

# Threatened Species Conservation Act 1995 No 101

[1995-101]



New South Wales

## Status Information

### Currency of version

Historical version for 9 December 2011 to 29 December 2011 (accessed 25 May 2024 at 2:27)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**  
[Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2008 No 114](#), Sch 2.35 [1]-[3] (not commenced — Sch 2.35 [1] and [2] to commence on the commencement of Sch 3.1 [6] to the [Environmental Planning and Assessment Amendment Act 2008](#); Sch 2.35 [3] to commence on the commencement of sec 96D of the [Environmental Planning and Assessment Act 1979](#), as inserted by Sch 2.1 [36] to the [Environmental Planning and Assessment Amendment Act 2008](#))  
[Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2011 No 62](#) (not commenced — to commence on 6.1.2012)
- **See also**  
[Threatened Species Conservation Amendment \(Ecological Consultants Accreditation Scheme\) Bill 2011](#)  
[Non-government Bill: Ms Cate Faehrmann, MLC]

### Authorisation

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File last modified 9 December 2011

# Threatened Species Conservation Act 1995 No 101



New South Wales

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# Threatened Species Conservation Act 1995 No 101



New South Wales

An Act to conserve threatened species, populations and ecological communities of animals and plants; to amend the *National Parks and Wildlife Act 1974*, the *Environmental Planning and Assessment Act 1979* and certain other Acts; to repeal the *Endangered Fauna (Interim Protection) Act 1991*; and for other purposes.

## Part 1 Preliminary

### Introductory note—

This Part contains provisions that set out the objects of this Act and define terms used in this Act. The Part also contains machinery provisions.

### 1 Name of Act

This Act is the *Threatened Species Conservation Act 1995*.

### 2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided in this section.
- (2) Section 155 (2) commences on the date of assent to this Act.

### 3 Objects of Act

The objects of this Act are as follows:

- (a) to conserve biological diversity and promote ecologically sustainable development, and
- (b) to prevent the extinction and promote the recovery of threatened species, populations and ecological communities, and
- (c) to protect the critical habitat of those threatened species, populations and ecological communities that are endangered, and
- (d) to eliminate or manage certain processes that threaten the survival or evolutionary

development of threatened species, populations and ecological communities, and

- (e) to ensure that the impact of any action affecting threatened species, populations and ecological communities is properly assessed, and
- (f) to encourage the conservation of threatened species, populations and ecological communities by the adoption of measures involving co-operative management.

#### 4 Definitions

(1) In this Act:

**animal** means any animal-life that is indigenous to New South Wales or is known to periodically or occasionally migrate to New South Wales, whether vertebrate or invertebrate and in any stage of biological development, but does not include:

- (a) humans, or
- (b) fish within the meaning of Part 7A of the *Fisheries Management Act 1994*.

**Note—**

Some types of fish may be included in the definition of **animal**. See section 5A.

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

**biodiversity values** has the meaning given by section 4A.

**biological diversity** means the diversity of life and is made up of the following 3 components:

- (a) genetic diversity—the variety of genes (or units of heredity) in any population,
- (b) species diversity—the variety of species,
- (c) ecosystem diversity—the variety of communities or ecosystems.

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

**consent authority** has the same meaning as in the Planning Act.

**council** has the same meaning as in the *Local Government Act 1993*.

**critical habitat** means habitat declared to be critical habitat under Part 3.

**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.

**Department** means the Department of Environment, Climate Change and Water.

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

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

**ecologically sustainable development** has the same meaning as under section 6 (2) of the [Protection of the Environment Administration Act 1991](#).

**endangered ecological community** means an ecological community specified in Part 3 of Schedule 1.

**endangered population** means a population specified in Part 2 of Schedule 1.

**endangered species** means a species specified in Part 1 of Schedule 1.

**endangered species, populations and ecological communities** means species, populations and ecological communities specified in Schedule 1 and **endangered species, population or ecological community** means a species, population or ecological community respectively specified in that Schedule.

**environmental planning instrument** or **EPI** means an environmental planning instrument under the Planning Act.

**exercise** a function includes perform a duty.

**Fisheries Scientific Committee** means the Fisheries Scientific Committee constituted under Part 7A of the [Fisheries Management Act 1994](#).

**function** includes a power, authority or duty.

**habitat** means an area or areas occupied, or periodically or occasionally occupied, by a species, population or ecological community and includes any biotic or abiotic component.

**harm** has the same meaning as in the [National Parks and Wildlife Act 1974](#).

**joint management agreement** means an agreement entered into under Division 2 of Part 7.

**key threatening process** means a threatening process specified in Schedule 3.

**land** includes:

- (a) buildings and other structures permanently fixed to land, and
- (b) land covered with water, and
- (c) the sea or an arm of the sea, and
- (d) a bay, inlet, lagoon, lake or body of water, whether inland or not and whether tidal or not, and
- (e) a river, stream or watercourse, whether tidal or not.

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

**list** means a list set out in Schedule 1, 1A, 2 or 3 and includes a list in one or more of those Schedules that does not contain any entries.

**NPW Act** means the [National Parks and Wildlife Act 1974](#).

**NRC** means the Natural Resources Commission established under the [Natural Resources Commission Act 2003](#).

**owner**, in relation to land, includes:

- (a) every person who, either at law or in equity:
  - (i) is entitled to the land for any estate of freehold in possession, or
  - (ii) is a person to whom the Crown has lawfully contracted to sell the land under the [Crown Lands Act 1989](#) or any other Act relating to the alienation of lands of the Crown, or
  - (iii) is entitled to receive, or is in receipt of, or if the land were let to a tenant would be entitled to receive, the rents and profits in respect of the land, whether as beneficial owner, trustee, mortgagee in possession or otherwise, and
- (b) a person who leases land under the [Crown Lands Act 1989](#), the [Crown Lands \(Continued Tenures\) Act 1989](#) or the [Western Lands Act 1901](#)), and
- (c) any other person who, under the regulations, is taken to be the owner of land.

**pick** has the same meaning as in the [National Parks and Wildlife Act 1974](#).

**Planning Act** means the [Environmental Planning and Assessment Act 1979](#).

**plant** means any plant-life that is indigenous to New South Wales, whether vascular or non-vascular and in any stage of biological development, and includes fungi and

lichens, but does not include marine vegetation within the meaning of Part 7A of the [Fisheries Management Act 1994](#).

**Note—**

Some types of marine vegetation may be included in the definition of **plant**. See Section 5A.

**population** means a group of organisms, all of the same species, occupying a particular area.

**Priorities Action Statement** means a Threatened Species Priorities Action Statement under Part 5A.

**public authority** means any public or local authority constituted by or under an Act, a government department, a statutory body representing the Crown, or a State owned corporation, and includes a person exercising any function on behalf of the authority, department, body or corporation and any person prescribed by the regulations to be a public authority.

**recovery plan** means a plan prepared and approved under Part 4.

**region** means, for the purposes of the provision in which it is used, a bioregion defined in a national system of bioregionalisation that is determined (by the Director-General under subsection (4)) to be appropriate for those purposes. If the bioregion occurs partly within and partly outside New South Wales, the region consists only of so much of the bioregion as occurs within New South Wales.

**Scientific Committee** means the Scientific Committee constituted under Part 8.

**SEAC** means the Social and Economic Advisory Council established under Part 9A.

**species** of animal or plant includes any defined sub-species and taxon below a sub-species and any recognisable variant of a sub-species or taxon.

**species impact statement** means a statement referred to in Division 2 of Part 6 and includes an environmental impact statement, prepared under the Planning Act, that contains a species impact statement.

**species presumed extinct** means a species specified in Part 4 of Schedule 1.

**Strategy** means the Biological Diversity Strategy referred to in section 140.

**threat abatement plan** means a plan prepared and approved under Part 5.

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

**threatened species** means a species specified in Part 1 or 4 of Schedule 1, Part 1 of Schedule 1A or Part 1 of Schedule 2.

**threatened species, populations and ecological communities** means species, populations and ecological communities specified in Schedules 1, 1A and 2 and **threatened species, population or ecological community** means a species, population or ecological community specified in any of those Schedules.

**Note—**

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

**threatening process** means a process that threatens, or may have the capability to threaten, the survival or evolutionary development of species, populations or ecological communities.

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

**vulnerable species** means a species specified in Part 1 of Schedule 2.

- (2) A reference in this Act to animal-life or plant-life indigenous to New South Wales is a reference to animal-life or plant-life of a species that was established in New South Wales before European settlement.
- (3) A reference in this Act to New South Wales includes a reference to the coastal waters of the State.

**Note—**

**Coastal waters of the State** is defined in section 58 of the [Interpretation Act 1987](#).

- (4) For the purposes of the definition of **region** in subsection (1), a determination of bioregions is to be made by the Director-General by order published in the Gazette. The Director-General is to consult the Director of NSW Fisheries before making any such order and is to obtain the concurrence of that Director with respect to areas occupied by fish or marine vegetation.
- (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.

#### **4A Biodiversity values—meaning**

- (1) For the purposes of this Act, **biodiversity values** includes the composition, structure

and function of ecosystems, and includes (but is not limited to) threatened species, populations and ecological communities, and their habitats.

- (2) However, a reference in this Act to biodiversity values does not extend to biodiversity values as they relate to fish, or marine vegetation, within the meaning of Part 7A of the *Fisheries Management Act 1994*, other than those that are considered to be animals or plants because of an order made under section 5A of this Act.

## 5 Notes in text

Introductory notes to Parts and other notes do not form part of this Act.

### 5A Relationship between this Act and Part 7A of the *Fisheries Management Act 1994*

- (1) The Minister may, by order made with the concurrence of the Minister administering the *Fisheries Management Act 1994*:
- (a) declare a species of fish to be a species of animal for the purposes of this Act if it is an invertebrate and it is a species that may inhabit a terrestrial environment at some stage of its biological development, or
  - (b) declare a species of marine vegetation to be a species of plant for the purposes of this Act if it is a species that may inhabit freshwater or a terrestrial environment at some stage of its biological development.
- (2) Any species of fish or marine vegetation that is the subject of an order in force under this section is taken to be a species of an animal or plant for the purposes of this Act, in accordance with the terms of the order.
- (3) The Minister and the Minister administering the *Fisheries Management Act 1994* may at any time consult with each other for the purpose of determining whether an order under this section should be made and the terms of the order.
- (4) The Ministers may also consult with the Chairperson of the Scientific Committee, the Chairperson of the Fisheries Scientific Committee and any other person or body before making an order under this section.
- (5) If the Ministers are unable to resolve any dispute between them as to the making or the terms of an order under this section, the matter is to be referred to the Premier for resolution. The decision of the Premier in relation to the matter is to be given effect to by the Ministers.
- (6) An order under this section is to be published in the Gazette.
- (7) For avoidance of doubt, an order under this section does not require the species concerned to be listed under Part 2 of this Act.
- (8) In this section:

**fish** means any fish (within the meaning of the [Fisheries Management Act 1994](#)) that is indigenous to New South Wales.

**freshwater** has the same meaning as in the [Fisheries Management Act 1994](#).

**marine vegetation** means any marine vegetation (within the meaning of the [Fisheries Management Act 1994](#)) that is indigenous to New South Wales.

## **Part 2 Listing of threatened species, populations and ecological communities and key threatening processes**

### **Introductory note—**

This Part provides for the identification, and classification, of the species, populations and ecological communities with which this Act is concerned. It also provides for the identification of key threatening processes that are most likely to jeopardise the survival of those species, populations and ecological communities. To this end, this Part provides for the listing:

- in Schedule 1, of endangered species, endangered populations and ecological communities and species that are presumed to be extinct, and
- in Schedule 1A, of critically endangered species and ecological communities, and
- in Schedule 2, of vulnerable species and vulnerable ecological communities, and
- in Schedule 3, of key threatening processes.

