



New South Wales

Nature Conservation Trust Amendment Bill 2010

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Nature Conservation Trust Act 2001*:

- (a) to require the Nature Conservation Trust of New South Wales (*the Trust*) to establish and maintain a public fund, so that donations to the Trust for its principal purpose are eligible for tax deductible status under Commonwealth taxation law, and
- (b) to clarify that the Trust has similar functions with respect to water as its functions with respect to land, including by authorising the Trust to deal in water access licences and similar entitlements, and
- (c) to authorise the Trust to sell, without imposing a covenant, any part of land that it acquires that is unsuitable for conservation purposes, and
- (d) to expressly permit Trust agreements to impose restrictions on the subdivision and other development of land, and
- (e) to make further provision for the skills and experience required of non-government members of the Board of the Trust, and
- (f) to provide for a further review of the Act in 5 years' time.

The Bill also amends the *National Parks and Wildlife Act 1974* to make it clear that conservation agreements may make provision for the protection, conservation and management of waters (as well as land).

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 1 February 2011.

Schedule 1 Amendment of Nature Conservation Trust Act 2001 No 10

Establishment of public fund

The amendments require the Trust to establish and maintain a public fund for the principal purpose of the Trust. The public fund is to be called the Nature Conservation Trust of New South Wales Public Fund (the **Public Fund**).

The amendments make it clear that the Trust has a single object, which is to protect and enhance natural heritage (including any cultural heritage associated with natural heritage). The object of the Trust is also its principal purpose.

The purpose of the amendments is to ensure that donations made to the Trust, for its principal purpose, are tax deductible under the *Income Tax Assessment Act 1997* of the Commonwealth (the **Commonwealth Income Tax Assessment Act**). For donations to the Public Fund to have tax deductible status under the Commonwealth Income Tax Assessment Act, the Trust must have as its principal purpose the protection and enhancement of the natural environment or a significant aspect of the natural environment.

The amendments include a number of other provisions the object of which is to ensure that donations to the Trust for its principal purpose meet the requirements for tax deductible status. These include:

- (a) a provision that makes it clear that the affairs of the Trust are to be conducted on a not-for-profit basis and that the Public Fund is not-for-profit, and
- (b) a requirement that all gifts of money or property made to the Public Fund for the principal purpose of the Trust, or other contributions made in relation to fundraising events for that principal purpose, be held in the Public Fund and are used only for that principal purpose, and
- (c) a requirement that the Trust not agree to any condition imposed on a gift to the Public Fund (so that a gift can be used only for the principal purpose of the Trust, rather than on the basis of donor preferences), and
- (d) a requirement that the Trust comply with any other requirements made of it under the Commonwealth Income Tax Assessment Act, including by complying with rules made under that Act and by providing statistical information about gifts or contributions made to the Public Fund, and

- (e) a requirement that, on a winding up of the Trust, all outstanding property held in the Public Fund is to be transferred to another fund with tax deductible status and a similar principal purpose.

The principal amendments described above are contained in **Schedule 1 [2], [6], [12], [17] and [22]**. **Schedule 1 [7]** makes changes to the functions of the Trust that are consequential on the new provisions relating to the Public Fund. **Schedule 1 [1]** inserts definitions used in the provisions. **Schedule 1 [11] and [12]** also replace the term “gift, devise or bequest” with the more general term “gift”, so that the new provision that prevents the Trust agreeing to a condition of a gift of money or property that is to be made to or held in the Public Fund will also apply to a devise or bequest, if the devise or bequest is a gift of money or property that must be held in the Public Fund under the Commonwealth Income Tax Assessment Act. **Schedule 1 [21]** removes a provision made redundant by the amendments. **Schedule 1 [5] and [9]** are consequential amendments.

As the Trust already maintains trust accounts, it is necessary to distinguish these accounts from the Public Fund. The amendment in **Schedule 1 [18]** renames the existing trust accounts as operating accounts and makes it clear that these accounts are to be kept separate from the Public Fund. The operating accounts can be used for the receipt of any money paid to the Trust that is not required to be held in the Public Fund (such as borrowings) and to meet its liabilities (for example, remuneration of Board members).

