

Threatened Species Conservation Amendment Act 2002 No 78

[2002-78]



New South Wales

Status Information

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Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

Notes—

- **Does not include amendments by**
Threatened Species Legislation Amendment Act 2004 No 88 (not commenced)

Authorisation

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New South Wales

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Threatened Species Conservation Amendment Act 2002 No 78



New South Wales

An Act to amend the *Threatened Species Conservation Act 1995* to make further provision with respect to the conservation of threatened species, populations and ecological communities of animals and plants; to make related amendments to other Acts; and for other purposes.

1 Name of Act

This Act is the *Threatened Species Conservation Amendment Act 2002*.

2 Commencement

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

3 Amendment of *Threatened Species Conservation Act 1995 No 101*

The *Threatened Species Conservation Act 1995* is amended as set out in Schedule 1.

4 Amendment of other Acts

The Acts specified in Schedule 2 are amended as set out in that Schedule.

Schedule 1 Amendment of *Threatened Species Conservation Act 1995*

(Section 3)

[1] (Repealed)

[2] Section 4 (1)

Insert in alphabetical order:

Fisheries Scientific Committee means the Fisheries Scientific Committee constituted under Part 7A of the *Fisheries Management Act 1994*.

threatened ecological community means an ecological community specified in Part 3 of Schedule 1 or Part 2 of Schedule 2.

vulnerable ecological community means an ecological community specified in Part 2 of Schedule 2.

[3] Section 4 (1), definition of “threatened species, populations and ecological communities”, note

Insert at the end of the definition:

Note—

In some cases vulnerable ecological communities are excluded from this expression. See subsection (5).

[4] (Repealed)

[5] Section 4 (5)

Insert after section 4 (4):

(5) In Parts 6 and 7, a reference to **threatened species, populations and ecological communities** or **threatened species, population or ecological community** (however expressed) does not include a reference to any vulnerable ecological community. However, this subsection does not affect the application of those Parts to any threatened species or endangered populations that may form part of a vulnerable ecological community.

Note—

Vulnerable ecological communities are excluded from the licensing provisions of this Act and from related offences under the *National Parks and Wildlife Act 1974*. However, the Director-General may prepare a recovery plan in respect of a vulnerable ecological community and that plan and the provisions of Division 2 of Part 4 of this Act apply in respect of the implementation of that plan.

[6] (Repealed)

[7] Part 2, Introductory note

Insert “and vulnerable ecological communities” after “Schedule 2, of vulnerable species”.

[8], [9] (Repealed)

[10] Sections 7 and 7A

Omit section 7. Insert instead:

7 Schedule 2 list of vulnerable species

- (1) Part 1 of Schedule 2 contains a list of vulnerable species for the purposes of this Act.
- (2) Any vulnerable species that is a listed threatened species under the

Environment Protection and Biodiversity Conservation Act 1999 of the Commonwealth is marked with an asterisk to show that it is considered to be a threatened species nationally.

7A Schedule 2 list of vulnerable ecological communities

- (1) Part 2 of Schedule 2 contains a list of vulnerable ecological communities for the purposes of this Act.
- (2) Any vulnerable ecological community that is a listed threatened ecological community under the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth is marked with an asterisk to show that it is considered to be a threatened ecological community nationally.

[11]-[17] (Repealed)

[18] Section 14A

Insert after section 14:

14A Ecological communities eligible for listing as vulnerable ecological communities

An ecological community is eligible to be listed as a vulnerable ecological community if, in the opinion of the Scientific Committee, the ecological community is likely to become endangered in New South Wales unless the circumstances and factors threatening its survival cease to operate.

