have expertise in one or more of the following areas: 7
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- (a) biological diversity, 9
- (b) biological science, 10
- (c) environmental science. 11
- (4) *BDAC* may advise the Minister, the Director-General and the NRC on: 12
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- (a) likely impacts on biological diversity of actions to be taken under the Act following the listing of threatened species, populations or ecological communities or key threatening processes, and 14
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- (b) such other related matters as may be referred to *BDAC* by the Minister, the Director-General or the NRC. 18
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- 141C Social and Economic Advisory Council** 20
- (1) There is to be a Social and Economic Advisory Council (*SEAC*). 21
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- (2) The Minister is to determine by instrument in writing the membership and the terms and conditions of appointment of members of *SEAC*. 23
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- (3) The members of *SEAC* are to have expertise in one or more of the following areas: 26
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- (a) natural resource management, 28
- (b) economics, 29
- (c) social impact assessment, 30
- (d) industry or agriculture sectors. 31

- (4) SEAC may advise the Minister, the Director-General and the NRC on:
 - (a) likely social and economic impacts of actions to be taken under this Act following the listing of threatened species, populations or ecological communities or key threatening processes, and
 - (b) such other related matters as may be referred to SEAC by the Minister, the Director-General or the NRC.

141D Provisions relating to BDAC, SEAC and their members

- (1) The provisions of sections 130 (Provisions relating to members of Scientific Committee), 131 (Chairperson and Deputy Chairperson), 132 (Disclosure of pecuniary interests), 133 (Procedure of Scientific Committee) and 134 (Transaction of business outside meeting or by telephone or other means) apply to and in respect of BDAC and SEAC and the members of BDAC and SEAC as if references in those sections to the Scientific Committee were references to BDAC and SEAC.
- (2) Despite subsection (1), the quorum for a meeting of BDAC or SEAC is a majority of the members of BDAC or SEAC.

[72] Section 142A

Insert after section 142:

142A Delegation

The Minister or the Director-General may delegate to any member of staff of the Department any of the Minister's or Director-General's functions under this Act other than this power of delegation.

[73] Section 146 Decision not to disclose location of critical habitat

Insert "or critically endangered" after "endangered" in section 146 (2) (a) (i).

[74] Schedule 1A	1
Insert after Schedule 1:	2
Schedule 1A Critically endangered species and ecological communities	3
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	(Section 6)
Part 1 Critically endangered species	6
Part 2 Critically endangered ecological communities	7
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[75] Schedule 2 Vulnerable species and ecological communities	9
Omit “Sections 7 and 7A”. Insert instead “Section 7”.	10
[76] Schedule 2, Part 2	11
Insert at the end of the Schedule:	12
Part 2 Vulnerable ecological communities	13
[77] Schedule 7 Savings, transitional and other provisions	14
Insert at the end of clause 1 (1):	15
<i>Threatened Species Legislation Amendment Act 2004</i> , to the extent that it amends this Act	16
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[78] Schedule 7, Part 5	18
Insert after Part 4:	19
Part 5 Provisions consequent on Threatened Species Legislation Amendment Act 2004	20
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11 Definition	23
In this Part:	24

2004 amending Act means the *Threatened Species Legislation Amendment Act 2004*.

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12 Referral of proposed final determinations to Minister

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The amendments to section 23, and new section 23A, as enacted by the 2004 amending Act extend to a matter pending under section 23 and not finally determined before the commencement of this clause.

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13 Threatened Species Priorities Action Statements

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The Director-General may exercise any function of the Director-General under Part 5A prior to the commencement of that Part, for the purpose of facilitating the adoption of a Threatened Species Priorities Action Statement on the commencement of that Part.

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14 Biological Diversity Advisory Council

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The members of the Biological Diversity Advisory Council holding office immediately before the repeal of sections 137–139 cease to hold office as members of the Advisory Council on that repeal (but are eligible, if otherwise qualified, for re-appointment as members of BDAC).

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Schedule 2 Amendment of Fisheries Management Act 1994 No 38

(Section 3)

[1] Section 220B Definitions

Insert in alphabetical order in section 220B (1):

BDAC means the Biological Diversity Advisory Council established under the *Threatened Species Conservation Act 1995*.

catchment action plan or *CAP* means a catchment action plan approved under Part 4 of the *Catchment Management Authorities Act 2003*.

critically endangered ecological community means an ecological community specified in Part 2 of Schedule 4A.

critically endangered species means a species specified in Part 1 of Schedule 4A.

critically endangered species and ecological communities means species and ecological communities specified in Schedule 4A and *critically endangered species or ecological community* means a species or ecological community respectively specified in that Schedule.

Department means the Department of Primary Industries.

environmental planning instrument or *EPI* means an environmental planning instrument under the *Environmental Planning and Assessment Act 1979*.

NPW Act means the *National Parks and Wildlife Act 1974*.

NRC means the Natural Resources Commission established under the *Natural Resources Commission Act 2003*.

Priorities Action Statement means a Threatened Species Priorities Action Statement under Division 5A.

SEAC means the Social and Economic Advisory Council established under the *Threatened Species Conservation Act 1995*.

threatened ecological community means an ecological community specified in Part 3 of Schedule 4, Part 2 of Schedule 4A or Part 2 of Schedule 5.

	<i>vulnerable ecological community</i> means an ecological community specified in Part 2 of Schedule 5.	1 2
[2]	Section 220B (1), definition of “threatened species”	3
	Omit the definition. Insert instead:	4
	<i>threatened species</i> means a species specified in Part 1 (Endangered species) or 4 (Species presumed extinct) of Schedule 4, Part 1 (Critically endangered species) of Schedule 4A or Part 1 (Vulnerable species) of Schedule 5.	5 6 7 8
[3]	Section 220B (1), definition of “threatened species, populations and ecological communities”	9 10
	Insert “, 4A” after “Schedules 4”.	11
[4]	Section 220B (1), definition of “threatened species, populations and ecological communities”	12 13
	Omit “either of those Schedules”. Insert instead “any of those Schedules”.	14
[5]	Section 220B (1), definition of “vulnerable species”	15
	Insert “Part 1 of” before “Schedule 5”.	16
[6]	Section 220C Lists	17
	Omit section 220C (5). Insert instead:	18
	(4A) Critically endangered species	19
	Part 1 of Schedule 4A contains a list of critically endangered species for the purposes of this Part.	20 21
	(4B) Critically endangered ecological communities	22
	Part 2 of Schedule 4A contains a list of critically endangered ecological communities for the purposes of this Part.	23 24
	(5) Vulnerable species	25
	Part 1 of Schedule 5 contains a list of vulnerable species for the purposes of this Part.	26 27
	(5A) Vulnerable ecological communities	28
	Part 2 of Schedule 5 contains a list of vulnerable ecological communities for the purposes of this Part.	29 30