Water management

At present the Act gives the Trust certain functions in respect of land that is significant for the conservation of natural heritage. **Schedule 1 [1]** inserts a definition of *land* into the Act to make it clear that land includes water on or under the surface of land. Accordingly, any of the functions of the Trust with respect to land extend to water on or under the surface of land.

Schedule 1 [6] also includes a provision that makes it clear that any arrangements entered into by the Trust with landholders can include arrangements for the management and protection of waters that affect the natural heritage of land. This may include waters not actually situated on the land to which the agreement relates.

Schedule 1 [8] authorises the Trust to buy, acquire, sell, hold, create security interests in and otherwise deal in access licences and other entitlements with respect to water under the *Water Management Act 2000* and the *Water Act 1912*. **Schedule 1 [10]** is a related amendment.

Use of covenants under revolving fund scheme

At present the Trust operates a revolving fund scheme. Under the scheme, the Trust purchases or acquires land that is significant for the conservation of natural heritage, arranges for a covenant to be registered on the title to the land that protects that heritage, and then sells or leases the land subject to the covenant.

Schedule 1 [4] will authorise the Trust to sell or lease part of any land acquired, without arranging for a covenant to be registered on the title to that part of the land,

if the Trust decides that the part of the land concerned is of low or no conservation value. **Schedule 1 [3]** is a related amendment.

Contents of Trust agreements

Schedule 1 [19] permits Trust agreements to contain provisions that restrict the development of land the subject of the agreement. Development is given the same meaning as it has in the *Environmental Planning and Assessment Act 1979*, which includes the use of land, the subdivision of land, the erection of buildings on land and the carrying out of work on land. At present, only restrictions on the use of the land are expressly permitted (however, agreements can provide for any matters which the parties consider appropriate). A related amendment in **Schedule 1 [20]** makes it clear that a Trust agreement can include provisions that require a landholder to refrain from carrying out specified actions (such as development).

Membership of Board of Trust

The requirements for membership of the Board of the Trust are modified, to make it clear that a non-government member must have skills and experience (rather than capacities) in one or more of the following areas:

- (a) increasing public knowledge, understanding and appreciation of the importance of natural and cultural heritage by private landholders and other community members,
- (b) protection and conservation of natural heritage,
- (c) protection and conservation of cultural heritage,
- (d) management of natural resources, including agricultural land,
- (e) land use planning and operation of local councils,
- (f) marketing and fundraising,
- (g) economics and financial management,
- (h) governance and administration,
- (i) decision making and leadership.

The principal amendment is **Schedule 1 [14]**. **Schedule 1 [13], [15], [16] and [24]** are related amendments.

Schedule 1 [25] repeals a provision that allows members of the Board to appoint deputies.

Review of Act

Schedule 1 [23] provides for a further review of the Act to be carried out 5 years after the date of assent to the proposed Act.

Savings and transitional

Schedule 1 [27] enables the making of savings and transitional regulations as a consequence of the amendments.

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Schedule 1 [28] inserts specific transitional provisions relating to the amendments.
Schedule 1 [26] is a consequential amendment.

Schedule 2 Amendment of National Parks and Wildlife Act 1974 No 80

Schedule 2 [1] makes it clear that conservation agreements entered into under the *National Parks and Wildlife Act 1974* can contain provisions for the purpose of the protection, conservation or management of waters.

Schedule 2 [2] is a consequential amendment.

First print



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No. , 2010

A Bill for

An Act to amend the *Nature Conservation Trust Act 2001* to make further provision for the object, functions and membership of the Nature Conservation Trust of New South Wales, and to amend the *National Parks and Wildlife Act 1974* in relation to conservation agreements.