The initial lists of threatened species, that is, species that are endangered, presumed extinct or vulnerable are contained in this Act on its commencement. Responsibility for inserting lists of critically endangered species, endangered populations, endangered and critically endangered ecological communities and threatening processes, and for adding items to, omitting items from or amending items in the lists of threatened species, populations and ecological communities and threatening processes rests with the Scientific Committee.

Division 1 makes provision with respect to Schedules 1–3 that are to contain lists of the species, populations and ecological communities and key threatening processes with which this Act is concerned.

Division 2 deals with eligibility for listing.

Division 3 describes the process by which the items may be added to or omitted from lists and by which items in lists may be amended, and makes provision for public participation in that process.

Division 4 describes the process by which species that are endangered or critically endangered may be listed provisionally in Schedule 1 or 1A, on an emergency basis, before the formal listing process described in Division 3 has been undertaken or completed, and makes provision for public participation in that process.

Division 5 describes the process by which certain minor amendments may be made to Schedules 1–3.

Offences relating to the harming of threatened species, populations and ecological communities (being animals) and the picking of threatened species, populations and ecological communities (being plants) are contained in the [National Parks and Wildlife Act 1974](#).

## **Division 1 Lists of threatened species, populations and ecological communities and key threatening processes**

### **6 Lists of endangered and critically endangered species, populations and ecological**



### **communities**

- (1) Part 1 of Schedule 1 contains a list of endangered species for the purposes of this Act.
- (2) Part 2 of Schedule 1 contains a list of endangered populations for the purposes of this Act.
- (3) Part 3 of Schedule 1 contains a list of endangered ecological communities for the purposes of this Act.
- (4) Part 4 of Schedule 1 contains a list of species presumed extinct for the purposes of this Act.
- (4A) Part 1 of Schedule 1A contains a list of critically endangered species for the purposes of this Act.
- (4B) Part 2 of Schedule 1A contains a list of critically endangered ecological communities for the purposes of this Act.
- (5) Any endangered or critically endangered species or species presumed extinct 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 the species is considered to be a threatened species nationally.
- (6) Any endangered or critically endangered 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.

### **7 Schedule 2 list of vulnerable species and ecological communities**

- (1) Part 1 of Schedule 2 contains a list of vulnerable species for the purposes of this Act.
- (2) Part 2 of Schedule 2 contains a list of vulnerable ecological communities for the purposes of this Act.
- (3) 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.
- (4) 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.

### **8 Schedule 3 list of key threatening processes**

Schedule 3 contains a list of key threatening processes for the purposes of this Act.

## 9 Listing of nationally threatened species and ecological communities

- (1) 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 a listed threatened ecological community under the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth, the Scientific Committee is to consider whether, in accordance with Divisions 2 and 3, the species or ecological community should be listed as a threatened species or threatened ecological community in Schedule 1, 1A or 2 to this Act.
- (2) Any species or ecological community that is inserted in a Schedule pursuant to this section is to be marked with an asterisk to show its national status.
- (3) If a threatened species or threatened ecological community ceases to be a listed threatened species or a listed threatened ecological community under the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth:
  - (a) the Minister is, by order published in the Gazette, to amend Schedule 1, 1A or 2 to this Act to omit the asterisk showing its national status, and
  - (b) the Scientific Committee is to consider, in accordance with Division 3, whether the species or ecological community should be omitted from Schedule 1, 1A or 2 to this Act.
- (4) If a threatened species or threatened ecological community becomes a listed threatened species or a listed threatened ecological community under the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth subsequent to its being listed in Schedule 1, 1A or 2 to this Act, the Minister is, by order published in the Gazette, to amend Schedule 1, 1A or 2 to this Act to insert an asterisk showing its national status.

## Division 2 Eligibility for listing

### 10 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 Scientific Committee, it has not been recorded in its known or expected habitat in New South Wales, despite targeted surveys, over a time frame appropriate, in the opinion of the Scientific Committee, to its life cycle and form.
- (2) A species is eligible to be listed as a ***critically endangered species*** if, in the opinion of the Scientific Committee, it is facing an extremely high risk of extinction in New South Wales in the immediate future, as determined in accordance with criteria prescribed by the regulations.
- (3) A species is eligible to be listed as an ***endangered species*** if, in the opinion of the

Scientific Committee:

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

### 11 Listing of populations

- (1) A population is eligible to be listed as an **endangered population** 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.
- (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.

### 12 Listing of ecological communities

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

### **13 Threatening processes eligible for listing as key threatening processes**

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

### **14 Regulations prescribing criteria under this Part**

A regulation that prescribes criteria for the purposes of section 10, 11, 12 or 13 is not to be made unless the Minister certifies in writing that:

- (a) the criteria are based on scientific principles only, and
- (b) any criteria for listing under the [Environment Protection and Biodiversity Conservation Act 1999](#) of the Commonwealth were given due consideration before the regulation was made.

### **15 (Repealed)**

## **Division 3 Procedure for listing**

### **16 Operation of Division**

- (1) This Division sets out the procedure to be adopted for the purposes of inserting matter in, omitting matter from or amending matter in Schedule 1, 1A, 2 or 3.
- (2) The procedure set out in this Division does not apply to the provisional listing of endangered or critically endangered species, populations or ecological communities, on an emergency basis, by the Scientific Committee under Division 4.
- (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.

### **17 Scientific Committee responsible for lists**

- (1) The Scientific Committee is responsible for determining whether any species, population, ecological community or threatening process should be inserted in or omitted from Schedule 1, 1A, 2 or 3 or whether any matter in those Schedules should be amended.

- (2) (Repealed)

**18 Who may initiate action for listing**

- (1) The Scientific Committee may make a determination for the purposes of this Division on its own initiative.
- (2) The Scientific Committee may also make a determination:
  - (a) following a request by the Minister or the NRC, or
  - (b) on a nomination, made in accordance with this Division, of any other person.

**19 Making nomination for inclusion on, omission from or amendment of list**

- (1) Any person may nominate any species, population or ecological community for insertion in or omission from Schedule 1, 1A or 2.
- (2) Any person may nominate any matter in Schedule 1, 1A or 2 for amendment.
- (3) Any person may nominate any threatening process for insertion in or omission from Schedule 3.
- (4) Any person may nominate any matter in Schedule 3 for amendment.
- (5) A nomination must:
  - (a) be made in writing addressed to the Chairperson of the Scientific Committee, and
  - (b) include any information prescribed by the regulations, and
  - (c) be made in accordance with any guidelines for the making of nominations published from time to time by the Director-General and the Scientific Committee.
- (6) The Scientific Committee is to give notice of a nomination to the Minister and the NRC within 14 days after the nomination is tabled at a meeting of the Committee.

**19A Referral of nomination to Fisheries Scientific Committee**

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

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

**Note—**

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

## **20 Scientific Committee may request additional information**

The Scientific Committee may request a person who makes a nomination to provide additional information about the subject matter of the nomination within a specified period.

## **21 Consideration of nomination by Scientific Committee**

- (1) The Scientific Committee is to determine priorities for its consideration of nominations every 12 months and in determining those priorities is to have regard to:
- (a) the degree of threat, immediacy of threat, taxonomic distinctiveness and such other matters as the Scientific Committee considers relevant, and
  - (b) any advice or recommendations of the Minister or the NRC concerning those priorities.
- (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.
- (2) The Scientific Committee may consider different nominations about the same subject together.
- (3) The Scientific Committee may reject a nomination if:

- (a) the subject of the nomination has already been dealt with, or
  - (b) the nomination is vexatious, or
  - (c) the nomination is not accompanied by the information prescribed by the regulations, or
  - (d) any additional information requested by the Scientific Committee is not provided within the period specified for its provision, or
  - (e) any additional information provided is inadequate and does not satisfy the Scientific Committee's request.
- (4) If the Scientific Committee rejects a nomination, it is to notify the Minister, the NRC, the Director-General and the person who made the nomination and is to give reasons for the rejection.
- (5) A person must not deliberately and wilfully make a vexatious nomination of any species, population or ecological community for insertion in or omission from Schedule 1, 1A or 2.

Maximum penalty: 20 penalty units.

## **22 Scientific Committee's preliminary determination**

- (1) The Scientific Committee, after considering a proposal raised on its own initiative or in response to a request from the Minister or a nomination by another person, must make a preliminary determination as to whether the proposal should be supported or not supported.
- (2) As soon as possible after making a preliminary determination, the Scientific Committee must:
- (a) in a case involving a nomination, notify the person who made the nomination, the Minister and the Director-General, and
  - (b) in a case of a proposal raised on its own initiative or in response to a request from the Minister, notify the Minister and the Director-General, and
  - (c) publish notice of its preliminary 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
  - (d) publish notice of the making of the preliminary determination in the Gazette.
- (3) The notice must:
- (a) state that the preliminary determination has been prepared, and

- (b) specify the manner in which members of the public may obtain a copy of the determination and the reasons for it, and
  - (c) invite persons to make written submissions to the Scientific Committee about the determination, and
  - (d) specify the address of the place to which submissions about the determination may be forwarded and the date by which submissions must be made.
- (4) The notice must specify the date by which and the address of the place to which any person may forward written submissions to the Scientific Committee about a preliminary determination.
  - (5) The Scientific Committee must consider all written submissions received by it on or before the date specified in the notice, being a date occurring not less than 30 days and not more than 150 days after the date on which the notice was first published under this section.
  - (6) Copies of a preliminary determination and the reasons for it are to be made available to members of the public (free of charge) as follows:
    - (a) by publication on the internet site of the National Parks and Wildlife Service,
    - (b) in response to a request made by contacting an office of the National Parks and Wildlife Service in a manner specified in the notice of the determination,
    - (c) in response to a request made in person at an office of the National Parks and Wildlife Service at an address specified in the notice of the determination.
  - (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.

### **23 Scientific Committee's final determination**

- (1) The Scientific Committee must either accept or reject a proposal for inclusion, or amendment, of matter in or omission of matter from Schedule 1, 1A, 2 or 3 and must give reasons for its decision.
- (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.
- (2) In a case involving a nomination, the Scientific Committee must make a final determination within 6 months after the closing date for making submissions to the Scientific Committee about its preliminary determination on the matter (as specified in the notice under section 22).



- (3) Before making a final determination the Scientific Committee must give the Minister notice in writing of the proposed final determination and the reasons for it. 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.
- (4) The Scientific Committee is not to proceed to make the proposed final determination unless:
  - (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
  - (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
  - (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.
- (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.
- (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.

### **23A Minister's response to proposed final determination**

- (1) Within 2 months after receiving notice from the Scientific Committee of a proposed final determination, the Minister may:
  - (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
  - (b) refer the proposed final determination back to the Scientific Committee for further consideration.
- (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 nomination that the matter has been referred back to the Scientific Committee and of the Minister's reasons for doing so.
- (3) If a proposed final determination is referred back to the Scientific Committee for

further consideration:

- (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
  - (b) the Scientific Committee is to make that decision within 3 months, and
  - (c) the Minister cannot refer the matter back to the 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.

#### **24 Publication of final determination**

- (1) On making a final determination, the Scientific Committee must, as soon as practicable:
- (a) in a case involving a nomination, notify the person who made the nomination of the determination, and
  - (b) notify the Minister, the NRC and the Director-General of the determination, and
  - (c) 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
  - (d) 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.
- (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.
- (3) 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:
- (a) by publication on the internet site of the Department,
  - (b) in response to a request made by contacting an office of the National Parks and Wildlife Service in a manner specified in the notice of the determination,
  - (c) in response to a request made in person at an office of the National Parks and Wildlife Service at an address specified in the notice of the determination.

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

## **25 Revision of Schedule on publication of final determination**

On the publication of a final determination in the Gazette that:

- (a) a species, population, ecological community or threatening process be inserted in Schedule 1, 1A, 2 or 3—the relevant Schedule is amended by inserting the species, population, ecological community or threatening process, or
- (b) a species, population, ecological community or threatening process be omitted from Schedule 1, 1A, 2 or 3—the relevant Schedule is amended by omitting the species, population, ecological community or threatening process, or
- (c) a species, population, ecological community or threatening process listed in Schedule 1, 1A, 2 or 3 be amended—the relevant Schedule is amended by omitting the species, population, ecological community or threatening process that is set out in the Schedule and by inserting instead a description of the species, population, ecological community or threatening process in the manner required by the determination.