[19]-[36] (Repealed)

[37] Section 56 Director-General to prepare recovery plans

Omit section 56 (3). Insert instead:

- (3) The Director-General may also prepare recovery plans for vulnerable ecological communities.
- (4) A recovery plan under this Act may contain provisions for more than one species, population or ecological community.
- (5) A recovery plan must be prepared as follows:
 - (a) in the case of a recovery plan for an endangered species, endangered population or endangered ecological community—within 3 years after the description of the species, population or ecological community is first inserted in Schedule 1,

- (b) in the case of a recovery plan for a vulnerable species—within 5 years after the description of the species is first inserted in Schedule 2,
- (c) in the case of a recovery plan that contains provisions relevant to more than one species, population or ecological community—within the time limit that would apply under paragraph (a) or (b) if the plan related solely to whichever species, population or ecological community to which the plan relates was most recently inserted in Schedule 1 or 2.

Note—

The time limits for the making of recovery plans under this Act correspond to the time limits for making recovery plans under the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth for endangered and vulnerable categories of listed threatened species and listed threatened ecological communities that occur in and outside a Commonwealth area.

- (6) If the Director-General decides to prepare a recovery plan for a vulnerable ecological community, the recovery plan is to be prepared within 5 years after that decision is made.

[38]-[52] (Repealed)

[53] Section 94 Significant effect on threatened species, populations or ecological communities, or their habitats

Omit section 94 (2). Insert instead:

- (2) For that purpose, the Director-General must take into account the following:
 - (a) each of the factors listed in subsection (3),
 - (b) any assessment guidelines issued and in force under section 94A.
- (3) The following factors must be taken into account in making a determination under this section:
 - (a) in the case of a threatened species, whether the action proposed is likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction,
 - (b) in the case of an endangered population, whether the action proposed is likely to have an adverse effect on the life cycle of the species that constitutes the endangered population such that a viable local population of the species is likely to be placed at risk of extinction,
 - (c) in the case of an endangered ecological community or critically endangered ecological community, whether the action proposed:
 - (i) is likely to have an adverse effect on the extent of the ecological community

- such that its local occurrence is likely to be placed at risk of extinction, or
- (ii) is likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction,
- (d) in relation to the habitat of a threatened species, population or ecological community:
- (i) the extent to which habitat is likely to be removed or modified as a result of the action proposed, and
 - (ii) whether an area of habitat is likely to become fragmented or isolated from other areas of habitat as a result of the proposed action, and
 - (iii) the importance of the habitat to be removed, modified, fragmented or isolated to the long-term survival of the species, population or ecological community in the locality,
- (e) whether the action proposed is likely to have an adverse effect on critical habitat (either directly or indirectly),
- (f) whether the action proposed is consistent with the objectives or actions of a recovery plan or threat abatement plan,
- (g) whether the action proposed constitutes or is part of a key threatening process or is likely to result in the operation of, or increase the impact of, a key threatening process.

[54] Section 94A

Insert after section 94:

94A Assessment guidelines

- (1) The Minister may, by order published in the Gazette, issue guidelines (***assessment guidelines***) relating to the determination of whether an action is likely to significantly affect threatened species, populations or ecological communities, or their habitats.
- (2) An order under this section (including any order that amends, revokes or replaces such an order) may be made only with the concurrence of the Minister for Planning.

[55] Section 96 Publication of licence application

Omit the section. Insert instead:

96 Publication of licence application

- (1) The Director-General is to keep a register of licence applications made under this Act.
- (2) The Director-General must, within 7 days after receiving a licence application, cause a copy of the application to be placed on the register.
- (3) The register is not to include any information the disclosure of which would contravene the *Privacy and Personal Information Protection Act 1998*.
- (4) Copies of the register are to be made available for public inspection (free of charge) at the principal office of the National Parks and Wildlife Service and on the internet site maintained by the National Parks and Wildlife Service.
- (5) If the licence application is accompanied by a species impact statement or a species impact statement is provided in response to a notification from the Director-General that a statement is required, the Director-General must cause to be placed in a newspaper circulating throughout the State a notice:
 - (a) outlining the nature of the application, and
 - (b) specifying the address of the place at which copies of the species impact statement may be inspected or purchased, and
 - (c) inviting written submissions within a period of not less than 28 days after the date of the notice.