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| The Legislature of New South Wales enacts: | 1 |
| 1 Name of Act | 2 |
| This Act is the <i>Nature Conservation Trust Amendment Act 2010</i> . | 3 |
| 2 Commencement | 4 |
| This Act commences on 1 February 2011. | 5 |

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|-------------------|---|----|
| Schedule 1 | Amendment of Nature Conservation Trust Act 2001 No 10 | 1 |
| | | 2 |
| [1] | Section 3 Definitions | 3 |
| | Insert in alphabetical order: | 4 |
| | <i>Commonwealth Income Tax Assessment Act</i> means the <i>Income Tax Assessment Act 1997</i> of the Commonwealth. | 5 |
| | | 6 |
| | <i>land</i> includes any water on or under the surface of land. | 7 |
| | <i>Public Fund</i> means the Nature Conservation Trust of New South Wales Public Fund established under section 27A. | 8 |
| | | 9 |
| [2] | Section 6 Meaning of “conservation priorities” | 10 |
| | Omit “the conservation of cultural heritage or natural heritage or both” from section 6 (1). | 11 |
| | | 12 |
| | Insert instead “the conservation of natural heritage (and any cultural heritage associated with natural heritage)”. | 13 |
| | | 14 |
| [3] | Section 7 Meaning of “Revolving Fund Scheme” | 15 |
| | Omit section 7 (b) and (c). Insert instead: | 16 |
| | (b) arranges for a protective covenant to be registered on the title to the land, and | 17 |
| | | 18 |
| | (c) sells or leases the land subject to that protective covenant, and | 19 |
| | | 20 |
| [4] | Section 7 (2) and (3) | 21 |
| | Insert at the end of section 7: | 22 |
| | (2) The Trust may sell or lease any part of land that is bought or acquired under the scheme, without arranging for a protective covenant to be registered on the title to that part, if the Trust decides that the part of the land concerned is of low or no conservation value. The proceeds of the sale or lease are to be used under the scheme in the same way as the proceeds of sale or lease of land the subject of a protective covenant. | 23 |
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| | | 29 |
| | (3) In this section, a <i>protective covenant</i> means a covenant the purpose of which is to protect natural heritage (and any cultural heritage associated with natural heritage). | 30 |
| | | 31 |
| | | 32 |
| [5] | Part 2, Division 1, heading | 33 |
| | Omit “objects”. Insert instead “object”. | 34 |

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| [6] Section 10 | 1 |
| Omit the section. Insert instead: | 2 |
| 10 Object of Trust | 3 |
| (1) The object of the Trust is to protect and enhance natural heritage (including any cultural heritage associated with natural heritage) by: | 4 |
| (a) encouraging landholders to enter into co-operative arrangements for the management and protection of urban and rural land in private occupation that is significant for the conservation of natural heritage (and any cultural heritage associated with natural heritage), and | 5 |
| (b) providing mechanisms for achieving conservation of that heritage, and | 6 |
| (c) promoting public knowledge, appreciation and understanding of: | 7 |
| (i) natural heritage (and any cultural heritage associated with natural heritage), and | 8 |
| (ii) the importance of conserving that heritage. | 9 |
| (2) The co-operative arrangements for the management and protection of land may include arrangements for the management and protection of any waters that affect the natural heritage of the land (and any cultural heritage associated with natural heritage), whether or not the waters are on or under the surface of the land. | 10 |
| (3) The affairs of the Trust are to be conducted on a not-for-profit basis. | 11 |
| (4) The object of the Trust is also its principal purpose. | 12 |
| Note. For donations to the Public Fund maintained by the Trust to have tax deductible status under Subdivision 30-E of the Commonwealth Income Tax Assessment Act, the Trust must have as its principal purpose the protection and enhancement of the natural environment or a significant aspect of the natural environment. | 13 |
| [7] Section 11 Functions of Trust | 14 |
| Omit section 11 (2). Insert instead: | 15 |
| (2) In particular, the Trust has the following functions: | 16 |
| (a) to operate the Revolving Fund Scheme, | 17 |
| (b) to establish and maintain the Public Fund and such other funds as are appropriate to its activities, | 18 |