## **25A Lists to be kept under review**

- (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.
- (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.
- (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.

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

### **26 Operation of Division**

This Division sets out the procedure to be adopted for the purposes of enabling matter to be provisionally listed in Schedule 1 or 1A on an emergency basis.

**Note—**

Only species that are likely to be endangered or critically endangered may be provisionally listed.

## **27 Scientific Committee responsible for provisional listing**

The Scientific Committee is responsible for determining whether any species should be provisionally listed in Schedule 1 or 1A as an endangered or critically endangered species on an emergency basis.

## **28 Eligibility for provisional listing**

A species is eligible to be provisionally listed in Schedule 1 or 1A as an endangered or critically endangered species if, in the opinion of the Scientific Committee:

- (a) the species:
  - (i) although not previously known to have existed in New South Wales, is believed on current knowledge to be indigenous to New South Wales, or
  - (ii) was presumed to be extinct in New South Wales but has been rediscovered, and
- (b) the species is not listed in Part 1 of Schedule 1 or 1A.

## **29 Who may initiate action for provisional listing**

- (1) The Scientific Committee may make a determination for the purposes of this Division on its own initiative.
- (2) The Scientific Committee may also make a determination:
  - (a) following a request by the Minister, or
  - (b) on a nomination, made in accordance with this Division, of any other person.

## **30 Making nomination for provisional listing**

- (1) Any person may nominate any species for provisional listing in Schedule 1 or 1A.
- (2) A nomination must be in writing addressed to the Chairperson of the Scientific Committee and must include any information prescribed by the regulations.

## **31 Scientific Committee may request additional information**

The Scientific Committee may request a person who makes a nomination for provisional listing to provide additional information about the subject matter of the nomination within a specified period.

## **32 Consideration of nomination for provisional listing by Scientific Committee**

- (1) The Scientific Committee is to consider each nomination as soon as practicable after it is made or, if additional information has been requested, after that information has been provided or the period specified for its provision has expired.
- (2) In any event, the Scientific Committee must make a determination about a

nomination within 6 months after it is made or, if additional information has been requested, after that information has been provided or the period specified for its provision has expired.

- (3) The Scientific Committee may consider different nominations about the same subject together.
- (4) The Scientific Committee may reject a nomination if:
  - (a) the subject of the nomination has already been dealt with, or
  - (b) the nomination is vexatious, or
  - (c) the nomination is not accompanied by the information prescribed by the regulations, or
  - (d) any additional information requested by the Scientific Committee is not provided within the period specified for its provision, or
  - (e) any additional information provided is inadequate and does not satisfy the Scientific Committee's request.
- (5) If the Scientific Committee rejects a nomination, it is to notify the Minister, the Director-General and the person who made the nomination and is to give reasons for the rejection.

### **33 Publication of determination for provisional listing**

- (1) On making a determination for provisional listing, the Scientific Committee must, as soon as practicable:
  - (a) in a case involving a nomination, notify the person who made the nomination of the determination, and
  - (b) notify the Minister and the Director-General of the determination, and
  - (c) 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
  - (d) 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) Copies of the determination and the reasons for it are to be made available to members of the public (free of charge) as follows:

- (a) by publication on the internet site of the National Parks and Wildlife Service,
- (b) in response to a request made by contacting an office of the National Parks and Wildlife Service in a manner specified in the notice of the determination,
- (c) in response to a request made in person at an office of the National Parks and Wildlife Service at an address specified in the notice of the determination.

#### **34 Effect of publication of determination for provisional listing**

On the publication of the determination that a species be provisionally listed in Schedule 1 or 1A, Schedule 1 or 1A is taken for all purposes to have been amended by the insertion of the description of the species that is the subject of the determination until such time as the provisional listing ceases to have effect in accordance with this Division.

#### **35 Scientific Committee to review status of provisionally listed species**

- (1) As soon as practicable after the publication of a determination under this Division, the Scientific Committee must review the status of a provisionally listed species to determine whether or not the species should be listed as a threatened species.
- (2) The requirements of sections 22–25 apply to the review of a provisional listing.

#### **36 Termination of provisional listing**

The provisional listing of a species in Schedule 1 or 1A ceases to have effect:

- (a) if the Scientific Committee makes a final determination in accordance with Division 3 that the species should be listed in Schedule 1, 1A or 2—when that determination is published in the Gazette, or
  - (b) if the Scientific Committee makes a final determination in accordance with Division 3 that the species should not be listed in Schedule 1, 1A or 2—when the Scientific Committee publishes a notice to that effect in the Gazette, or
  - (c) within 12 months after the provisional listing,
- whichever first occurs.

### **Division 5 Minor changes to listings**

#### **36A Minor amendments to Schedules**

- (1) The Scientific Committee may determine to amend the description of any species, population, ecological community or threatening process in Schedule 1, 1A, 2 or 3, or to omit the description of any species or population from, or insert a description of any species or population into, Schedule 1, 1A, 2 or 3, without following the procedure set out in Division 3 or 4, if, in the opinion of the Scientific Committee, the amendment, omission or insertion is necessary or desirable for any of the following purposes:

- (a) to reflect any change in the name of a species described in Schedule 1, 1A, 2 or 3, or a reclassification of any such species into further species, as a result of taxonomic revision,
  - (b) to correct any minor error or omission,
  - (c) to clarify a description of an ecological community (including to reflect new surveys or research information).
- (2) A determination under this Division must not alter the listing status of a particular species or ecological community by:
- (a) moving the description of the species or ecological community from one Schedule to the Act to another Schedule, or
  - (b) moving the description of a species from Part 1 of Schedule 1 or 1A to Part 4 of Schedule 1 (or vice versa).
- (3) A determination under this Division must not alter the particular area of any ecological community.
- (4) The procedures for inserting matters in Schedule 1, 1A, 2 or 3 set out in Divisions 3 and 4 do not apply to a determination made under this Division.

### **36B Publication of determination**

- (1) On making a determination under this Division, the Scientific Committee must, as soon as practicable:
- (a) notify the Minister and the Director-General of the determination, and
  - (b), (c) (Repealed)
  - (d) 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) Copies of the determination and the reasons for it are to be made available to members of the public (free of charge) as follows:
- (a) by publication on the internet site of the National Parks and Wildlife Service,
  - (b) in response to a request made by contacting an office of the National Parks and Wildlife Service in a manner specified in the notice of the determination,
  - (c) in response to a request made in person at an office of the National Parks and Wildlife Service at an address specified in the notice of the determination.
- (4) (Repealed)

### **36C Revision of Schedule on publication of determination**

On the publication of a determination in the Gazette that the description of a species, population, ecological community or threatening process listed in Schedule 1, 1A, 2 or 3 be amended or that a description of a species or population be omitted from or inserted into Schedule 1, 1A, 2 or 3 under this Division, the relevant Schedule is amended:

- (a) in the case of the amendment of a description—by omitting the description from the Schedule concerned and by inserting instead a description in the manner required by the determination, and
- (b) in the case of the omission or insertion of a description—by omitting the description from, or inserting the description into, the Schedule concerned.

## **Part 3 Critical habitat of endangered species, populations and ecological communities and critically endangered species and ecological communities**

### **Introductory note—**

This Part makes the Director-General responsible for identifying (where this is possible) habitat that is critical to the survival of endangered species, populations and ecological communities, or critically endangered species and ecological communities (that is, those species, populations and ecological communities listed for the time being in Schedule 1 or 1A) and for recommending to the Minister that the habitat so identified be declared critical habitat. The Director-General must consult with the Scientific Committee before preparing a recommendation and must have regard to any advice given by the Scientific Committee concerning identification of critical habitat.

Division 1 describes the process by which critical habitat is identified by the Director-General and declared by the Minister and makes provision for public participation in that process.

Division 2 deals with the preparation, publication and other dissemination of maps of critical habitat, and the maintenance of a register of critical habitat by the Director-General.

An offence relating to the damaging of critical habitat is contained in the [National Parks and Wildlife Act 1974](#). That Act also makes it an offence for a person to damage the habitat of a threatened species, population or ecological community.

## **Division 1 Identification and declaration of critical habitat**

### **37 Habitat eligible to be declared to be critical habitat**

- (1) The whole or any part or parts of the area or areas of land comprising the habitat of an endangered species, population or ecological community or critically endangered species or ecological community that is critical to the survival of the species, population or ecological community is eligible to be declared under this Part to be the critical habitat of the species, population or ecological community.
- (2) The regulations may provide that a specified habitat, or habitat of a specified kind, may, or may not, be declared to be critical habitat for the purposes of this Part.

### **38 Director-General responsible for identifying critical habitat**

The Director-General is responsible for identifying (where this is possible) the area or



areas of land comprising the critical habitat of each endangered species, population and ecological community or critically endangered species or ecological community.

### **39 Director-General to consult with Scientific Committee**

The Director-General must:

- (a) consult with the Scientific Committee before preparing a recommendation for the identification of an area or areas of land comprising critical habitat for the purposes of this Act, and
- (b) have regard to its advice in preparing any recommendation for that purpose.

### **40 Preparation of recommendation for identification of critical habitat**

- (1) After considering the Scientific Committee's advice, the Director-General must, if the Director-General considers that it is possible to identify the critical habitat of an endangered species, population or ecological community or critically endangered species or ecological community, prepare a recommendation for identification of the area or areas of land comprising the critical habitat of that species, population or ecological community.
- (2) In so doing, the Director-General must consider the likely social and economic consequences of the making of the recommendation in the manner proposed.

### **41 Publication of recommendation**

- (1) After preparing a recommendation for identification of the area or areas of land comprising the critical habitat of an endangered species, population or ecological community or critically endangered species or ecological community, the Director-General must:
  - (a) give a copy of it to the Scientific Committee, and
  - (b) give notice of the recommendation to all persons known by the Director-General, following the making of reasonable searches and inquiries, to be affected by the recommendation, being:
    - (i) landholders (including public authorities who are landholders), and
    - (ii) other public authorities known to the Director-General to exercise relevant functions in relation to the land, and
    - (iii) if the land is subject to a mortgage, charge or positive covenant—the mortgagee, chargee or person entitled to the benefit of the covenant, and
    - (iv) holders of leases and other interests granted by the Crown, and
  - (c) publish notice of the recommendation in a newspaper circulating generally

throughout the State and, if the recommendation 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

(d) publish notice of the recommendation in the Gazette.

(2) The notice must:

(a) state that the recommendation has been prepared, and

(b) specify the address of the place at which copies of the recommendation may be inspected, and

(c) invite persons to make written submissions to the Director-General about the recommendation, and

(d) specify the address of the place to which submissions about the recommendation may be forwarded and the date by which submissions must be made.

#### **42 Consideration of submissions by Director-General**

(1) The Director-General must consider all written submissions received by the Director-General on or before the date specified in the notice.

(2) The Director-General may amend the recommendation to take account of any of those submissions or any advice given by the Scientific Committee.

#### **43 Director-General to refer recommendation to Minister**

After considering the submissions and making amendments (if any) to the recommendation, the Director-General:

(a) must forward the recommendation, identifying the area or areas of land comprising the critical habitat of the endangered species, population or ecological community or critically endangered species or ecological community concerned, to the Minister, and

(b) must also provide the Minister with a summary of any advice given by the Scientific Committee concerning the matter and of all submissions received about the recommendation, and details of any amendments made to the recommendation by the Director-General to take account of that advice or those submissions.