[7] Section 220D Amendment of lists	1
Omit “Minister” wherever occurring in section 220D (1) and (2).	2
Insert instead “Fisheries Scientific Committee”.	3
[8] Section 220D (1) and (2)	4
Insert “4A,” after “Schedule 4,” wherever occurring.	5
[9] Section 220D (3)	6
Omit the subsection. Insert instead:	7
(3) A new species, population, ecological community or threatening process may not be listed, nor any such listing changed or omitted, unless the requirements of Subdivision 2 have been complied with.	8 9 10 11
[10] Section 220E	12
Omit the section. Insert instead:	13
220E Identification of nationally threatened species and ecological communities	14 15
(1) A species or ecological community listed in Schedule 4, 4A or 5 that is also a listed threatened species or listed threatened ecological community under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> of the Commonwealth is shown in Schedule 4, 4A or 5 to this Act marked with an asterisk to show its national status.	16 17 18 19 20 21
(2) As soon as practicable after a species or ecological community that is or was indigenous to New South Wales becomes a listed threatened species or listed threatened ecological community under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> of the Commonwealth, the Fisheries Scientific Committee is to consider whether, in accordance with this Division, the species or ecological community should be listed in Schedule 4, 4A or 5 to this Act.	22 23 24 25 26 27 28 29
(3) If a species or ecological community ceases to be a listed threatened species or a listed threatened ecological community under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> of the Commonwealth:	30 31 32 33

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- (a) Schedule 4, 4A or 5 to this Act may be amended to omit the asterisk showing its national status, and
 - (b) the Fisheries Scientific Committee is to consider, in accordance with this Division, whether the species or ecological community should be omitted from Schedule 4, 4A or 5 to this Act.

[11] Sections 220F–220FC

Omit section 220F. Insert instead:

220F Eligibility for listing of species

- (1) A species is eligible to be listed as a *species presumed extinct* at a particular time if, in the opinion of the Fisheries 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 Fisheries Scientific Committee, to its life cycle and form.
- (2) A species is eligible to be listed as a *critically endangered species* if, in the opinion of the Fisheries 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.
- (3) A species is eligible to be listed as an *endangered species* if, in the opinion of the Fisheries 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.
- (4) A species is eligible to be listed as a *vulnerable species* if, in the opinion of the Fisheries 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.

220FA	Listing of populations	1
(1)	A population is eligible to be listed as an <i>endangered population</i> if, in the opinion of the Fisheries Scientific Committee, 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.	2 3 4 5 6
(2)	A population is not eligible to be listed as an endangered population if it is a population of a species already listed in Schedule 4 or 4A.	7 8 9
220FB	Listing of ecological communities	10
(1)	An ecological community is eligible to be listed as a <i>critically endangered ecological community</i> if, in the opinion of the Fisheries 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.	11 12 13 14 15 16
(2)	An ecological community is eligible to be listed as an <i>endangered ecological community</i> if, in the opinion of the Fisheries Scientific Committee:	17 18 19
(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	20 21 22
(b)	it is not eligible to be listed as a critically endangered ecological community.	23 24
(3)	An ecological community is eligible to be listed as a <i>vulnerable ecological community</i> if, in the opinion of the Fisheries Scientific Committee:	25 26 27
(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	28 29 30 31
(b)	it is not eligible to be listed as an endangered or critically endangered ecological community.	32 33

220FC	Threatening processes eligible for listing as key threatening processes	1 2
(1)	A threatening process is eligible to be listed as a <i>key threatening process</i> if, in the opinion of the Fisheries Scientific Committee:	3 4 5
(a)	it adversely affects threatened species, populations or ecological communities, or	6 7
(b)	it could cause species, populations or ecological communities that are not threatened to become threatened.	8 9 10
(2)	The regulations may prescribe criteria for the determination of matters under this section.	11 12
[12]	Section 220G	13
	Omit the section. Insert instead:	14
220G	Fisheries Scientific Committee responsible for lists	15
	The Fisheries Scientific Committee is responsible for determining whether any species, populations, ecological communities or threatening processes should be listed in Schedule 4, 4A, 5 or 6.	16 17 18 19
[13]	Section 220H	20
	Omit the section. Insert instead:	21
220H	Who may initiate action for listing	22
(1)	The Fisheries Scientific Committee may make a determination for the purposes of this Subdivision on its own initiative.	23 24 25
(2)	The Fisheries Scientific Committee may also make a determination:	26 27
(a)	following a request by the Minister or the NRC, or	28
(b)	on a nomination, made in accordance with this Division, of any other person.	29 30
(3)	A proposal that involves the alteration of the listing status of a species or ecological community (by moving the description of the species or ecological community from one Schedule to another or from one Part of a Schedule to another Part of the	31 32 33 34

	Schedule) may be dealt with under this Subdivision as a composite proposal, whereby all aspects of the proposal are dealt with together.	1 2 3
[14]	Section 220I How nominations made	4
	Insert “, 4A” after “Schedule 4” in section 220I (1).	5
[15]	Section 220I (5)	6
	Insert after section 220I (4):	7
	(5) The Fisheries Scientific Committee is to give notice of a nomination to the Minister and the NRC within 14 days after the nomination is made.	8 9 10
[16]	Section 220J Consideration of nomination by Fisheries Scientific Committee	11 12
	Omit section 220J (1). Insert instead:	13
	(1) The Fisheries Scientific Committee is to determine priorities for its consideration of nominations and in determining those priorities is to have regard to:	14 15 16
	(a) the degree of threat, immediacy of threat, taxonomic distinctiveness and such other matters as the Fisheries Scientific Committee considers relevant, and	17 18 19
	(b) any advice or recommendations of the Minister or the NRC concerning those priorities.	20 21
	(1A) The NRC and the Minister may give advice or make recommendations to the Fisheries Scientific Committee concerning priorities for the consideration of nominations by the Fisheries Scientific Committee, and in giving that advice or making those recommendations the NRC and the Minister may consider State-wide issues of concern in biodiversity conservation.	22 23 24 25 26 27 28
[17]	Section 220J (3) (a)	29
	Omit “recommend”. Insert instead “make”.	30
[18]	Section 220J (4)	31
	Insert “, the NRC” after “Minister”.	32