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| (c) | to raise money from organisations and the general public to help fund its activities, | 1 2 |
| (d) | to use any gifts or contributions received by the Trust for the protection and enhancement of natural heritage (and any cultural heritage associated with natural heritage), | 3 4 5 |
| (e) | to negotiate, enter into, monitor and enforce compliance with Trust agreements, | 6 7 |
| (f) | to provide technical, financial and other assistance to landholders generally, when the Trust considers it appropriate to do so, for the purpose of facilitating the achievement of conservation goals, | 8 9 10 11 |
| (g) | to provide education to the public on issues of conservation, land management and ecological sustainability. | 12 13 14 |
| (3) | In this section, <i>gift</i> includes a devise or bequest. | 15 |
| [8] | Section 12 Powers of Trust | 16 |
| | Insert after section 12 (2) (b): | 17 |
| (b1) | to buy or otherwise acquire, sell, hold, create security interests in and otherwise deal in access licences, holdings in access licences and water authorities in any manner permitted by the <i>Water Management Act 2000</i> or the <i>Water Act 1912</i> , | 18 19 20 21 22 |
| [9] | Sections 12 (2) (e) and (f) and 22 (1) (b) and (e), and Schedule 1, clause 5 (3) (a) | 23 24 |
| | Omit “objects” wherever occurring. Insert instead “object”. | 25 |
| [10] | Section 12 (4) | 26 |
| | Insert after section 12 (3): | 27 |
| (4) | In this section: <i>water authority</i> means a licence or permit under the <i>Water Act 1912</i> . | 28 29 30 |
| [11] | Section 14 Acquisition of property by gift | 31 |
| | Omit “, devise or bequest” wherever occurring. | 32 |

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Schedule 1 Amendment of Nature Conservation Trust Act 2001 No 10

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| [12] Section 14 (4) and (5) | 1 |
| Insert after section 14 (3): | 2 |
| (4) The Trust must not agree to any condition of a gift of money or property that is made to or to be held in the Public Fund. | 3 4 |
| Note. Gifts of money or property made to the Public Fund may be used only for the principal purpose of the Trust. | 5 6 |
| (5) In this section, <i>gift</i> includes a devise or bequest. | 7 |
| [13] Section 18 Members of Board | 8 |
| Omit section 18 (1) (c). Insert after section 18 (1) (a): | 9 |
| (b) 8 are to be non-government members, being members of the public (any one or more of whom may be a representative of any non-government agency). | 10 11 12 |
| [14] Section 18 (2) and (3) | 13 |
| Omit the subsections. Insert instead: | 14 |
| (2) The Minister is not to appoint a non-government member to the Board unless the Minister is satisfied that the person has skills and experience in one or more of the following areas: | 15 16 17 |
| (a) increasing public knowledge, understanding and appreciation of the importance of natural and cultural heritage by private landholders and other community members, | 18 19 20 21 |
| (b) protection and conservation of natural heritage, | 22 |
| (c) protection and conservation of cultural heritage, | 23 |
| (d) management of natural resources, including agricultural land, | 24 25 |
| (e) land use planning and operation of local councils, | 26 |
| (f) marketing and fundraising, | 27 |
| (g) economics and financial management, | 28 |
| (h) governance and administration, | 29 |
| (i) decision making and leadership. | 30 |
| (3) The Minister is to ensure, as far as is possible, that the composition of the Board is such that the members of the Board together have all of the skills and experience specified in subsection (2). | 31 32 33 34 |

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| [15] Section 19 Appointment of non-government members of Board | 1 |
| Omit “the appointment of the members of the Board referred to in section 18 (1) (c)” from section 19 (1). | 2 3 |
| Insert instead “the appointment of non-government members of the Board”. | 4 |
| [16] Section 19 (3) (b) | 5 |
| Omit the paragraph. Insert instead: | 6 |
| (b) the particular skills and experience that an appointee will be required to have, | 7 8 |
| [17] Section 27A | 9 |
| Insert after section 27: | 10 |
| 27A Public Fund | 11 |
| (1) The Trust is to establish and maintain a public fund for the principal purpose of the Trust. | 12 13 |
| (2) The fund is to be called the Nature Conservation Trust of New South Wales Public Fund. | 14 15 |
| (3) The Public Fund is not-for-profit. | 16 |
| (4) The following are to be held in the Public Fund: | 17 |
| (a) all gifts of money or property made for the principal purpose of the Trust that are to be made to the Public Fund under section 30-130 of the Commonwealth Income Tax Assessment Act, | 18 19 20 21 |
| (b) all contributions made in relation to a fundraising event held for the principal purpose of the Trust that are to be made to the Public Fund under section 30-130 of the Commonwealth Income Tax Assessment Act, | 22 23 24 25 |
| (c) any money received by the Trust because of such gifts or contributions. | 26 27 |
| (5) No other money or property is to be held in the Public Fund. | 28 |
| (6) Money and property held in the Public Fund may be used by the Trust only for its principal purpose. | 29 30 |
| (7) Money held in the Public Fund is to be paid into an account kept, for the purposes of the Public Fund, with an authorised deposit-taking institution. | 31 32 33 |
| (8) The Trust must comply with any requirements made of it in connection with registration as an environmental organisation | 34 35 |