#### **44 Consideration of recommendation by Minister**

(1) On receiving a recommendation from the Director-General, the Minister must consider the recommendation and have regard to the following:

(a) the likely social and economic consequences of a declaration of critical habitat in the manner indicated in the recommendation,

(b) without limiting paragraph (a), the likely consequences of a declaration of critical

habitat in the manner indicated in the recommendation for landholders of, or other persons having an interest in, or on lawful uses of, the land,

- (c) the advice of the Scientific Committee concerning the matter,
- (d) any submissions made about the recommendation and, in particular, any submissions received from public authorities exercising relevant functions in relation to the land.

- (2) In so doing, the Minister must also consider whether, consistent with the principles of ecologically sustainable development, the recommendation might be amended to avoid or lessen any adverse consequences of the making of a declaration of critical habitat.

#### **45 Consultation between Ministers**

If a submission from a public authority indicates that a recommendation is likely to affect the exercise of functions by the public authority, the Minister is to consult with the responsible Minister for the public authority concerning the recommendation before making a decision about the recommendation.

#### **46 Minister may return recommendation to Director-General for amendment**

- (1) If the Minister thinks that a recommendation should be amended in some respect, the Minister may request the Director-General to amend the recommendation.
- (2) On receiving such a request, the Director-General must:
  - (a) amend the recommendation in the manner requested by the Minister, and
  - (b) return the recommendation, as so amended, to the Minister.

#### **47 Declaration of critical habitat by Minister**

- (1) The Minister may:
  - (a) approve a recommendation, without amendment or with any amendments that the Minister considers appropriate, or
  - (b) refuse a recommendation (on the basis of one or more of the factors referred to in section 44 (1) or otherwise), or
  - (c) refer it back to the Director-General for further consideration.
- (2) Despite the other provisions of this Division, the Minister must approve or refuse a recommendation within 6 months after the date specified in the notice referred to in section 41 (2) as the date by which submissions about the recommendation must be made.

- (3) If the Minister approves of a recommendation, with or without amendments, the Minister may, by notification published in the Gazette, declare the area or areas of land identified in the recommendation (with any appropriate amendment) and described in the notification to be the critical habitat of the endangered species, population or ecological community or critically endangered species or ecological community concerned.
- (4) Section 53 (2) applies to the publication of a map of the critical habitat.

#### **48 Publication of declaration of critical habitat**

As soon as practicable after the declaration of critical habitat by the Minister, the Director-General must:

- (a) give notice of the declaration to all persons known by the Director-General, following the making of reasonable searches and inquiries, to be affected by the declaration, being:
  - (i) landholders (including public authorities who are landholders), and
  - (ii) other public authorities known by the Director-General to exercise relevant functions in relation to the land, in particular, the Valuer-General, and
  - (iii) if the land is subject to a mortgage, charge or positive covenant—the mortgagee, chargee or person entitled to the benefit of the covenant, and
- (b) publish notice of the declaration in a newspaper circulating generally throughout the State and, if the declaration 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
- (c) publish notice of the declaration in the Gazette.

#### **49 Amendment or revocation of declaration of critical habitat**

- (1) The Minister may amend or revoke a declaration of critical habitat by a further notification published in the Gazette. However, the Minister must not amend or revoke a declaration unless the Minister has obtained from, and considered, the advice of the Director-General.
- (2) Before providing advice about a proposed amendment or revocation, the Director-General must:
  - (a) consult the Scientific Committee concerning the proposed amendment or revocation and have regard to its advice, and
  - (b) give and publish notice of the proposed amendment or revocation as if it were a recommendation referred to in section 41, and consider all written submissions concerning the proposed amendment or revocation that are received on or before

the date specified in the notice.

- (3) If a declaration is amended or revoked by the Minister, the Director-General must:
- (a) give notice of the amendment or revocation to:
    - (i) those persons who were given notice of the making of the declaration and who retain the requisite interest in the land, and
    - (ii) any other person known by the Director-General, following the making of reasonable searches and inquiries, to have become a landholder, public authority exercising relevant functions in relation to the land, mortgagee, chargee or person entitled to the benefit of a positive covenant in the land after notice of the making of the declaration was given, and
  - (b) publish notice of the amendment or revocation in the Gazette.
- (4) A notice under subsection (3) must give the reasons for the amendment or revocation of the declaration.

#### **50 Public authorities to have regard to critical habitat**

A public authority must, on and after publication of a declaration of critical habitat, have regard to the existence of critical habitat:

- (a) in relation to use of land that it owns or controls that is within or contains critical habitat, or
- (b) in exercising its functions in relation to land that is within or contains critical habitat.

#### **51 Regulations may prohibit certain actions on critical habitat**

The regulations may prohibit or regulate, for the purposes of this Act, the carrying out of specified actions, or actions of a specified class or description, on specified critical habitat.

#### **52 Effect of failure to comply with procedural requirements**

A declaration of critical habitat is not open to challenge because of a failure to comply with the procedural requirements of this Division after the declaration has been published in the Gazette.

### **Division 2 Maps and register of critical habitat**

#### **53 Map of critical habitat to be prepared and published**

- (1) Before the publication of a declaration, or an amendment of a declaration, of critical habitat, the Director-General must arrange for the preparation of a map that shows the location of the critical habitat proposed to be declared or amended.
- (2) A copy of the map is to be published in the Gazette on the publication of the

declaration of the critical habitat.

#### **54 Maps of critical habitat to be served**

The Director-General must serve a copy of a map of critical habitat on the following:

- (a) the Director-General of the Department of Land and Water Conservation,
- (b) the Director of Planning,
- (c) each council within whose area the whole or part of the critical habitat is located,
- (d) landholders of land on which critical habitat is located (including public authorities who are landholders),
- (e) holders of leases and other interests granted by the Crown,
- (f) other public authorities known by the Director-General to exercise relevant functions in relation to the land.

#### **55 Director-General to keep register of critical habitat**

- (1) The Director-General must keep a register containing copies of declarations of critical habitat as in force from time to time, and maps of the critical habitat that are published in the Gazette, and must make that register available to public authorities.
- (2) The register is to be open for public inspection, without charge, during ordinary business hours, and copies of or extracts from the register are to be made available to the public on request, on payment of the fee fixed by the Director-General.

## **Part 4 Recovery plans for threatened species, populations and ecological communities**

### **Introductory note—**

This Part is the first of 4 Parts that address responses to threats to the survival of threatened species, populations and ecological communities, and their habitats. This Part deals with recovery plans for threatened species, populations and ecological communities and makes further provision as to the protection of their critical habitats (if any).

The Director-General must prepare recovery plans for endangered species (other than species presumed extinct), populations and ecological communities, for critically endangered species and ecological communities, and for vulnerable species. The object of a recovery plan is to promote the recovery of the threatened species, population or ecological community to which it relates to a position of viability in nature. If critical habitat has been declared for the species, population or ecological community, the plan must include reference to that fact.

Division 1 deals with the preparation, contents, publication and adoption of recovery plans.

Division 2 deals with the implementation of recovery plans, and includes procedures for public authorities to report on their implementation of, or on proposed departures from, measures specified to be taken in recovery plans.

In accordance with the Planning Act, the terms of recovery plans are to be taken into account by consent authorities and determining authorities (within the meaning of that Act) when they are considering development applications under Part 4, or the carrying out, or applications for approval for the carrying out, of activities under Part 5, of that Act.

## Division 1 Preparation of recovery plans

### 56 Director-General to prepare recovery plans

- (1) The Director-General may prepare a recovery plan for each endangered species (other than a species presumed extinct), population and ecological community and each critically endangered species and ecological community to promote the recovery of the species, population or ecological community to a position of viability in nature.
- (2) The Director-General may also prepare recovery plans for vulnerable species.
- (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 and may be made for part of a range of a species, population or ecological community.
- (5) (Repealed)
- (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.

### 56A Joint preparation of recovery plans

- (1) The Director-General may, with the prior approval of the Minister and the Minister administering the *Fisheries Management Act 1994*, make arrangements with the Director of NSW Fisheries for the joint preparation of a recovery plan under this Act and Part 7A of the *Fisheries Management Act 1994*.
- (2) In such a case, any function of the Director-General or the Minister under this Part in respect of the plan may be exercised in conjunction with any corresponding function of the Director of NSW Fisheries or the Minister administering the *Fisheries Management Act 1994* in respect of the plan under the *Fisheries Management Act 1994*.

**Note—**

For example, the Director-General and the Director of NSW Fisheries may jointly publish a notice of the preparation of the plan under section 61 of this Act and section 220ZO of the *Fisheries Management Act 1994*.

- (3) The Minister may exercise his or her functions under sections 64 and 65 of this Act in respect of any such plan only with the concurrence of the Minister administering the *Fisheries Management Act 1994*.
- (4) If the Minister administering this Act and the Minister administering the *Fisheries Management Act 1994* are unable, following consultation, to resolve any dispute as to the exercise of any function under sections 64 and 65 of this Act in respect of any

such plan, the matter is to be referred to the Premier for resolution. The decision of the Premier in relation to the matter is to be given effect to by the Ministers.

- (5) Except as otherwise provided by this section, this Part applies in respect of a recovery plan jointly prepared as provided for by this section in the same way as it applies in respect of any other recovery plan.

### **57 Guidelines for recovery plans**

- (1) The Director-General must, in preparing a recovery plan and in deciding which measures to include in it, have regard to the following:
- (a) the objects of this Act,
  - (b) the likely social and economic consequences of the making of the plan,
  - (c) the most efficient and effective use of available resources for the conservation of threatened species, populations and ecological communities,
  - (d) the minimising of any significant adverse social and economic consequences.
- (2) The Director-General is to consider, when preparing a recovery plan, any measures by which the public may co-operate in the conservation of a threatened species, population or ecological community.
- (3) The Director-General is also to consider, when preparing a recovery plan, any special knowledge or interest that indigenous people may have in the species, population or ecological community concerned and in the measures to be contained in the plan (including the likely social, cultural and economic consequences of the making of the plan).

### **58 Priorities for recovery plans**

Priorities in the preparation of recovery plans are to be in accordance with the priorities for recovery established by the relevant Priorities Action Statement.

### **59 Contents of recovery plans**

A recovery plan must:

- (a) identify the threatened species, population or ecological community to which it applies, and
- (b) identify any critical habitat declared in relation to the threatened species, population or ecological community, and
- (c) identify any threatening process or processes threatening the threatened species, population or ecological community, and



- (d) identify methods by which adverse social and economic consequences of the making of the plan can be minimised, and
- (e) state what must be done to ensure the recovery of the threatened species, population or ecological community, and
- (f) state what must be done to protect the critical habitat (if any) identified in the plan, and
- (f1) state performance indicators that are to be applied to measure whether the actions identified in the plan are being implemented and are successfully promoting the recovery of the species, population or ecological community, and
- (g) state, with reference to the objects of this Act:
  - (i) the way in which those objects are to be implemented or promoted for the benefit of the threatened species, population or ecological community, and
  - (ii) the method by which progress towards achieving those objects is to be assessed, and
- (h) identify the persons or public authorities who are responsible for the implementation of the measures included in the plan, and
- (i) state the date by which the recovery plan should be subject to review by the Director-General.

#### **60 Consultation between chief executive officers**

- (1) The Director-General must, if the Director-General considers that a public authority should be responsible for the implementation of a measure to be included in a recovery plan, consult with the chief executive officer of the public authority before completing the preparation of the draft recovery plan.
- (2) A measure must not be included in a recovery plan for implementation by a public authority unless the chief executive officer of the public authority approves of the inclusion of the measure.

#### **61 Publication of draft recovery plan**

- (1) As soon as practicable after preparing a draft recovery plan, the Director-General must:
  - (a) give a copy of the draft recovery plan to the Scientific Committee, and
  - (b) give notice of the preparation of the draft recovery plan to any public authority that the Director-General knows is likely to be affected by the recovery plan, and
  - (c) publish notice of the preparation of the draft recovery plan in a newspaper

circulating generally throughout the State and, if the recovery plan 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

(d) publish notice of the preparation of the draft recovery plan in the Gazette.