[56]-[58] (Repealed)

[59] Section 110 Content of species impact statement

Insert after section 110 (2) (d):

- (e) an assessment of whether those species or populations are adequately represented in conservation reserves (or other similar protected areas) in the region,
 - (e1) an assessment of whether any of those species or populations is at the limit of its known distribution,

[60] Section 110 (3) (b1) and (b2)

Insert after section 110 (3) (b):

- (b1) an assessment of whether those ecological communities are adequately represented in conservation reserves (or other similar protected areas) in the region,

(b2) an assessment of whether any of those ecological communities is at the limit of its known distribution,

[61]-[79] (Repealed)

[80] Schedule 2, Part 2

Insert at the end of the Schedule:

Part 2 **Vulnerable ecological communities**

[81]-[83] (Repealed)

Schedule 2 Amendment of other Acts

(Section 4)

2.1 Environmental Planning and Assessment Act 1979 No 203

[1] Section 4 Definitions

Insert “, except as provided by section 5D” after “*Fisheries Management Act 1994*” at the end of the definition of ***threatened species, populations and ecological communities*** in section 4 (1).

[2] Section 4 (1), definition of “threatened species, populations and ecological communities”, note

Insert at the end of the definition:

Note—

Section 5D excludes vulnerable ecological communities from this expression.

[3] Section 4 (1)

Insert in alphabetical order:

threatened species has the same meaning as in the *Threatened Species Conservation Act 1995* or (subject to section 5C) Part 7A of the *Fisheries Management Act 1994*.

vulnerable ecological community has the same meaning as in the *Threatened Species Conservation Act 1995*.

[4] Section 5A

Omit the section. Insert instead:

5A Significant effect on threatened species, populations or ecological

communities, or their habitats

- (1) For the purposes of this Act and, in particular, in the administration of sections 78A, 79B, 79C, 111 and 112, the following must be taken into account in deciding whether there is likely to be a significant effect on threatened species, populations or ecological communities, or their habitats:
 - (a) each of the factors listed in subsection (2),
 - (b) any assessment guidelines.
- (2) The following factors must be taken into account in making a determination under this section:
 - (a) in the case of a threatened species, whether the action proposed is likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction,
 - (b) in the case of an endangered population, whether the action proposed is likely to have an adverse effect on the life cycle of the species that constitutes the endangered population such that a viable local population of the species is likely to be placed at risk of extinction,
 - (c) in the case of an endangered ecological community or critically endangered ecological community, whether the action proposed:
 - (i) is likely to have an adverse effect on the extent of the ecological community such that its local occurrence is likely to be placed at risk of extinction, or
 - (ii) is likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction,
 - (d) in relation to the habitat of a threatened species, population or ecological community:
 - (i) the extent to which habitat is likely to be removed or modified as a result of the action proposed, and
 - (ii) whether an area of habitat is likely to become fragmented or isolated from other areas of habitat as a result of the proposed action, and
 - (iii) the importance of the habitat to be removed, modified, fragmented or isolated to the long-term survival of the species, population or ecological community in the locality,
 - (e) whether the action proposed is likely to have an adverse effect on critical

habitat (either directly or indirectly),

- (f) whether the action proposed is consistent with the objectives or actions of a recovery plan or threat abatement plan,
- (g) whether the action proposed constitutes or is part of a key threatening process or is likely to result in the operation of, or increase the impact of, a key threatening process.

(3) In this section:

assessment guidelines means assessment guidelines issued and in force under section 94A of the *Threatened Species Conservation Act 1995* or, subject to section 5C, section 220ZZA of the *Fisheries Management Act 1994*.

key threatening process has the same meaning as in the *Threatened Species Conservation Act 1995* or, subject to section 5C, Part 7A of the *Fisheries Management Act 1994*.