[19] Section 220K Notification and consultation with respect to proposed determination of Fisheries Scientific Committee	1 2
Omit “recommendation” wherever occurring.	3
Insert instead “determination”.	4
[20] Section 220K	5
Insert “, 4A” after “Schedule 4”.	6
[21] Sections 220L–220MA	7
Omit sections 220L and 220M. Insert instead:	8
220L Fisheries Scientific Committee’s final determination	9
(1) The Fisheries Scientific Committee must either accept or reject a proposal for the amendment of Schedule 4, 4A, 5 or 6, and must give reasons for the determination.	10 11 12
(2) The reasons for a determination are to include reference to such of the criteria prescribed by the regulations under sections 220F–220FC as may be relevant to the determination.	13 14 15 16
(3) In a case involving a nomination, the Fisheries Scientific Committee must make a final determination within 6 months after the end of the period allowed for public comment on the proposed determination of the nomination under section 220K (as provided under section 284).	17 18 19 20 21
(4) Before making a final determination the Fisheries Scientific Committee must give the Minister notice in writing of the proposed final determination. The Minister then has 2 months to decide whether to refer the proposed final determination back to the Fisheries Scientific Committee for further consideration under section 220M.	22 23 24 25 26 27
(5) The Fisheries Scientific Committee is not to proceed to make the proposed final determination unless:	28 29
(a) the Minister has notified the Fisheries Scientific Committee that the Minister has decided not to refer the proposed determination back to the Fisheries Scientific Committee for further consideration, or	30 31 32 33

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- (b) the Minister has not referred the proposed final determination back to the Fisheries Scientific Committee for further consideration under section 220M within 2 months after the Minister was given notice of the proposed final determination, or
- (c) if the Minister has referred the proposed final determination back to the Fisheries Scientific Committee for further consideration under section 220M within that 2 months, the Fisheries Scientific Committee has decided to proceed with the final determination following that further consideration.
- (6) The Minister may at the request of the Fisheries Scientific Committee extend and further extend the period of 6 months under subsection (3), to a maximum period of 2 years.
- (7) Failure to make a final determination within the period required by this section or to give notice to the Minister of a proposed final determination within the period required by this section does not affect the validity of the determination.
- 220M Minister's response to proposed final determination**
- (1) Within 2 months after receiving notice from the Fisheries Scientific Committee of a proposed final determination, the Minister may:
- (a) notify the Fisheries Scientific Committee that the Minister has decided not to refer the proposed determination back to the Fisheries Scientific Committee for further consideration, or
- (b) refer the proposed final determination back to the Fisheries Scientific Committee for further consideration.
- (2) The Minister may only refer a matter back to the Fisheries Scientific Committee for reasons of a scientific nature provided to the Fisheries Scientific Committee. In the case of a nomination, the Fisheries Scientific Committee is to notify the person who made the nomination that the matter has been referred back to the Fisheries Scientific Committee and of the Minister's reasons for doing so.
- (3) If a proposed final determination is referred back to the Fisheries Scientific Committee for further consideration:

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- (a) the Fisheries Scientific Committee may, after further considering it, decide to proceed with the final determination, to change the final determination or not to proceed with the final determination, and
- (b) the Fisheries Scientific Committee is to make that decision within 3 months, and
- (c) the Minister cannot refer the matter back to the Fisheries Scientific Committee again after it has made that decision.
- (4) Failure to make a decision within the period required by this section does not affect the validity of the decision.

220MA Publication of final determination

- (1) On making a final determination, the Fisheries Scientific Committee must, as soon as practicable:
- (a) make an order under section 220D giving effect to the determination, and
- (b) in a case involving a nomination, notify the person who made the nomination of the determination, and
- (c) notify the Minister, the NRC and the Director-General of the determination, and
- (d) publish notice of the determination in a newspaper circulating generally throughout the State and, if the determination is likely to affect a particular area or areas (other than the State as a whole), in a newspaper circulating generally in that area or areas, and
- (e) publish notice of the making of the determination in the Gazette.
- (2) The notice must specify the manner in which members of the public may obtain a copy of the determination and the reasons for it.
- (3) The reasons for a final determination are to include reference to such of the criteria prescribed by the regulations under sections 220F–220FC as may be relevant to the determination.
- (4) Copies of the final determination and the reasons for it are to be made available to members of the public (free of charge) as follows:

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- (a) by publication on the internet site of the Department, 1
- (b) in response to a request made by contacting an office of 2
the Department in a manner specified in the notice of 3
the determination, 4
- (c) in response to a request made in person at an office of 5
the Department at an address specified in the notice of 6
the determination. 7
- (5) The validity of a final determination cannot be questioned in 8
any legal proceedings except those commenced in a court by 9
any person within 3 months of the date of publication in the 10
Gazette of notice of the making of the final determination. 11
- [22] Section 220N Provisional listing** 12
- Omit section 220N (2). Insert instead: 13
- (2) The Fisheries Scientific Committee may make a 14
determination for the provisional listing of any such 15
endangered species without complying with sections 220K, 16
220L (3)–(6) and 220M. The other provisions of this 17
Subdivision apply to and in respect of any such determination. 18
- (2A) The Fisheries Scientific Committee must make a 19
determination about a nomination within 6 months after it is 20
made or, if additional information has been requested, after 21
that information has been provided or the period specified for 22
its provision has expired. Failure to make a determination 23
within that period does not affect the validity of the 24
determination. 25
- [23] Section 220NA** 26
- Insert after section 220N: 27
- 220NA Lists to be kept under review** 28
- (1) The Fisheries Scientific Committee must keep the lists in 29
Schedules 4, 4A, 5 and 6 under review and must, at least every 30
2 years, determine whether any changes to the lists are 31
necessary. 32
- (2) The NRC or the Minister may give advice or make 33
recommendations to the Fisheries Scientific Committee 34
concerning priorities for the review of the lists in Schedules 4, 35

	4A, 5 and 6 under this section, and the Fisheries Scientific Committee is to have regard to any such advice or recommendations.	1 2 3
	(3) The NRC or the Minister may give directions to the Fisheries Scientific Committee requiring the Fisheries Scientific Committee to undertake investigations for the purpose of identifying species, populations and communities that are potentially threatened species, populations and communities.	4 5 6 7 8
[24]	Part 7A, Division 3, heading	9
	Omit the heading. Insert instead:	10
	Division 3 Critical habitat of endangered and critically endangered species, populations and ecological communities	11 12 13
[25]	Sections 220P, 220Q, 220T, 220Y	14
	Insert “or critically endangered” after “endangered” wherever occurring.	15
[26]	Section 220ZD Damage to habitat of threatened species, population or ecological community	16 17
	Insert at the end of section 220ZD:	18
	(2) In proceedings for an offence under this section in respect of an act or an omission of a person that causes damage to any habitat (other than critical habitat) of a threatened species, population or ecological community, it is to be conclusively presumed that the person knew that the land concerned was habitat of that kind if it is established that:	19 20 21 22 23 24
	(a) the act or omission occurred in the course of the carrying out of development or an activity for which development consent under Part 4 of the <i>Environmental Planning and Assessment Act 1979</i> , or an approval to which Part 5 of that Act applies, was required but not obtained, or	25 26 27 28 29 30
	(b) the act or omission constituted a failure to comply with any such development consent or approval.	31 32