(2) The notice must:

(a) state that the draft recovery plan has been prepared, and

(b) specify the address of the place at which copies of the draft recovery plan may be inspected, and

(c) invite persons to make written submissions to the Director-General about the draft recovery plan, and

(d) specify the address of the place to which submissions about the draft recovery plan may be forwarded and the date by which submissions must be made.

## **62 Consideration of submissions by Director-General**

(1) The Director-General must consider all written submissions received by the Director-General on or before the date specified in the notice.

(2) The Director-General may amend the draft recovery plan to take account of those submissions or any advice given by the Scientific Committee.

## **63 Director-General to refer draft recovery plan to Minister**

After considering the submissions and making amendments (if any) to the draft recovery plan, the Director-General must:

(a) forward the draft recovery plan to the Minister, and

(b) provide the Minister with a summary of any advice given by the Scientific Committee and of all submissions received about the draft recovery plan, and details of any amendments made to the draft recovery plan by the Director-General to take account of that advice or those submissions.

## **64 Minister may return draft recovery plan to Director-General for amendment**

(1) If the Minister thinks that a draft recovery plan should be amended in some respect, the Minister may request the Director-General to amend the plan.

(2) On receiving such a request, the Director-General must:

(a) amend the proposal in the manner requested by the Minister, and

(b) return the plan, as so amended, to the Minister.

## **65 Approval of recovery plan by Minister**

- (1) In considering whether to approve or to refuse to approve a draft recovery plan, the Minister must have regard to the likely social and economic consequences of the approval of the plan.
- (2) The Minister may:
  - (a) approve a draft recovery plan without amendment or with any amendments that the Minister considers appropriate, or
  - (b) refuse to approve the plan (on the basis of the likely social or economic consequences of the plan or otherwise), or
  - (c) refer it back to the Director-General for further consideration.
- (3) Without limiting subsection (2), the Minister may refuse to approve a plan or refer it back to the Director-General for further consideration on the basis that the plan does not comply with the requirements of this Act.

## **66 Reasons for departure from draft recovery plan to be stated**

If a recovery plan approved by the Minister is not in the form of the draft recovery plan submitted to the Minister by the Director-General, the recovery plan approved must state the reasons for any departures from the draft plan.

## **66A Advice of Scientific Committee to be included in plan**

The recovery plan approved by the Minister must include a summary of any advice given by the Scientific Committee with respect to the plan, details of any amendments made to the plan to take account of that advice and a statement of the reasons for any departure from that advice.

## **67 Recovery plans to be published**

- (1) As soon as practicable after the Minister approves a draft recovery plan, the Director-General must:
  - (a) give a copy of the recovery plan to the Scientific Committee, and
  - (b) publish notice of the approval of the plan in a newspaper circulating generally throughout the State and, if the recovery plan 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
  - (c) notify any public authority likely to be affected by the plan, and
  - (d) publish notice of the approval of the plan in the Gazette.

- (2) The Director-General must also make a copy of the recovery plan available for public inspection, without charge, during business hours and copies of or extracts from the recovery plan are to be made available to the public on request, on payment of the fee fixed by the Director-General.

### **68 Review of recovery plans**

- (1) The Director-General is required to keep each recovery plan under review and, if a date by which a plan is to be reviewed is stated in it, is to review the plan by that date.
- (2) The Director-General is also to consider any submissions about recovery plans received from public authorities or the public.
- (3) If the Director-General considers that any change (other than a minor change) should be made to a recovery plan, the Director-General is to prepare a new plan in accordance with this Part.

## **Division 2 Implementation of recovery plans**

### **69 Ministers and public authorities to implement recovery plans**

- (1) Ministers and public authorities (including the Director-General) are to take any appropriate action available to them to implement those measures included in a recovery plan for which they are responsible and must not make decisions that are inconsistent with the provisions of a recovery plan.
- (2) If the implementation of a recovery plan affects a statutory discretion of a Minister or public authority, this section does not operate to exclude the discretion, but the Minister or authority must take the recovery plan into account.
- (3) This section does not operate to require or authorise any action by a Minister or public authority that is inconsistent with any statutory or other legal obligation of the Minister or public authority.

### **70 Public authorities to report on implementation of recovery plans**

- (1) A public authority (including the Director-General but not including a council) identified in a recovery plan as responsible for the implementation of measures included in the plan must report on action taken by it to implement those measures in its annual report to Parliament.
- (2) A council identified in a recovery plan as responsible for the implementation of measures included in the plan must report on action taken by it to implement those measures in its annual report as to the state of the environment of its area.

## **71 Notification of proposed departures from recovery plan**

- (1) A public authority must not exercise a function in a manner that is inconsistent with the implementation of measures included in a recovery plan unless:
  - (a) in the case of a public authority other than the Director-General—it has given written notice of the proposed exercise of the function to the Director-General, or
  - (b) in the case of the Director-General—the Director-General has given written notice of the proposed exercise of the function to the Minister.
- (2) The Director-General must comply with any directions given by the Minister concerning a proposed departure from a recovery plan.
- (3) This section does not apply in relation to anything authorised to be done by or under the *State Emergency and Rescue Management Act 1989* that is reasonably necessary in order to avoid a threat to life or property.
- (4) This section does not apply in relation to any thing authorised to be done by or under the *Rural Fires Act 1997* in relation to any emergency fire fighting act within the meaning of that Act.

## **72 Consultations with Director-General concerning proposed departures**

- (1) The Director-General must, on receiving notice of a proposed departure from a recovery plan from a public authority, determine whether exercise of the function in the manner proposed is acceptable or whether it is likely to jeopardise the effective implementation of the plan.
- (2) If the Director-General considers that the departure is acceptable, the Director-General must notify the public authority accordingly.
- (3) If the Director-General considers that the departure is unacceptable because it is likely to jeopardise the effective implementation of the recovery plan, the Director-General must consult with the public authority in an endeavour to resolve the matter by modification of the action proposed or by other mutually acceptable means.

## **73 Reference of proposed departures to Ministers and Premier**

- (1) A matter that has not been resolved after consultation between the Director-General and the public authority concerned must be referred by the parties to their respective Ministers.
- (2) In the case of a council, the reference is to the Minister administering the *Local Government Act 1993* unless the matter relates, in whole or in part, to the exercise of functions under the Planning Act. In that event, the reference is to be to the Minister administering the Planning Act.

- (3) The Ministers, on receiving a reference, are to consult in an endeavour to resolve the matter by means that the Ministers consider to be appropriate.
- (4) If the Ministers are unable to resolve the matter after consultation, it is to be referred to the Premier for resolution.
- (5) A public authority (including the Director-General) must give effect to any decision of, or directions made or given by, the Premier on the matter and is, despite the requirements of any other Act or law, empowered to comply with any such decision or directions.

## **Part 5 Threat abatement plans to manage key threatening processes**

### **Introductory note—**

Part 2 provides for the identification of key threatening processes by the Scientific Committee. This Part deals with the preparation and implementation of threat abatement plans to manage key threatening processes with a view to their abatement, amelioration or elimination.

Division 1 deals with the preparation, contents, publication and adoption of threat abatement plans.

Division 2 deals with the implementation of threat abatement plans, and includes procedures for public authorities to report on their implementation of, or on proposed departures from, measures specified to be taken in threat abatement plans.

In accordance with the Planning Act, the terms of threat abatement plans are to be taken into account by consent authorities and determining authorities (within the meaning of that Act) when they are considering development applications under Part 4, or the carrying out, or applications for approval for the carrying out, of activities under Part 5, of that Act.

## **Division 1 Preparation of threat abatement plans**

### **74 Director-General may prepare threat abatement plans**

- (1) The Director-General may prepare a threat abatement plan for each key threatening process to manage the threatening process:
  - (a) so as to abate, ameliorate or eliminate its adverse effects on threatened species, populations or ecological communities, or
  - (b) in the case of a key threatening process that could cause species, populations or ecological communities that are not threatened to become threatened, so as to prevent those species, populations or ecological communities from becoming threatened.
- (2) A threat abatement plan may contain provisions relevant to more than one key threatening process.
- (3), (4) (Repealed)

### **74A Joint preparation of threat abatement plans**

- (1) The Director-General may, with the prior approval of the Minister and the Minister administering the *Fisheries Management Act 1994*, make arrangements with the

Director of NSW Fisheries for the joint preparation of a threat abatement plan under this Act and Part 7A of the *Fisheries Management Act 1994*.

- (2) In such a case, any function of the Director-General or the Minister under this Part in respect of the plan may be exercised in conjunction with any corresponding function of the Director of NSW Fisheries or the Minister administering the *Fisheries Management Act 1994* in respect of the plan under the *Fisheries Management Act 1994*.

**Note—**

For example, the Director-General and the Director of NSW Fisheries may jointly publish a notice of the preparation of the plan under section 79 of this Act and section 220ZO of the *Fisheries Management Act 1994*.

- (3) The Minister may exercise his or her functions under sections 82 and 83 of this Act in respect of any such plan only with the concurrence of the Minister administering the *Fisheries Management Act 1994*.
- (4) If the Minister administering this Act and the Minister administering the *Fisheries Management Act 1994* are unable, following consultation, to resolve any dispute as to the exercise of any function under sections 82 and 83 of this Act in respect of any such plan, the matter is to be referred to the Premier for resolution. The decision of the Premier in relation to the matter is to be given effect to by the Ministers.
- (5) Except as otherwise provided by this section, this Part applies in respect of a threat abatement plan that is jointly prepared as provided for by this section in the same way as it applies in respect of any other threat abatement plan.

## **75 Guidelines for threat abatement plans**

- (1) The Director-General must, in preparing threat abatement plans and in deciding which measures to include in those plans, have regard to the following:
- (a) the objects of this Act,
  - (b) the likely social and economic consequences of the making of the plan,
  - (c) the most efficient and effective use of available resources for the conservation of threatened species, populations and ecological communities,
  - (d) the desirability of minimising any significant adverse social and economic consequences.
- (2) The Director-General is to consider, when preparing a threat abatement plan, any measures by which the public may co-operate in the abatement, amelioration or elimination of the adverse effects of key threatening processes on the prospects of survival of threatened species, populations or ecological communities and their recovery to a position of viability in nature.
- (3) The Director-General is also to consider, when preparing a threat abatement plan, any

special knowledge or interest that indigenous people may have in the species, population or ecological community concerned and in the measures to be contained in the plan (including the likely social, cultural and economic consequences of the making of the plan).

#### **76 Priorities for threat abatement plans**

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.

#### **77 Contents of threat abatement plans**

A threat abatement plan must:

- (a) state the criteria for assessing the achievement of the objective, and
- (b) identify the actions needed to abate, ameliorate or eliminate the effects of the key threatening process, and
- (c) identify the persons or public authorities who are responsible for the implementation of the measures included in the plan, and
- (d) where practicable, provide a proposed timetable for the implementation of the plan, and
- (e) state the estimated cost of the measures included in the plan, and
- (f) state the date by which the plan should be subject to review by the Director-General, and
- (g) include any other matter relating to the impact of the plan as the Director-General considers appropriate.

#### **78 Consultation between chief executive officers**

- (1) The Director-General must, if the Director-General considers that a public authority should be responsible for the implementation of a measure to be included in a threat abatement plan, consult with the chief executive officer of the public authority before completing the preparation of the draft threat abatement plan.
- (2) A measure must not be included in a threat abatement plan for implementation by a public authority unless the chief executive officer of the public authority approves of the inclusion of the measure.

#### **79 Publication of draft threat abatement plan**

- (1) As soon as practicable after preparing a draft threat abatement plan, the Director-General must:



- (a) give a copy of the draft threat abatement plan to the Scientific Committee, and
- (b) give notice of the preparation of the draft threat abatement plan to any public authority that the Director-General knows is likely to be affected by the threat abatement plan, and
- (c) publish notice of the preparation of the draft threat abatement plan in a newspaper circulating generally throughout the State and, if the threat abatement plan 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
- (d) publish notice of the preparation of the draft threat abatement plan in the Gazette.