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| under Subdivision 30-E of the Commonwealth Income Tax Assessment Act. | 1 2 |
| (9) In particular, the Trust must: | 3 |
| (a) comply with any rules made by the Treasurer and the Environment Minister under Subdivision 30-E of the Commonwealth Income Tax Assessment Act to ensure that gifts or contributions made to the Public Fund are used only for its principal purpose, and | 4 5 6 7 8 |
| (b) provide to the Environment Secretary under Subdivision 30-E of the Commonwealth Income Tax Assessment Act, within 4 months after the end of each financial year of the Trust, any statistical information about gifts or contributions made to the Public Fund during that financial year required for the purposes of compliance with that Act. | 9 10 11 12 13 14 |
| (10) The Trust must appoint a management committee to manage the Public Fund on its behalf. | 15 16 |
| [18] Section 28 | 17 |
| Omit the section. Insert instead: | 18 |
| 28 Operating accounts | 19 |
| (1) The Trust is to establish and maintain an account (an <i>operating account</i>) that is separate from the account kept for the purposes of the Public Fund. | 20 21 22 |
| (2) More than one operating account may be established. | 23 |
| (3) There is to be paid into an operating account: | 24 |
| (a) all money received by or on account of the Trust that is not required to be held in the Public Fund, and | 25 26 |
| (b) the proceeds of investment of such money, and | 27 |
| (c) all money borrowed by or advanced to the Trust, and | 28 |
| (d) all money directed to be paid into an operating account by or under this or any other Act. | 29 30 |
| (4) The money in an operating account may, subject to the terms of any trust or condition affecting that money or any part of it, be applied for any one or more of the following purposes: | 31 32 33 |
| (a) providing the remuneration of the members of the Board and the Chief Executive Officer and other staff of the Trust, | 34 35 36 |
| (b) discharging the liabilities incurred by the Trust in the exercise of its functions, | 37 38 |

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| | (c) any other purpose authorised by or under this or any other Act. | 1 2 |
| | (5) An operating account is to be kept with an authorised deposit-taking institution. | 3 4 |
| [19] | Section 33 Contents of agreement | 5 |
| | Omit section 33 (1) (b). Insert instead: | 6 |
| | (b) restrictions on the development (within the meaning of the <i>Environmental Planning and Assessment Act 1979</i>) of land or specified areas of land, | 7 8 9 |
| | Note. Development, as defined by the <i>Environmental Planning and Assessment Act 1979</i> , includes the use of land, the subdivision of land, the erection of buildings on land and the carrying out of work on land. | 10 11 12 13 |
| [20] | Section 33 (1) (f) | 14 |
| | Insert “or to refrain from carrying out specified actions” after “actions”. | 15 |
| [21] | Section 44 Winding up | 16 |
| | Omit section 44 (4). | 17 |
| [22] | Section 44A | 18 |
| | Insert after section 44: | 19 |
| | 44A Distribution of outstanding property on winding up | 20 |
| | (1) On a winding up of the Trust, the liquidator is to transfer any outstanding property held in the Public Fund after the Trust is wound up to a tax exempt fund that is maintained for a similar purpose to the principal purpose of the Trust. | 21 22 23 24 |
| | (2) A <i>tax exempt fund</i> is a fund that is on the register of environmental organisations kept under Subdivision 30-E of the Commonwealth Income Tax Assessment Act. | 25 26 27 |
| | (3) Preference is to be given to a tax exempt fund that is used for the protection of the natural heritage (and any cultural heritage associated with natural heritage) of New South Wales. | 28 29 30 |
| | (4) The liquidator may also transfer any other outstanding property of the Trust after the Trust is wound up to that tax exempt fund or to any other body or fund having a similar purpose to the principal purpose of the Trust. | 31 32 33 34 |
| | (5) Preference is to be given to a fund used for, or a body that has functions with respect to, the protection of the natural heritage | 35 36 |