[27] Section 220ZF Defences	1
Insert after section 220ZF (1) (b):	2
(b1) was authorised by a property vegetation plan approved	3
under the <i>Native Vegetation Act 2003</i> for land that had	4
the benefit of biodiversity certification under Division	5
10 when approval of the plan was given, or	6
[28] Section 220ZF (1) (e)	7
Omit “agricultural or”.	8
[29] Section 220ZFA	9
Insert after section 220ZF:	10
220ZFA Further defences	11
(1) It is a defence to a prosecution for an offence against this	12
Division if the accused proves that the act constituting the	13
alleged offence was any of the following activities:	14
(a) clearing that constitutes a routine agricultural	15
management activity,	16
(b) a routine agricultural management activity (except	17
clearing under paragraph (a)), but only to the extent that	18
the activity is reasonably necessary for the purposes of	19
the agricultural activities carried out on the land	20
concerned,	21
Note. Both (a) and (b) must be read subject to subsection (3).	22
(c) an activity that is permitted under any of the following	23
provisions of the <i>Native Vegetation Act 2003</i> :	24
(i) section 19 (Clearing of non-protected regrowth	25
permitted),	26
(ii) section 23 (Continuation of existing farming	27
activities),	28
(iii) section 24 (Sustainable grazing),	29
(d) any other activity prescribed by the regulations for the	30
purposes of this section.	31
(2) Each of the following is a <i>routine agricultural management</i>	32
<i>activity</i> for the purposes of this section:	33
(a) the construction, operation and maintenance of rural	34
infrastructure:	35

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- (i) including (subject to the regulations) dams, permanent fences, buildings, windmills, bores, air strips (in the Western Division), stockyards, and farm roads, but
- (ii) not including rural infrastructure in areas zoned as rural-residential under environmental planning instruments or on small holdings (as defined in the regulations),
- (b) the removal of noxious weeds under the *Noxious Weeds Act 1993*,
- (c) the control of noxious animals under the *Rural Lands Protection Act 1998*,
- (d) the collection of firewood (except for commercial purposes),
- (e) the harvesting or other clearing of native vegetation planted for commercial purposes,
- (f) the lopping of native vegetation for stock fodder (including uprooting mulga in the Western Division in areas officially declared to be drought affected),
- (g) traditional Aboriginal cultural activities (except commercial activities),
- (h) the maintenance of public utilities (such as those associated with the transmission of electricity, the supply of water, the supply of gas and electronic communication),
- (i) any activity reasonably considered necessary to remove or reduce an imminent risk of serious personal injury or damage to property.
- (3) This section does not authorise the doing of an act that constitutes a routine agricultural management activity:
- (a) if it exceeds the minimum extent necessary for carrying out the routine agricultural management activity, or
- (b) if it is done for a work, building or structure before the grant of any statutory approval or other authority required for the work, building or structure.
- (4) This section does not apply to land described or referred to in Part 3 (Urban areas) of Schedule 1 to the *Native Vegetation Act 2003*.

(5)	The regulations may make provision for or with respect to:	1
(a)	extending, limiting or varying the activities referred to in subsection (1) (and that subsection is to be construed accordingly), or	2 3 4
(b)	excluding any specified land or class of land from the operation of subsection (1), or	5 6
(c)	including any specified land or class of land in the operation of subsection (1) that would otherwise be excluded from its operation by subsection (4).	7 8 9
(6)	Until regulations under subsection (5) otherwise provide, any regulations in force under section 11 (2) of the <i>Native Vegetation Act 2003</i> apply for the purposes of extending, limiting or varying the activities referred to in subsection (2) in the same way as those regulations apply for the purposes of extending, limiting or varying the activities referred to in section 11 (1) of that Act.	10 11 12 13 14 15 16
[30]	Section 220ZI Director-General to prepare recovery plans for threatened species, populations and ecological communities	17 18
	Omit “must prepare” from section 220ZI (1).	19
	Insert instead “may prepare”.	20
[31]	Section 220ZI (1) (a)	21
	Insert “or critically endangered” after “endangered”.	22
[32]	Section 220ZI (1)	23
	Omit “as soon as practicable after it is listed,”.	24
[33]	Section 220ZI (2)	25
	Insert “and may be made for part of a range of a species, population or ecological community,” after “community” where firstly occurring.	26 27
[34]	Section 220ZJ Director-General to prepare threat abatement plans	28
	Omit “must prepare” from section 220ZJ (1).	29
	Insert instead “may prepare”.	30

[35] Section 220ZK	1
Omit the section. Insert instead:	2
220ZK Priorities for recovery or threat abatement plans	3
Priorities in the preparation of recovery plans or threat abatement plans are to be in accordance with the priorities for recovery or threat abatement established by the relevant Priorities Action Statement.	4 5 6 7
[36] Section 220ZL Deadlines for preparation of recovery or threat abatement plans	8 9
Omit the section.	10
[37] Section 220ZO Public and other consultation concerning draft recovery or threat abatement plan	11 12
Omit section 220ZO (3). Insert instead:	13
(3) If the Director-General considers that a public authority should be responsible for the implementation of a measure to be included in a plan:	14 15 16
(a) the Director-General must consult with the chief executive officer of the public authority before completing the preparation of the plan, and	17 18 19
(b) a measure must not be included in a plan for implementation by a public authority unless the chief executive officer of the public authority approves of the inclusion of the measure.	20 21 22 23
[38] Part 7A, Division 5A	24
Insert after Division 5 of Part 7A:	25
Division 5A Threatened Species Priorities Action Statements	26 27
220ZVA What the Statement provides for	28
A Threatened Species Priorities Action Statement (also called a Priorities Action Statement) is a statement that:	29 30
(a) sets out the strategies (<i>recovery and threat abatement strategies</i>) to be adopted for promoting the recovery of each threatened species, population and ecological	31 32 33

	community to a position of viability in nature and for managing each key threatening process as provided by section 220ZJ (1), and	1 2 3
	(b) establishes relative priorities for the implementation of recovery and threat abatement strategies, and	4 5
	(c) establishes performance indicators to facilitate reporting on achievements in implementing recovery and threat abatement strategies.	6 7 8
220ZVB	Director-General to prepare and adopt Priorities Action Statement	9 10
	(1) As soon as practicable after the commencement of this section, the Director-General is to prepare and adopt a Priorities Action Statement for the purposes of this Part.	11 12 13
	(2) The Director-General is to review the Priorities Action Statement every 3 years and may make changes to the Priorities Action Statement pursuant to any such review by adopting amendments to the Statement.	14 15 16 17
	(3) In preparing or reviewing a Priorities Action Statement, the Director-General is to seek advice from the NRC, the Fisheries Scientific Committee, BDAC, SEAC and such other State government agencies as the Director-General considers appropriate.	18 19 20 21 22
220ZVC	Public consultation on draft statement or amendments	23
	Before adopting a Priorities Action Statement or any amendment to the statement, the Director-General must first prepare a draft of the statement or amendment and give the public an opportunity to make submissions on the draft statement or amendment.	24 25 26 27 28
	Note. Section 284 regulates the public consultation procedure. It requires copies of the draft statement to be publicly exhibited and a period of at least 30 days for public comment.	29 30 31
220ZVD	Consideration of submissions by Director-General	32
	(1) The Director-General must consider all written submissions received by the Director-General on or before the date specified in the notice.	33 34 35
	(2) The Director-General may alter the draft statement or amendment to take account of those submissions.	36 37