[5] (Repealed)

[6] Section 5D

Insert after section 5C:

5D Application of Act to vulnerable ecological communities

- (1) In this Act, a reference to **threatened species, populations and ecological communities** or **threatened species, population or ecological community** (however expressed) does not include a reference to any vulnerable ecological community.
- (2) However, this section does not affect the application of this Act to any threatened species or endangered population that forms part of a vulnerable ecological community.

Note—

Vulnerable ecological communities are generally excluded from the provisions of this Act relating to threatened species, populations and ecological communities, including provisions that require the concurrence of the Director-General of National Parks and Wildlife or the Minister administering the *Threatened Species Conservation Act 1995*, or the preparation of a species impact statement, in respect of development or an activity that is likely to have a significant effect on threatened species, populations or ecological communities (subject to subsection (2) above). However, vulnerable ecological communities are relevant to the preparation of environmental planning instruments under section 26.

[7] Section 26 Contents of environmental planning instruments

Insert after section 26 (1):

- (1A) An environmental planning instrument may also make provision for or with respect to protecting and conserving vulnerable ecological communities.
- (1B) Despite subsection (1A), an environmental planning instrument must not contain any provision that requires a consent authority, before determining a development application relating to development that may affect a vulnerable ecological community:
- (a) to consult with the Director-General of National Parks and Wildlife or the Minister administering the *Threatened Species Conservation Act 1995* about the effect of the development on the vulnerable ecological community, or
 - (b) to obtain the concurrence of the Director-General of National Parks and Wildlife or the Minister administering the *Threatened Species Conservation Act 1995* in respect of the development because of its possible effect on the vulnerable ecological community.

[8]-[16] (Repealed)

2.2 Fisheries Management Act 1994 No 38

[1]-[4] (Repealed)

[5] Section 220ZZ Significant effect on threatened species, populations or ecological communities, or their habitats

Omit section 220ZZ (2). Insert instead:

- (2) For that purpose, the Director must take into account the following:
- (a) each of the factors listed in subsection (2A),
 - (b) any assessment guidelines issued and in force under section 220ZZA.
- (2A) The following factors must be taken into account in making a determination under this section:
- (a) in the case of a threatened species, whether the action proposed is likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction,
 - (b) in the case of an endangered population, whether the action proposed is likely to have an adverse effect on the life cycle of the species that constitutes the endangered population such that a viable local population of the species is likely to be placed at risk of extinction,

- (c) in the case of an endangered ecological community or critically endangered ecological community, whether the action proposed:
 - (i) is likely to have an adverse effect on the extent of the ecological community such that its local occurrence is likely to be placed at risk of extinction, or
 - (ii) is likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction,
- (d) in relation to the habitat of a threatened species, population or ecological community:
 - (i) the extent to which habitat is likely to be removed or modified as a result of the action proposed, and
 - (ii) whether an area of habitat is likely to become fragmented or isolated from other areas of habitat as a result of the proposed action, and
 - (iii) the importance of the habitat to be removed, modified, fragmented or isolated to the long-term survival of the species, population or ecological community in the locality,
- (e) whether the action proposed is likely to have an adverse effect on critical habitat (either directly or indirectly),
- (f) whether the action proposed is consistent with the objectives or actions of a recovery plan or threat abatement plan,
- (g) whether the action proposed constitutes or is part of a key threatening process or is likely to result in the operation of, or increase the impact of, a key threatening process.

[6] Section 220ZZA

Insert after section 220ZZ:

220ZZA Assessment guidelines

- (1) The Minister may, by order published in the Gazette, issue guidelines (***assessment guidelines***) relating to the determination of whether an action is likely to significantly affect threatened species, populations or ecological communities, or their habitats.
- (2) An order under this section (including any order that amends, revokes or replaces such an order) may be made only with the concurrence of the Minister for Planning.

[7] (Repealed)

2.3-2.5

(Repealed)