(2) The notice must:

- (a) state that the draft threat abatement plan has been prepared, and
- (b) specify the address of the place at which copies of the draft threat abatement plan may be inspected, and
- (c) invite persons to make written submissions to the Director-General about the draft threat abatement plan, and
- (d) specify the address of the place to which submissions about the draft threat abatement plan may be forwarded and the date by which submissions must be made.

#### **80 Consideration of submissions by Director-General**

- (1) The Director-General must consider all written submissions received by the Director-General on or before the date specified in the notice.
- (2) The Director-General may amend the draft threat abatement plan to take into account any of those submissions or any advice given by the Scientific Committee.

#### **81 Director-General to refer draft threat abatement plan to Minister**

After considering the submissions and making amendments (if any) to the draft threat abatement plan, the Director-General must:

- (a) forward the draft threat abatement plan to the Minister, and
- (b) provide the Minister with a summary of any advice given by the Scientific Committee and of all submissions received about the draft threat abatement plan, and details of any amendments made to the draft threat abatement plan by the Director-General to take account of that advice or those submissions.

## **82 Minister may return draft threat abatement plan to Director-General for amendment**

- (1) If the Minister thinks that a draft threat abatement plan should be amended in some respect, the Minister may request the Director-General to amend the plan.
- (2) On receiving such a request, the Director-General must:
  - (a) amend the plan in the manner requested by the Minister, and
  - (b) return the plan, as so amended, to the Minister.

## **83 Approval of threat abatement plan by Minister**

- (1) In considering whether to approve or to refuse to approve a draft threat abatement plan, the Minister must have regard to the likely social and economic consequences of the approval of the plan.
- (2) The Minister may:
  - (a) approve a threat abatement plan without amendment or with any amendments that the Minister considers appropriate, or
  - (b) refuse to approve the plan (on the basis of the likely social or economic consequences of the plan or otherwise), or
  - (c) refer it back to the Director-General for further consideration.

## **84 Threat abatement plans to be published**

- (1) As soon as practicable after the Minister approves a threat abatement plan, the Director-General must:
  - (a) give a copy of the threat abatement plan to the Scientific Committee, and
  - (b) publish notice of the approval of the plan in a newspaper circulating generally throughout the State and, if the threat abatement plan 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
  - (c) notify any public authority that the Director-General knows is likely to be affected by the plan, and
  - (d) publish notice of the approval of the plan in the Gazette.
- (2) The Director-General must also make a copy of the threat abatement plan available for public inspection, without charge, during ordinary business hours and copies of or extracts from the threat abatement plan are to be made available to the public on request, on payment of the fee fixed by the Director-General.

## **85 Review of threat abatement plans**

- (1) The Director-General is required to keep each threat abatement plan under review and, if a date by which a plan is to be reviewed is stated in it, is to review the plan by that date.
- (2) The Director-General is also to consider any submissions about threat abatement plans received from public authorities or the public.
- (3) If the Director-General considers that any change (other than a minor change) should be made to a threat abatement plan, the Director-General is to prepare a new plan in accordance with this Part.

## **Division 2 Implementation of threat abatement plans**

### **86 Ministers and public authorities to implement threat abatement plans**

- (1) Ministers and public authorities (including the Director-General) are to take any appropriate action available to them to implement those measures included in a threat abatement plan for which they are responsible and must not make decisions that are inconsistent with the provisions of a threat abatement plan.
- (2) If the implementation of a threat abatement plan affects a statutory discretion of a Minister or public authority, this section does not operate to exclude the discretion, but the Minister or authority must take the plan into account.
- (3) This section does not operate to require or authorise any action by a Minister or public authority that is inconsistent with any statutory or other legal obligation of the Minister or public authority.

### **87 Public authorities to report on implementation of threat abatement plans**

- (1) A public authority (including the Director-General but not including a council) identified in a threat abatement plan as responsible for the implementation of measures included in the plan must report on action taken by it to implement those measures in its annual report to Parliament.
- (2) A council identified in a threat abatement plan as responsible for the implementation of measures included in the plan must report on action taken by it to implement those measures in its annual report as to the state of the environment of its area.

### **88 Notification of proposed departures from threat abatement plan**

- (1) A public authority must not exercise a function in a manner that is inconsistent with the implementation of measures included in a threat abatement plan unless:
  - (a) in the case of a public authority other than the Director-General—it has given written notice of the proposed exercise of the function to the Director-General, or

(b) in the case of the Director-General—the Director-General has given written notice of the proposed exercise of the function to the Minister.

- (2) The Director-General must comply with any directions given by the Minister concerning a proposed departure from a threat abatement plan.
- (3) This section does not apply in relation to anything authorised to be done by or under the *State Emergency and Rescue Management Act 1989* that is reasonably necessary in order to avoid a threat to life or property.
- (4) This section does not apply in relation to any thing authorised to be done by or under the *Rural Fires Act 1997* in relation to any emergency fire fighting act within the meaning of that Act.

### **89 Consultations with Director-General concerning proposed departures**

- (1) The Director-General must, on receiving notice of a proposed departure from a threat abatement plan from a public authority, determine whether exercise of the function in the manner proposed is acceptable or whether it is likely to jeopardise the effective implementation of the plan.
- (2) If the Director-General considers that the departure is acceptable, the Director-General must notify the public authority accordingly.
- (3) If the Director-General considers that the departure is unacceptable because it is likely to jeopardise the effective implementation of the threat abatement plan, the Director-General must consult with the public authority in an endeavour to resolve the matter by modification of the action proposed or by other mutually acceptable means.

### **90 Reference of proposed departures to Ministers and Premier**

- (1) A matter that has not been resolved after consultation between the Director-General and the public authority concerned must be referred by the parties to their respective Ministers.
- (2) In the case of a council, the reference is to the Minister administering the *Local Government Act 1993* unless the matter relates, in whole or in part, to the exercise of functions under the Planning Act. In that event, the reference is to be to the Minister administering the Planning Act.
- (3) The Ministers, on receiving a reference, are to consult in an endeavour to resolve the matter by means that the Ministers consider to be appropriate.
- (4) If the Ministers are unable to resolve the matter after consultation, it is to be referred to the Premier for resolution.
- (5) A public authority (including the Director-General) must give effect to any decision of, or directions made or given by, the Premier on the matter and is, despite the

requirements of any other Act or law, empowered to comply with any such decision or directions.

## **Part 5A Threatened Species Priorities Action Statement**

### **90A What the Statement provides for**

A Threatened Species Priorities Action Statement (also called a Priorities Action Statement) is a statement that:

- (a) sets out the strategies (***recovery and threat abatement strategies***) 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
- (b) establishes relative priorities for the implementation of recovery and threat abatement strategies, and
- (c) establishes performance indicators to facilitate reporting on achievements in implementing recovery and threat abatement strategies and their effectiveness, and
- (d) contains a status report on each threatened species, where information is available, and
- (e) sets out clear timetables for recovery and threat abatement planning and achievement.

### **90B Director-General to prepare and adopt Priorities Action Statement**

- (1) The Director-General is to prepare and adopt a Priorities Action Statement for the purposes of this Act.
- (2) The Priorities Action Statement must be completed as soon as practicable and no later than 12 months after the date of assent to the [\*Threatened Species Legislation Amendment Act 2004\*](#).
- (3) 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.
- (4) 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.

### **90C Publication of draft statement or amendments**

- (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:

- (a) publish notice of the preparation of the draft statement or amendment in a newspaper circulating generally throughout the State, and
- (b) publish notice of the preparation of the draft statement or amendment on the website of the Department.

(2) The notice must:

- (a) state that the draft statement or amendment has been prepared, and
- (b) specify the address of the place at which copies of the draft statement or amendment can be inspected, and
- (c) invite persons to make written submissions to the Director-General about the draft statement or amendment, and
- (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 (being a date that is not less than 30 days after the date of publication of the notice under subsection (1) (a)).

#### **90D Consideration of submissions by Director-General**

- (1) The Director-General must consider all written submissions received by the Director-General on or before the date specified in the notice.
- (2) The Director-General may alter the draft statement or amendment to take account of those submissions.
- (3) The Director-General must adopt the Priorities Action Statement or amendment (with or without alterations) within 4 months after the end of the period allowed for the making of submissions about the draft statement or amendment.

#### **90E Review to include report on achievements**

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.

## **Part 6 Licensing**

### **Introductory note—**

This Part deals with the licensing by the Director-General of actions that are likely to result in:

- (a) the harming of an animal that is of, or part of, a threatened species, population or ecological community, or
- (b) the picking of a plant that is of, or part of, a threatened species, population or ecological community, or
- (c) damage to critical habitat, or
- (d) damage to habitat of a threatened species, population or ecological community.

The offences relating to the above actions are set out in the [National Parks and Wildlife Act 1974](#).

This Part also contains provisions about species impact statements. These statements are employed to measure the significance of the effect of actions on threatened species, populations or ecological communities, or their habitats. A species impact statement must be lodged with an application for a licence under this Part if the Director-General determines that the action proposed is likely to significantly affect threatened species, populations or ecological communities, or their habitats.

Division 1 deals with the grant of licences, including the making of applications, fees, determinations as to whether actions proposed will significantly affect threatened species, populations or ecological communities, publication of applications and the making of submissions concerning them, and matters that the Director-General must take into account before granting licences and appeals.

Division 2 deals with the form and content of species impact statements and the notification of the Director-General's requirements as to their preparation.

Division 3 sets out exceptions to licensing requirements.

Division 4 sets out miscellaneous provisions.

## **Division 1 Grant of licences**

### **91 Licence to harm or pick threatened species, populations or ecological communities or damage habitat**

- (1) The Director-General may grant a licence authorising a person to take action likely to result in one or more of the following:
  - (a) harm to any animal that is of, or is part of, a threatened species, population or ecological community,
  - (b) the picking of any plant that is of, or is part of, a threatened species, population or ecological community,
  - (c) damage to critical habitat,
  - (d) damage to habitat of a threatened species, population or ecological community.
- (2) A general licence may be issued under section 120 of the [National Parks and Wildlife Act 1974](#) to authorise an action referred to in subsection (1) only:
  - (a) for the welfare of an animal, or
  - (b) if there is a threat to life or property.
- (3) Subsection (2) does not limit the purposes for which a licence may be issued under this section.

**Note—**

For example, a licence may be issued under this section to authorise an Aboriginal person or persons to harm animals or pick plants for cultural purposes.

**92 Application for licence**

- (1) An application for a licence must be in a form approved, and be accompanied by an application fee of the amount prescribed, by the Director-General.
- (2) If the action proposed to be taken under the authority of the licence is on land that is critical habitat, the application must be accompanied by a species impact statement prepared in accordance with Division 2.
- (3) If the action proposed is not on land that is critical habitat, the application must include the following:
  - (a) details of the types, and condition, of habitats in and adjacent to the land to be affected by the action,
  - (b) particulars of any known records of a threatened species in the same or similar known habitats in the locality,
  - (c) details of any known or potential habitat for a threatened species on the land to be affected by the action,
  - (d) details of the amount of such habitat to be affected by the action proposed in relation to the known distribution of the species and its habitat in the locality and region,
  - (e) an assessment of the likely nature and intensity of the effect of the action on the life cycle and habitat of the species,
  - (f) details of possible measures to avoid or ameliorate the effect of the action.
- (4) An applicant may lodge a species impact statement with an application even if the action proposed is not on land that is critical habitat. In that event, the application need not include the information referred to in subsection (3).

**93 Payment of licence processing fee**

- (1) The Director-General is to levy a processing fee, being not more than the costs (including on-costs) incurred by the National Parks and Wildlife Service in the assessment and processing of a licence application (whether or not the application is successful).
- (2) The fee is recoverable by the Director-General as a debt due to the Crown in a court of competent jurisdiction.