(3)	The Director-General may then adopt the Priorities Action Statement or amendment.	1 2
220ZVE	Review to include report on achievements	3
	As part of each review of the Priorities Action Statement, the Director-General is to include in the Priorities Action Statement a report on achievements in implementing the strategies established by the Priorities Action Statement during the period to which the review applies.	4 5 6 7 8
[39]	Section 221NA	9
	Insert after section 221N:	10
221NA	Regulations	11
(1)	The regulations may provide that development or an activity of a specified type constitutes, or does not constitute, development that is likely to significantly affect threatened species, populations or ecological communities, or their habitats.	12 13 14 15 16
(2)	Any such regulation has effect (despite the provisions of this Act or any other Act) for the purposes of the operation of:	17 18
(a)	Division 6 (Licensing and Ministerial orders) of Part 7A of this Act, and	19 20
(b)	Parts 4 and 5 of the <i>Environmental Planning and Assessment Act 1979</i> (including the operation of those Parts as applying under any other Act).	21 22 23
	Note. Exceptions for the carrying out of routine agricultural management activities are provided for in section 220ZFA.	24 25
[40]	Section 221ZB Functions of Fisheries Scientific Committee	26
	Insert “or critically endangered” after “endangered” in section 221ZB (2) (b).	27 28
[41]	Section 221ZB (2) (e)	29
	Insert “and the NRC” after “Minister” where firstly occurring.	30

[42] Part 7A, Divisions 10 and 11	1
Insert after Division 9 of Part 7A:	2
Division 10 Biodiversity certification of native vegetation reform package	3
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221ZF Native vegetation reform package	5
For the purposes of this Division, the <i>native vegetation reform package</i> is the package of reforms comprising the following:	6
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(a) the <i>Native Vegetation Act 2003</i> and the regulations under that Act,	9
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(b) State-wide standards and targets for natural resource management issues recommended under the <i>Natural Resources Commission Act 2003</i> and adopted by the Government,	11
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(c) catchment action plans under the <i>Catchment Management Authorities Act 2003</i> ,	15
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(d) protocols and guidelines adopted or made under the regulations under the <i>Native Vegetation Act 2003</i> , the <i>Catchment Management Authorities Act 2003</i> and the <i>Natural Resources Commission Act 2003</i> .	17
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221ZG Biodiversity certification of native vegetation reform package	21
The Minister may by order published in the Gazette confer biodiversity certification on the native vegetation reform package for the purposes of this Part.	22
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221ZH Effect of biodiversity certification	25
While biodiversity certification of the native vegetation reform package is in force, all land within the area of operations of each catchment management authority has the benefit of that biodiversity certification.	26
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Note. Biodiversity certification has the following effects:	30
(a) the clearing of native vegetation as authorised by a property vegetation plan that is approved for land while the land has the benefit of biodiversity certification is a defence to a prosecution for certain offences under section 220ZF, and	31
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(b) development consent to clearing of native vegetation on land that has the benefit of biodiversity certification does not require the preparation of a species impact statement or consultation between Ministers. (See section 14 (4) of the <i>Native Vegetation Act 2003</i> .)	35
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221ZI	Suspension and revocation of certification	1
(1)	The Minister may by order published in the Gazette suspend or revoke biodiversity certification of the native vegetation reform package if the Minister is of the opinion that the package or its current or likely future implementation will result in a failure to conserve threatened species, populations and ecological communities.	2 3 4 5 6 7
(2)	The Minister may by order published in the Gazette suspend or revoke biodiversity certification of the native vegetation reform package in its application to a particular catchment management authority if the Minister is of the opinion that the catchment management authority:	8 9 10 11 12
	(a) has failed to properly exercise its functions under the native vegetation reform package, or	13 14
	(b) has otherwise failed to exercise its functions in a manner that promotes the conservation of threatened species, populations and ecological communities.	15 16 17
(3)	During the suspension or following the revocation of biodiversity certification of the native vegetation reform package in its application to a particular catchment management authority, land within the area of operations of the catchment management authority does not have the benefit of the biodiversity certification of the native vegetation reform package.	18 19 20 21 22 23 24
(4)	The Minister is only entitled to form an opinion for the purposes of this section:	25 26
	(a) based on the outcomes of any audit undertaken by the NRC, or	27 28
	(b) based on the results of an investigation conducted by the Director-General, or	29 30
	(c) in such other circumstances as may be prescribed by the regulations.	31 32
221ZJ	Notification of certification, variation, suspension or revocation	33 34
	Notice of the grant of biodiversity certification under this Division or of any suspension or revocation of that certification under this Division is to be given:	35 36 37

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- (a) to the Director-General of the Department of Infrastructure, Planning and Natural Resources, and
- (b) on the website of the Department of Primary Industries.

Division 11 Biodiversity certification of environmental planning instruments

221ZK Biodiversity certification

- (1) The Minister may by order published in the Gazette confer biodiversity certification on an EPI if satisfied that the EPI seeks to promote conservation of threatened species, populations and ecological communities.
- (2) In deciding whether to confer biodiversity certification on an EPI the Minister must also have regard to the following considerations:
- (a) the likely social and economic consequences of implementation of the EPI,
- (b) the most efficient and effective use of available resources for the conservation of threatened species, populations and ecological communities,
- (c) the principles of ecologically sustainable development,
- (d) conservation outcomes resulting from any reservation or proposed reservation of land under Part 4 of the NPW Act or the entering into of a conservation agreement relating to the land under that Act, or resulting from any other action to secure the protection of land for conservation purposes,
- (e) conservation outcomes resulting from the operation outside the area of operation of the EPI of strategies, plans, agreements and other instruments (whether or not they are EPIs).
- (3) An EPI cannot be biodiversity certified unless:
- (a) notice is given of proposed biodiversity certification of the EPI in the course of the public exhibition of a draft of the EPI under section 66 of the *Environmental Planning and Assessment Act 1979* or by public exhibition following a procedure that substantially accords with the procedure for public exhibition required by that section, and