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| | (and any cultural heritage associated with natural heritage) of New South Wales. | 1 2 |
| | (6) This section applies despite the provisions of the <i>Corporations Act 2001</i> of the Commonwealth, as applied by this Act to a winding up or dissolution of the Trust. | 3 4 5 |
| [23] | Section 51 Review of Act | 6 |
| | Omit “from the date of assent to this Act” from section 51 (2). | 7 |
| | Insert instead “from the date of assent to the <i>Nature Conservation Trust Amendment Act 2010</i> ”. | 8 9 |
| [24] | Schedule 1 Members and procedure of the Board | 10 |
| | Omit clause 3. Insert instead: | 11 |
| | 3 Remuneration | 12 |
| | (1) A non-government member is entitled to be paid such remuneration (including travelling and subsistence allowances) as: | 13 14 15 |
| | (a) the Board may from time to time determine in its business plan in respect of the member, or | 16 17 |
| | (b) the regulations may specify, whichever is the lesser. | 18 19 |
| | (2) The remuneration is to be paid from an operating account. | 20 |
| [25] | Schedule 1, clause 4 | 21 |
| | Omit the clause. | 22 |
| [26] | Schedule 2 Savings and transitional provisions | 23 |
| | Insert before clause 1: | 24 |
| | Part 1 General | 25 |
| [27] | Schedule 2, clause 1 | 26 |
| | Insert at the end of clause 1 (1): | 27 |
| | <i>Nature Conservation Trust Amendment Act 2010</i> | 28 |

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| [28] Schedule 2, Part 2 | 1 |
| Insert after clause 1: | 2 |
| Part 2 Provisions consequent on enactment of Nature Conservation Trust Amendment Act 2010 | 3 |
| | 4 |
| | 5 |
| 2 Changes to membership arrangements | 6 |
| (1) An amendment made to section 18 by the <i>Nature Conservation Trust Amendment Act 2010</i> applies only in respect of the appointment of a non-government member to the Board that is made on or after the commencement of the amendment. | 7 |
| | 8 |
| | 9 |
| | 10 |
| (2) On the repeal of clause 4 of Schedule 1 by the <i>Nature Conservation Trust Amendment Act 2010</i> , the appointment of any deputy to a member is revoked. | 11 |
| | 12 |
| | 13 |
| 3 Establishment of Public Fund and related changes | 14 |
| (1) The Public Fund amendments apply only in respect of money and property received by the Trust on or after the commencement of the amendments. | 15 |
| | 16 |
| | 17 |
| (2) Any Trust Account established under section 28 before the commencement of the Public Fund amendments becomes, on the commencement of those amendments, an operating account. | 18 |
| | 19 |
| | 20 |
| (3) The <i>Public Fund amendments</i> are the amendments made to section 14 and Division 4 of Part 2 of this Act by the <i>Nature Conservation Trust Amendment Act 2010</i> . | 21 |
| | 22 |
| | 23 |

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| Schedule 2 | Amendment of National Parks and Wildlife Act 1974 No 80 | 1 |
| | | 2 |
| [1] Section 69C Purpose and content of agreements | | 3 |
| Insert after section 69C (1) (e2): | | 4 |
| (e3) for the purpose of the protection, conservation or management of waters in or in connection with an area or purpose referred to in paragraph (a), (b), (c), (d), (e), (e1) or (e2), or | | 5 6 7 8 |
| [2] Section 69C (1) (f) | | 9 |
| Omit “referred to in paragraph (a), (b), (c), (d), (e), (e1) or (e2)”. | | 10 |
| Insert instead “elsewhere referred to in this subsection”. | | 11 |