- (3) The Director-General may, before dealing with an application, require the applicant to pay an amount not exceeding one-half of the estimated processing fee.
- (4) The Director-General may reduce the amount of a processing fee levied for any licence application having regard to the following:
  - (a) the extent of scientific examination necessary for the processing of the application,
  - (b) the adequacy of any species impact statement or environmental impact statement that includes a species impact component supplied by the applicant,
  - (c) the capacity of the applicant or persons with whom the applicant is associated to meet the fee levied,
  - (d) whether and to what extent the activity sought to be licensed may confer a commercial benefit on the applicant if the licence is granted.
- (5) Before a prospective applicant for a licence lodges an application, the Director-General must advise the applicant of the maximum fee payable in respect of the application.

**94 Significant effect on threatened species, populations or ecological communities, or their habitats**

- (1) If the action proposed to be taken by the applicant is not on land that is critical habitat and the application is not accompanied by a species impact statement, the Director-General must determine whether the action proposed is likely to significantly affect threatened species, populations or ecological communities, or their habitats.
- (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.

#### **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.

#### **95 Determination by Director-General as to significant effect**

- (1) If the Director-General determines that an action proposed by an applicant for a licence is likely to significantly affect threatened species, populations or ecological communities, or their habitats, the Director-General must notify the applicant that, if the application is to proceed, a species impact statement prepared in accordance with Division 2 must be provided.

- (2) If the Director-General determines that an action proposed is not likely to significantly affect threatened species, populations or ecological communities, or their habitats, a licence under this Act is not required and the Director-General must, as soon as practicable after making the determination, issue to the applicant a certificate to that effect.

**Note—**

An action that is not required to be licensed under this Act may however be required to be licensed under the [National Parks and Wildlife Act 1974](#) if it is likely to affect protected fauna or protected native plants or may otherwise constitute an offence under that Act.

- (3) A certificate under subsection (2) may be issued unconditionally or subject to conditions.

**Note—**

Section 133 (4) of the [National Parks and Wildlife Act 1974](#) provides that the holder of such a certificate must not contravene or fail to comply with any condition or restriction attached to the certificate.

## **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.

### **96A Sale of copies of species impact statement**

- (1) The Director-General may require an applicant for a licence to provide additional copies of a species impact statement that accompanied the application or was

provided in response to a notification from the Director-General that a statement is required.

- (2) The Director-General may refuse to grant an application if that direction is not complied with.
- (3) Copies of the species impact statement may be sold by the Director-General to any member of the public for not more than \$25 a copy (or such other amount as may be prescribed by the regulations).
- (4) The Director-General must:
  - (a) pay the proceeds of sale of copies of the species impact statement to the applicant, and
  - (b) return to the applicant any unsold copies of the species impact statement.

#### **97 Matters that Director-General must take into account**

- (1) In considering whether to grant or to refuse to grant a licence application, the Director-General must take into account the following:
  - (a) any species impact statement,
  - (b) any written submissions received concerning the application within the period, and at the address for submissions, specified in the notice,
  - (c) the factors specified in sections 10-15,
  - (d) any relevant recovery plan or threat abatement plan,
  - (e) the principles of ecologically sustainable development,
  - (f) whether the action proposed is likely to irretrievably reduce the long-term viability of the species, population or ecological community in the region,
  - (g) whether the action proposed is likely to accelerate the extinction of the species or ecological community or place it at risk of extinction.
- (2) The Director-General must also consider the likely social and economic consequences of granting or refusing to grant a licence application.

#### **98 Director-General may request additional information**

The Director-General may request the applicant to provide additional information in support of an application for a licence.

#### **99 Determination of licence application**

- (1) After considering an application for a licence and accompanying material, the

Director-General may:

- (a) grant the application, unconditionally or subject to conditions or restrictions, or
  - (b) refuse the application.
- (2) The Director-General must, subject to subsection (3), make a decision about an application within 120 days after the Director-General receives a species impact statement or within such further period as may be agreed with the applicant for the licence.
- (3) The Director-General must not grant an application until the processing fee levied in respect of it has been paid.
- (4) A licence may authorise specified persons in addition to the person to whom the licence is granted to do the things authorised by the licence. In any such case, the specified persons are taken to be the holders of the licence for the purposes of this Act.
- (5) For the avoidance of doubt, it is declared that the Director-General is not a determining authority for the purposes of Part 5 of the Planning Act when granting a licence.

#### **100 Licence may extend to protected fauna or protected native plants**

- (1) The Director-General may, in a licence granted under this Part, authorise a person to take action that is likely to result in either or both of the following:
- (a) harm to protected fauna,
  - (b) picking of protected native plants.
- (2) In this section, **protected fauna** and **protected native plant** have the same meanings as in the [National Parks and Wildlife Act 1974](#).

#### **101 Conditions and restrictions to licence**

- (1) Without limiting section 99 (1) (a), the Director-General may grant an application for a licence subject to a condition that the applicant:
- (a) make specified modifications to the action proposed, whether in relation to the area of land proposed to be affected or otherwise, or
  - (b) make a monetary contribution towards the cost of preparation of a recovery plan for any threatened species, population or ecological community, or any of their habitats, likely to be affected by the action proposed.
- (2) The Director-General may, by notice in writing served on the holder of a licence:
- (a) attach any conditions or restrictions to the licence after its issue, or

- (b) vary or remove any conditions or restrictions attached to any licence, or
- (c) otherwise vary the licence.

**Note—**

Section 133 of the *National Parks and Wildlife Act 1974* requires that the holder of a licence under this Part must not contravene or fail to comply with any condition or restriction attached to the licence.

- (3) The Audit and Compliance Committee established under section 9 of the *National Parks and Wildlife Act 1974* is to monitor the conditions attached to licences by the Director-General, for the purpose of overseeing the compliance of the Director-General with his or her obligations under this Act.

**102 Proposed variation of licence to be publicly notified**

- (1) Despite section 101 (2), the Director-General must, before removing or varying any condition or restriction attached to a licence:
  - (a) cause to be placed in a newspaper circulating throughout the State a notice:
    - (i) outlining the nature of the proposed variation to the licence, and
    - (ii) specifying the address of the place at which copies of any species impact statement relating to the licence may be inspected or purchased, and
    - (iii) inviting written submissions within a period of not less than 28 days after the date of the notice, and
  - (b) take into account the matters specified in section 97.
- (2) This section does not apply if the proposed variation to the licence constitutes a minor amendment only of that licence.

**103 Notification of licence determination**

- (1) The Director-General is to notify an applicant and any person who has made submissions of the Director-General's determination of a licence application.
- (2) The Director-General must give a copy of the reasons for his or her determination of a licence application:
  - (a) to the applicant, and
  - (b) to any person who asks for it (either free or for a reasonable charge determined by the Director-General).

**104 Director-General to keep register of licences**

- (1) The Director-General must keep a register containing copies of licences issued under this Division as in force from time to time.

- (2) The register is to be open for public inspection, without charge, during ordinary business hours, and copies of or extracts from the register are to be made available to the public on request, on payment of the fee fixed by the Director-General.

#### **105 Cancellation of licence**

- (1) A licence granted under this Part may be cancelled by the Director-General.
- (2) The Director-General is to notify the holder of a licence of its cancellation and is to include the reasons for the cancellation in that notification.

#### **106 Appeal by applicant or person commenting on licence application**

- (1) An applicant for a licence or a person who has made written submissions (within the period specified in this Division) about an application for a licence, or a person to whose licence conditions or restrictions have been attached or whose licence has been varied or cancelled may, if dissatisfied with the Director-General's decision, appeal to the Land and Environment Court.
- (2) In determining an appeal about an application for a licence, the Court must take into account the matters set out in section 97, but this requirement does not limit the operation of section 39 of the *Land and Environment Court Act 1979*.

#### **107 Time for appeal, and deemed approval**

- (1) An appeal may be made by a person within 28 days after notification has been given to the person under section 101 (2), 103 or 105 (2) or, if the appellant is dissatisfied with any condition or restriction attached to a licence when it is granted, within 28 days after the licence is granted.
- (2) If the Director-General fails to grant, but does not refuse, a licence application by the expiry of the period of 120 days referred to in section 99 (2) or of any extension of that period agreed to by the Director-General and the applicant for the licence, the application is taken to have been granted.

#### **108 Stay of operation of licence pending appeal**

- (1) If an appeal relates to the grant of a licence, the licence has no operation until the expiration of the period within which a person entitled to lodge an appeal may do so or, if an appeal has been lodged, until the appeal is finally determined.
- (2) If no written submissions about an application of a licence are received at the specified place and by the specified date and the applicant informs the Director-General in writing that the applicant does not wish to lodge an appeal but that the applicant wishes the licence to commence, the licence is to operate from a date stipulated by the Director-General.

## **Division 2 Species impact statements**

### **109 Form of species impact statements**

- (1) A species impact statement must be in writing.
- (2) A species impact statement must be signed by the principal author of the statement and by:
  - (a) the applicant for the licence, or
  - (b) if the species impact statement is prepared for the purposes of the Planning Act, the applicant for development consent or the proponent of the activity proposed to be carried out (as the case requires), or
  - (c) if the species impact statement is prepared for the purposes of the *Plantations and Reafforestation Act 1999*, the applicant for authorisation under that Act.

### **110 Content of species impact statement**

- (1) A species impact statement must include a full description of the action proposed, including its nature, extent, location, timing and layout and, to the fullest extent reasonably practicable, the information referred to in this section.
- (2) A species impact statement must include the following information as to threatened species and populations:
  - (a) a general description of the threatened species or populations known or likely to be present in the area that is the subject of the action and in any area that is likely to be affected by the action,
  - (b) an assessment of which threatened species or populations known or likely to be present in the area are likely to be affected by the action,
  - (c) for each species or population likely to be affected, details of its local, regional and State-wide conservation status, the key threatening processes generally affecting it, its habitat requirements and any recovery plan or threat abatement plan applying to it,
  - (d) an estimate of the local and regional abundance of those species or populations,
  - (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,
  - (f) a full description of the type, location, size and condition of the habitat (including



- critical habitat) of those species and populations and details of the distribution and condition of similar habitats in the region,
- (g) a full assessment of the likely effect of the action on those species and populations, including, if possible, the quantitative effect of local populations in the cumulative effect in the region,
  - (h) a description of any feasible alternatives to the action that are likely to be of lesser effect and the reasons justifying the carrying out of the action in the manner proposed, having regard to the biophysical, economic and social considerations and the principles of ecologically sustainable development,
  - (i) a full description and justification of the measures proposed to mitigate any adverse effect of the action on the species and populations, including a compilation (in a single section of the statement) of those measures,
  - (j) a list of any approvals that must be obtained under any other Act or law before the action may be lawfully carried out, including details of the conditions of any existing approvals that are relevant to the species or population.
- (3) A species impact statement must include the following information as to ecological communities:
- (a) a general description of the ecological community present in the area that is the subject of the action and in any area that is likely to be affected by the action,
  - (b) for each ecological community present, details of its local, regional and State-wide conservation status, the key threatening processes generally affecting it, its habitat requirements and any recovery plan or any threat abatement plan applying to it,
  - (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,
  - (c) a full description of the type, location, size and condition of the habitat of the ecological community and details of the distribution and condition of similar habitats in the region,
  - (d) a full assessment of the likely effect of the action on the ecological community, including, if possible, the quantitative effect of local populations in the cumulative effect in the region,
  - (e) a description of any feasible alternatives to the action that are likely to be of

lesser effect and the reasons justifying the carrying out of the action in the manner proposed, having regard to the biophysical, economic and social considerations and the principles of ecologically sustainable development,

- (f) a full description and justification of the measures proposed to mitigate any adverse effect of the action on the ecological community, including a compilation (in a single section of the statement) of those measures,
  - (g) a list of any approvals that must be obtained under any other Act or law before the action may be lawfully carried out, including details of the conditions of any existing approvals that are relevant to the ecological community.
- (4) A species impact statement must include details of the qualifications and experience in threatened species conservation of the person preparing the statement and of any other person who has conducted research or investigations relied on in preparing the statement.
  - (5) The requirements of subsections (2) and (3) in relation to information concerning the State-wide conservation status of any species or population, or any ecological community, are taken to be satisfied by the information in that regard supplied to the principal author of the species impact statement by the National Parks and Wildlife Service, which information that Service is by this subsection authorised and required to provide.