(b)	copies of submissions made in response to an invitation for submissions in the course of that public exhibition have been provided to the Minister.	1 2 3
(4)	The Minister may issue guidelines for the purpose of assisting in the preparation of EPIs for biodiversity certification.	4 5
221ZL	Certification can be conditional	6
(1)	Biodiversity certification of an EPI can be subject to conditions, including conditions that limit the certification to specified threatened species, populations and communities or to a specified part of the land to which the EPI applies.	7 8 9 10
(2)	Unless limited by the conditions of certification, biodiversity certification of an EPI applies to the whole of the land to which the EPI applies, and to all threatened species, populations and ecological communities.	11 12 13 14
221ZM	Effect of biodiversity certification	15
(1)	Any development for which development consent is required under the provisions of a biodiversity certified EPI is, for the purposes of Part 4 of the <i>Environmental Planning and Assessment Act 1979</i> taken to be development that is not likely to significantly affect any threatened species, population or ecological community, or its habitat.	16 17 18 19 20 21
(2)	An activity to which Part 5 of the <i>Environmental Planning and Assessment Act 1979</i> applies that a biodiversity certified EPI provides can be carried out without the need for development consent is, for the purposes of that Part, taken to be an activity that is not likely to significantly affect any threatened species, population or ecological community, or its habitat.	22 23 24 25 26 27 28
(3)	This section applies only to development or an activity on land to which the certification of the EPI applies and only to threatened species, populations or ecological communities (and their habitat) to which the certification applies.	29 30 31 32
221ZN	Period of certification and extension	33
(1)	Biodiversity certification of an EPI remains in force for such period as the Minister determines and specifies in the certification. If no period is specified, biodiversity certification remains in force for 10 years.	34 35 36 37

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- (2) Prior to the expiration of biodiversity certification of an EPI, the Minister may by order published in the Gazette extend by a period of up to 10 years the period for which that certification remains in force, but only if the Minister has reviewed the EPI to take account of any new listing of a species, population or ecological community or the discovery of a species, population or ecological community not previously known in an area. 1
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- (3) This section does not prevent further biodiversity certification of an EPI under this Division. 9
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221ZO Suspension and revocation of certification 11

The Minister may by order published in the Gazette suspend or revoke the certification of an EPI if the Minister is of the opinion that: 12
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- (a) the EPI fails (or will, as a result of any proposed amendment of the EPI, fail) to make appropriate provision for the conservation of threatened species, populations and ecological communities, or 15
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- (b) the consent authority under the EPI has failed to adequately comply with a direction by the Minister to review the EPI in response to any new listing of a species, population or ecological community or the discovery of a species, population or ecological community not previously known in an area. 19
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221ZP Notification of certification, suspension or revocation 25

Notice of the grant of biodiversity certification under this Division or of the extension, suspension or revocation of that certification is to be given: 26
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- (a) to the Director-General of the Department of Infrastructure, Planning and Natural Resources, and 29
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- (b) on the website of the Department of Primary Industries, and 31
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- (c) to each local council that is the council of an area of which land to which the EPI applies forms part. 33
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221ZQ	Concurrence can be conditional on voluntary conservation action	1
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(1)	The Director-General may grant concurrence under section 79B or 112C of the <i>Environmental Planning and Assessment Act 1979</i> conditional on the taking of specified action (voluntary action , as provided by subsection (2)) that the Director-General considers will significantly benefit threatened species conservation, but only if the Director-General is satisfied that the person who proposes to carry out the development or activity to which the concurrence relates has agreed to take the voluntary action and agrees to the imposition of the condition.	3 4 5 6 7 8 9 10 11 12
(2)	The voluntary action that can be required by a condition imposed under this section is any one or more of the following:	13 14 15
	(a) the reservation of land under Part 4 of the NPW Act or the entering into of a conservation agreement relating to the land under that Act,	16 17 18
	(b) action to secure the protection of land for conservation purposes by a method that the Director-General considers satisfactory,	19 20 21
	(c) action to restore threatened species habitat on land referred to in paragraph (a) or (b),	22 23
	(d) the contribution of money for a purpose referred to in paragraph (a)–(c).	24 25
(3)	In determining whether to confer biodiversity certification on an EPI, the Minister is entitled to have regard to the conservation benefits that will result from the taking of action in accordance with a condition proposed to be imposed under this section (as if those benefits would result from the implementation of the EPI).	26 27 28 29 30 31
(4)	When such a condition is imposed as a condition of concurrence in respect of development, the consent authority for the development must also impose the condition on its consent for the development.	32 33 34 35
(5)	The annual report of the Department is to include details of land or money contributed pursuant to a condition imposed under this section.	36 37 38

221ZR	Director-General may accredit persons to prepare assessments and surveys	1
		2
(1)	The Director-General is to institute arrangements for the accreditation of suitably qualified and experienced persons to undertake and prepare surveys and assessments for use in connection with:	3
		4
		5
		6
(a)	biodiversity certification of EPIs under this Division, or	7
(b)	any assessment of the matters referred to in section 5A (Significant effect on threatened species, populations or ecological communities, or their habitats) of the <i>Environmental Planning and Assessment Act 1979</i> .	8
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(2)	An applicant for accreditation must furnish the Director-General with such information as the Director-General requires to effectively determine the application and the application must be accompanied by the fee fixed by the Director-General for the consideration of the application.	12
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(3)	An accreditation is to be for the period specified by the Director-General in the instrument of accreditation, and the accreditation (or any renewal of it) may be given subject to the conditions and restrictions (if any) specified in the instrument of accreditation.	17
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(4)	Without limiting subsection (3), an accreditation is to include conditions that require surveys and assessments to be undertaken and prepared in accordance with standards approved from time to time by the Director-General by order published in the Gazette.	22
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(5)	The Director-General may vary conditions or restrictions (if any) attaching to an accreditation and may suspend or cancel an accreditation.	27
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[43]	Section 284 Public consultation procedure	30
	Omit “recommendation” from section 284 (1) (f).	31
	Insert instead “determination”.	32
[44]	Section 284 (1) (h)	33
	Insert after section 284 (1) (g):	34
	(h) a draft Priorities Action Statement or amendment of such a Statement under Division 5A of Part 7A.	35
		36

[45] Schedule 4A	1
Insert after Schedule 4:	2
Schedule 4A Critically endangered species and ecological communities	3
	4
(Section 220C)	5
Part 1 Critically endangered species	6
Part 2 Critically endangered ecological communities	7
	8
[46] Schedule 5, heading	9
Omit the heading and section reference. Insert instead:	10
Schedule 5 Vulnerable species and ecological communities	11
	12
(Section 220C)	13
Part 1 Vulnerable species	14
[47] Schedule 5	15
Insert at the end of the Schedule:	16
Part 2 Vulnerable ecological communities	17
[48] Schedule 7 Savings, transitional and other provisions	18
Insert at the end of clause 2 (1):	19
<i>Threatened Species Legislation Amendment Act 2004</i> , to the extent that it amends this Act	20
	21

[49] Schedule 7	1
Insert after clause 17B:	2
17C Referral of proposed final determinations to Minister	3
Sections 220L and 220M, as substituted by the <i>Threatened Species Legislation Amendment Act 2004</i> extend to a matter pending under section 220L and not finally determined before the commencement of this clause.	4 5 6 7
17D Threatened Species Priorities Action Statements	8
The Director-General may exercise any function of the Director-General under Division 5A of Part 7A prior to the commencement of that Division, for the purpose of facilitating the adoption of a Threatened Species Priorities Action Statement on the commencement of that Division.	9 10 11 12 13

Schedule 3 Amendment of other threatened species legislation	1
	2
(Section 3)	3
3.1 National Parks and Wildlife Act 1974 No 80	4
[1] Section 5 Definitions	5
Insert in alphabetical order in section 5 (1):	6
<i>authorised officer</i> means the Director-General or a person appointed as an authorised officer for the time being under section 156B.	7 8 9
[2] Section 5 (1)	10
Omit the definitions of <i>endangered ecological community</i> , <i>endangered population</i> and <i>endangered species</i> .	11 12
Insert instead:	13
<i>endangered ecological community</i> means an endangered or critically endangered ecological community within the meaning of the <i>Threatened Species Conservation Act 1995</i> .	14 15 16
<i>endangered population</i> means an endangered population within the meaning of the <i>Threatened Species Conservation Act 1995</i> .	17 18 19
<i>endangered species</i> means an endangered or critically endangered species within the meaning of the <i>Threatened Species Conservation Act 1995</i> .	20 21 22
[3] Section 98 Harming protected fauna, other than threatened species, endangered populations or endangered ecological communities	23 24 25
Insert after section 98 (5):	26
(6) A person is not to be convicted of an offence arising under subsection (2) if the person proves that the act constituting the offence was done in the course of carrying out an activity that would constitute a defence under section 118G (Defences) to a prosecution for an offence under Part 8A.	27 28 29 30 31

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- [4] Section 118A Harming or picking threatened species, endangered populations or endangered ecological communities** 1
2
- Insert after section 118A (3) (a1): 3
- (a2) was authorised by a property vegetation plan approved 4
under the *Native Vegetation Act 2003* for land that had 5
the benefit of biodiversity certification under Division 6
4 of Part 7 of the *Threatened Species Conservation Act 7*
1995 when approval of the plan was given, or 8
Note. See also the defences under section 118G. 9
- [5] Section 118D Damage habitat of threatened species, endangered population or endangered ecological community** 10
11
- Insert after section 118D (2) (a1): 12
- (a2) was authorised by a property vegetation plan approved 13
under the *Native Vegetation Act 2003* if that approval is 14
given while biodiversity certification of the native 15
vegetation reform package is in force under Division 4 16
of Part 7 of the *Threatened Species Conservation Act 17*
1995, or 18
Note. See also the defences under section 118G. 19
- [6] Section 118D (4)** 20
- Insert after section 118D (3): 21
- (4) In proceedings for an offence under this section in respect of 22
an act or an omission of a person that causes damage to any 23
habitat (other than critical habitat) of a threatened species, an 24
endangered population or an endangered ecological 25
community, it is to be conclusively presumed that the person 26
knew that the land concerned was habitat of that kind if it is 27
established that: 28
- (a) the act or omission occurred in the course of the 29
carrying out of development or an activity for which 30
development consent under Part 4 of the *Environmental 31*
Planning and Assessment Act 1979, or an approval to 32
which Part 5 of that Act applies, was required but not 33
obtained, or 34
- (b) the act or omission constituted a failure to comply with 35
any such development consent or approval. 36
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[7] Section 118G	1
Insert after section 118F:	2
118G Defences	3
(1) It is a defence to a prosecution for an offence under this Part if the accused proves that the act constituting the alleged offence was any of the following activities:	4
(a) clearing that constitutes a routine agricultural management activity,	5
(b) a routine agricultural management activity (except clearing under paragraph (a)), but only to the extent that the activity is reasonably necessary for the purposes of the agricultural activities carried out on the land concerned,	6
Note. Both (a) and (b) must be read subject to subsection (3).	7
(c) an activity that is permitted under any of the following provisions of the <i>Native Vegetation Act 2003</i> :	8
(i) section 19 (Clearing of non-protected regrowth permitted),	9
(ii) section 23 (Continuation of existing farming activities),	10
(iii) 24 (Sustainable grazing),	11
(d) any other activity prescribed by the regulations for the purposes of this section.	12
(2) Each of the following is a <i>routine agricultural management activity</i> for the purposes of this section:	13
(a) the construction, operation and maintenance of rural infrastructure:	14
(i) including (subject to the regulations) dams, permanent fences, buildings, windmills, bores, air strips (in the Western Division), stockyards, and farm roads, but	15
(ii) not including rural infrastructure in areas zoned as rural-residential under environmental planning instruments or on small holdings (as defined in the regulations),	16
(b) the removal of noxious weeds under the <i>Noxious Weeds Act 1993</i> ,	17
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| (c) | the control of noxious animals under the <i>Rural Lands Protection Act 1998</i> , | 1
2 |
| (d) | the collection of firewood (except for commercial purposes), | 3
4 |
| (e) | the harvesting or other clearing of native vegetation planted for commercial purposes, | 5
6 |
| (f) | the lopping of native vegetation for stock fodder (including uprooting mulga in the Western Division in areas officially declared to be drought affected), | 7
8
9 |
| (g) | traditional Aboriginal cultural activities (except commercial activities), | 10
11 |
| (h) | the maintenance of public utilities (such as those associated with the transmission of electricity, the supply of water, the supply of gas and electronic communication), | 12
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| (i) | any activity reasonably considered necessary to remove or reduce an imminent risk of serious personal injury or damage to property. | 16
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| (3) | This section does not authorise the doing of an act that constitutes a routine agricultural management activity: | 19
20 |
| (a) | if it exceeds the minimum extent necessary for carrying out the routine agricultural management activity, or | 21
22 |
| (b) | if it is done for a work, building or structure before the grant of any statutory approval or other authority required for the work, building or structure. | 23
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| (4) | This section does not apply to land described or referred to in Part 3 (Urban areas) of Schedule 1 to the <i>Native Vegetation Act 2003</i> . | 26
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28 |
| (5) | The regulations may make provision for or with respect to: | 29 |
| (a) | extending, limiting or varying the activities referred to in subsection (1) (and that subsection is to be construed accordingly), or | 30
31
32 |
| (b) | excluding any specified land or class of land from the operation of subsection (1), or | 33
34 |
| (c) | including any specified land or class of land in the operation of subsection (1) that would otherwise be excluded from its operation by subsection (4). | 35
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- (6) Until regulations under subsection (5) otherwise provide, any regulations in force under section 11 (2) of the *Native Vegetation Act 2003* apply for the purposes of extending, limiting or varying the activities referred to in subsection (2) in the same way as those regulations apply for the purposes of extending, limiting or varying the activities referred to in section 11 (1) of that Act.

[8] Section 156B

Insert after section 156A:

156B Powers of authorised officers

- (1) The Director-General may appoint any person (including a class of persons) to be an authorised officer for the purposes of national parks legislation. Such an appointment is to be made under Chapter 7 of the *Protection of the Environment Operations Act 1997* (the **POEO Act**) as applied under this section.
- (2) An authorised officer has and may exercise the functions of an authorised officer under Chapter 7 (except Part 7.6) of the POEO Act for the following purposes:
- (a) for determining whether there has been compliance with or a contravention of national parks legislation,
 - (b) for obtaining information or records for purposes connected with the administration of national parks legislation,
 - (c) generally for administering national parks legislation.
- (3) The provisions of Chapter 7 of the POEO Act apply to and in respect of national parks legislation as if:
- (a) references in those provisions to an authorised officer were references to authorised officers appointed as referred to in this section, and
 - (b) references in those provisions to “this Act” were references to an Act or regulation forming part of the national parks legislation, and
 - (c) references in those provisions to the EPA were references to the Director-General, and

(d) the Director-General were the appropriate regulatory authority for matters concerning national parks legislation.	1 2 3
(4) The functions that an authorised officer has under Chapter 7 of the POEO Act are, for the purposes of any provision of national parks legislation, taken to be functions under national parks legislation.	4 5 6 7
(5) If an authorised officer has functions in respect of a matter under both Chapter 7 of the POEO Act (as applying under this section) and under any other provision of national parks legislation, the fact that there is a restriction on the exercise of a function under national parks legislation does not of itself operate to restrict the exercise by an authorised officer of any similar or the same function under Chapter 7 of the POEO Act.	8 9 10 11 12 13 14 15
(6) In this section:	16
<i>national parks legislation</i> means each of the following Acts and the regulations under those Acts:	17 18
(a) this Act,	19
(b) <i>Threatened Species Conservation Act 1995</i> ,	20
(c) <i>Wilderness Act 1987</i> ,	21
(d) <i>Marine Parks Act 1997</i> .	22
[9] Sections 159A and 159B	23
Insert after section 159:	24
159A Liability of landholder for certain harming and picking offences	25 26
In any criminal proceedings for an offence under section 98 or Part 8A, 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:	27 28 29 30 31
(a) the activity was carried out by another person, and	32
(b) the landholder did not cause or permit the other person to carry out the activity.	33 34
This section does not prevent proceedings being taken against the person who actually carried out the activity.	35 36

159B	Causing or permitting certain harming and picking offences	1
	A person who causes or permits, by act or omission, another person to commit an offence under section 98 or a provision of Part 8A is guilty of an offence under the provision and is liable on conviction to the same penalty applicable to an offence under that provision.	2 3 4 5 6
[10]	Section 160 Penalty notices for certain offences	7
	Omit “(not exceeding 5 penalty units)” from section 160 (6) (b).	8
[11]	Section 164 Powers of entry and seizure	9
	Omit “The Director-General or any person duly authorised by the Director-General in that behalf” from section 164 (1).	10 11
	Insert instead “An authorised officer”.	12
[12]	Section 164 (2) (c)	13
	Insert “with the permission of the occupier or” after “except”.	14
[13]	Section 164 (5)	15
	Omit the words before paragraph (a).	16
	Insert instead:	17
	An authorised officer or a police officer may apply to an authorised justice for a search warrant if the authorised officer or police officer believes on reasonable grounds:	18 19 20
[14]	Section 165 Persons to deliver up fauna etc when required	21
	Omit “the Director-General, or any person duly authorised by the Director-General in that behalf,” from section 165 (1).	22 23
	Insert instead “an authorised officer”.	24
[15]	Section 167 Disposal of fauna and perishable goods when seized or delivered up	25 26
	Omit “the Director-General or an officer of the Service duly authorised by the Director-General in that behalf” from section 167 (1).	27 28
	Insert instead “an authorised officer”.	29

[16] Schedule 3 Savings, transitional and other provisions	1
Insert at the end of clause 1 (1):	2
<i>Threatened Species Legislation Amendment Act 2004</i> , to the	3
extent that it amends this Act	4
[17] Schedule 3	5
Insert after Part 4:	6
Part 5 Provisions consequent on enactment of Threatened Species Legislation Amendment Act 2004	7 8 9
44 Authorised officers	10
(1) A person who is duly authorised for the purposes of section 164 or 165 immediately before the commencement of section 156B is, on that commencement taken to have been appointed as an authorised officer under that section.	11 12 13 14
(2) The functions conferred on an authorised officer by section 156B extend to matters arising before the commencement of that section.	15 16 17
3.2 National Parks and Wildlife Regulation 2002	18
Clause 94 Evidence of authority	19
Omit clause 94 (1). Insert instead:	20
(1) For the purposes of sections 164 and 165 of the Act, the prescribed evidence of a person's authority is:	21 22
(a) a written instrument of authority signed by the Director- General that identifies the person so authorised (unless the person has been provided with an identification card as referred to in paragraph (b)), or	23 24 25 26
(b) the identification card provided to the person in respect of the person's appointment as an authorised officer under section 189 of the <i>Protection of the Environment Operations Act 1997</i> (as applying under section 156B of the Act).	27 28 29 30 31

3.3 Native Vegetation Act 2003 No 103	1
Section 14 Granting of development consent	2
Insert after section 14 (3):	3
(4) If development is on land that has the benefit of biodiversity certification under Division 4 of Part 7 of the <i>Threatened Species Conservation Act 1995</i> :	4
(a) an application for development consent is not required to be accompanied by a species impact statement (as would otherwise be required under section 78A of the EPA Act), and	5
(b) the Minister is not required to consult with the Minister administering the <i>Threatened Species Conservation Act 1995</i> (as would otherwise be required under section 79B of the EPA Act).	6
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3.4 Natural Resources Commission Act 2003 No 102	15
Section 16A	16
Insert after section 16:	17
16A Assistance from Scientific Committee	18
The Commission may seek and obtain the advice of:	19
(a) the Scientific Committee under the <i>Threatened Species Conservation Act 1995</i> on matters of a scientific nature relating to threatened species, populations and communities, such as the setting of state-wide and regional standards or targets for biodiversity conservation, and	20
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(b) the Biological Diversity Advisory Council under that Act on matters of biological diversity, and	26
27	27
(c) the Social and Economic Advisory Council under that Act on matters relating to the social and economic impact of natural resource management.	28
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3.5 Threatened Species Conservation Amendment Act 2002	1
No 78	2
[1] Schedule 1 [2]	3
Omit the item.	4
[2] Schedule 1 [7]	5
Omit the item.	6
[3] Schedule 1 [10]	7
Omit the item.	8
[4] Schedule 1 [18]	9
Omit the item.	10
[5] Schedule 1 [80]	11
Omit the item.	12