### **111 Director-General's requirements**

- (1) The person applying for the licence (or, if the species impact statement is being prepared for the purposes of the Planning Act, the applicant for development consent or the proponent of the activity or, if the species impact statement is being prepared for the purposes of the *Plantations and Reafforestation Act 1999*, the applicant for authorisation under that Act) must request from the Director-General and must, in preparing the species impact statement, comply with any requirements notified to the person by the Director-General concerning the form and content of the statement.
- (2) The Director-General must notify any requirements under this section within 28 days after having been requested to provide them.
- (3) Despite the other provisions of this Division, the Director-General may, having regard to the circumstances of a particular case, limit or modify (or limit and modify) the matters to be included in a species impact statement in such manner as may be specified by the Director-General in the particular case.
- (4) Despite anything in this Act or the Planning Act or the *Plantations and Reafforestation Act 1999*, the Director-General may, having regard to the circumstances of a particular case, dispense with the requirement for a species impact statement in the particular case if the Director-General is satisfied that the impact of the activity concerned will

be trivial or negligible.

### **112 Regulations**

The regulations may make further provision for or with respect to the form and contents of species impact statements.

### **113 Director-General may accredit persons to prepare species impact statements**

- (1) The Director-General is to institute arrangements for the accreditation of suitably qualified and experienced persons to prepare species impact statements for the purposes of this Act.
- (2) An applicant for accreditation must furnish the Director-General with such information as the Director-General requires to effectively determine the application and must be accompanied by the fee fixed by the Director-General for the consideration of the application.
- (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.
- (3A) Without limiting subsection (3), an accreditation is to include conditions that require a species impact statement to be prepared in accordance with survey standards approved from time to time by the Director-General by order published in the Gazette.
- (4) The Director-General may vary conditions or restrictions (if any) attaching to an accreditation and may suspend or cancel an accreditation.

## **Division 3 Exceptions to licensing requirements**

### **113A Regulations**

- (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.
- (2) Any such regulations have effect (despite the provisions of this Act or any other Act) for the purposes of the operation of:
  - (a) Part 6 (Licensing) of this Act, and
  - (b) Parts 4 and 5 of the Planning Act (including the operation of those Parts as applying under any other Act).

#### **Note—**

Exceptions for the carrying out of routine agricultural management activities are provided for in section

118G of the *National Parks and Wildlife Act 1974*.

- (3) A regulation that provides that development or an activity of a specified type does not constitute development that is likely to significantly affect threatened species, populations or ecological communities, or their habitats, is not to be made unless the Minister has certified in writing that the development or activity is of minimal environmental impact on threatened species, populations and ecological communities, and their habitats.

### **113B Property management plans**

- (1) The Director-General may, for the purposes of this Act, approve of a property management plan for land prepared by a landholder.
- (2) In determining whether to approve a property management plan, the Director-General must take into account such matters as may be prescribed by the regulations.
- (3) The Minister is to endeavour to ensure that regulations are made for the purposes of subsection (2) within 6 months after the commencement of that subsection.
- (4) Any action identified in, and carried out in accordance with, a property management plan so approved by the Director-General does not require a licence under this Part even if the action is an action, or of a class of actions, that may, in accordance with the regulations, be carried out only under the authority of a licence under this Part.
- (5) Without limiting subsection (4), a property management plan may include provisions that authorise persons other than the landholder to take any action on or in respect of land. For example, provisions that authorise Aboriginal persons to harm animals or pick plants on the land that is the subject of the property management plan may be included.
- (6) It is a defence to a prosecution for an offence under Part 8A of the *National Parks and Wildlife Act 1974* if the accused proves that the action constituting the alleged offence was identified in, and carried out in accordance with, a property management plan approved by the Director-General for the purposes of this Act.
- (7) Nothing in this section prevents the Director-General from granting a licence under this Part to a landholder or to any other person to authorise the person to take any action referred to in section 91 (1).
- (8) For the avoidance of doubt, it is declared that the Director-General is not a determining authority for the purposes of Part 5 of the Planning Act when approving a property management plan.

## **Division 4 Miscellaneous**

### **113C Transitional—effect of changes to list of vulnerable species**

- (1) An amendment to the list of vulnerable species does not apply in respect of an application for a licence duly made under section 92 before the amendment took effect.
- (2) This section ceases to apply in respect of an application for a licence at the end of the period of 12 months after the application is made.

## **Part 7 Other conservation measures**

### **Introductory note—**

This Part deals with certain other measures that may be taken to conserve threatened species, populations and ecological communities, and their habitats. These involve the making of stop work orders by the Director-General or the making of joint management agreements between the Director-General and other public authorities to manage or regulate actions on land that may jeopardise the survival of threatened species, populations or ecological communities, or their habitats.

Measures available under the [National Parks and Wildlife Act 1974](#), involving the making of interim protection orders by the Minister or the entering into of conservation agreements by the Minister with land owners, may also be employed for the conservation of threatened species, populations or ecological communities, or their habitats.

Division 1 deals with the making of stop work orders by the Director-General, appeals, consultations about modification of detrimental action and recommendations for the making of interim protection orders under the [National Parks and Wildlife Act 1974](#).

Division 2 deals with the preparation, contents and publication of joint management agreements, and provides for review of joint management agreements, and the performance of parties to them, by the Scientific Committee.

## **Division 1 Stop work orders**

### **114 Director-General may make stop work order**

- (1) If the Director-General is of the opinion that any action is being, or is about to be, carried out that is likely to result in one or more of the following:
  - (a) harm to a threatened species, population or ecological community (so far as animals are concerned),
  - (b) picking of a threatened species, population or ecological community (so far as plants are concerned),
  - (c) damage to critical habitat,
  - (d) damage to habitats of threatened species, populations or ecological communities,the Director-General may order that the action is to cease and that no action, other than such action as may be specified in the order, is to be carried out in or in the vicinity of the critical habitat or the habitat of the threatened species, population or ecological community within a period of 40 days after the date of the order.
- (2) An order takes effect on and from the date on which:

- (a) a copy of the order is affixed in a conspicuous place in the critical habitat or other habitat the subject of the order, or
  - (b) the person performing or about to perform the action is notified that the order has been made,
- whichever is the sooner.
- (3) This section does not apply in relation to anything authorised to be done by or under:
- (a) a licence granted under this Act or the *National Parks and Wildlife Act 1974*, or
  - (b) the *State Emergency and Rescue Management Act 1989* that is reasonably necessary in order to avoid a threat to life or property.
- (3A) This section does not apply in relation to any thing authorised to be done by or under the *Rural Fires Act 1997* in relation to any emergency fire fighting act within the meaning of that Act.
- (4) This section does not apply in relation to anything that is essential for the carrying out of:
- (a) development in accordance with a development consent within the meaning of the Planning Act, or
  - (a1) clearing of native vegetation as authorised by a property vegetation plan approved under the *Native Vegetation Act 2003*, being clearing that had the benefit of biodiversity certification of the native vegetation reform package under Division 4 of Part 7 when the plan was approved, or
  - (a2) State significant infrastructure approved under Part 5.1 of the Planning Act, or
  - (b) an activity, whether by a determining authority or pursuant to an approval of a determining authority within the meaning of Part 5 of that Act if the determining authority has complied with that Part.
- (5) In this Division, a reference to action being, or about to be, carried out includes a reference to action that should be, but is not being, carried out and the Director-General may make an order, in accordance with this Division, that any such action is to be carried out.
- (6) A person must not contravene an order under this section.

Maximum penalty (subsection (6)):

- (a) in the case of a corporation—10,000 penalty units and, in the case of a continuing offence, a further penalty of 1,000 penalty units for each day the offence continues, or

- (b) in the case of an individual—1,000 penalty units and, in the case of a continuing offence, a further penalty of 100 penalty units for each day the offence continues.

#### **115 Prior notification of making of stop work order not required**

The Director-General is not required, before making an order under this Division, to notify any person who may be affected by the order.

#### **116 Appeal to Minister**

- (1) A person against whom an order is made under this Division may appeal to the Minister against the making of the order.
- (2) After hearing an appeal, the Minister may:
  - (a) confirm the order, or
  - (b) modify or rescind the order, but only if this is consistent with the principles of ecologically sustainable development.

#### **117 Extension of stop work order**

The Director-General may extend an order under this Division for such further period or periods of 40 days as the Director-General thinks fit.

#### **118 Consultation about modification of proposed detrimental action**

- (1) After making an order under this Division, the Director-General must immediately consult with the person proposing to perform the action to determine whether any modification of the action may be sufficient to protect the threatened species, populations or ecological communities, critical habitat or other habitat concerned.
- (2) The Director-General may, for the purposes of making such determination and considering whether the adoption of any other steps, such as the grant of a licence under Part 6, may be appropriate, request the person proposing to perform the action to provide the information referred to in section 92 (3).
- (3) After considering any information provided under subsection (2) in accordance with the requirements of section 94, the Director-General may, if appropriate and if the person concerned wishes to apply for a licence under Part 6, request the person to provide an application for a licence and a species impact statement for determination under that Part.

#### **119 Recommendation for making of interim protection order**

- (1) The Director-General must recommend to the Minister the making of an interim protection order under Part 6A of the *National Parks and Wildlife Act 1974* if, after consulting with the person proposing to perform the action, the Director-General is of the opinion that satisfactory arrangements cannot be made to protect the threatened

species, populations or ecological communities, critical habitat or other habitat that is the subject of an order under this Division.

- (2) The Director-General must not recommend the making of an interim protection order in relation to anything that is authorised to be done by or under an authority referred to in section 114 (3) or that is essential for a purpose referred to in section 114 (4).

### **120 Stop work order prevails over other instruments**

- (1) An approval, notice, order or other instrument made or issued by or under any other Act or law that requires or permits critical habitat, the subject of an order in force under this Division, to be significantly affected is inoperative to the extent of any inconsistency with the order under this Division.
- (2) This section has effect whether the approval, notice, order or other instrument concerned was made or issued before or after the making of the order under this Division.

## **Division 2 Joint management agreements**

### **121 Joint management agreements**

The Director-General may enter into a joint management agreement with one or more public authorities for the management, control, regulation or restriction of an action that is jeopardising the survival of a threatened species, population or ecological community.

**Note—**

It is a defence to certain offences under the [National Parks and Wildlife Act 1974](#) if the act constituting the offence was authorised by and done in accordance with a joint management agreement.

### **122 Role of Scientific Committee**

- (1) Before a joint management agreement is entered into, the Scientific Committee must review the draft joint management agreement and provide the Director-General with comments on the review by the date specified for the making of public submissions on the draft agreement.
- (2) The Scientific Committee must also:
  - (a) conduct an annual review of the performance of all parties to a joint management agreement, and
  - (b) advise the Director-General of any deficiencies in implementation of any joint management agreement by any party to it.
- (3) The Director-General is to incorporate the Scientific Committee's advice on the annual review of joint management agreements in the Director-General's annual report to Parliament under the [National Parks and Wildlife Act 1974](#).



### **123 Contents of joint management agreements**

- (1) A joint management agreement is to contain terms, binding on all parties, that:
  - (a) identify the threatened species, population or ecological community to which the agreement applies, and
  - (b) identify the action that it manages, controls, regulates or restricts, and
  - (c) state its objective (for example, maintenance of a habitat in a state that will contribute to the long-term survival of the species, population or ecological community), and
  - (d) state the way in which the objective is to be achieved, and
  - (e) specify the measures by which progress towards achieving the objective is to be assessed, and
  - (f) identify the parties who are responsible for the implementation of those measures.
- (2) A joint management agreement entered into with a council or a consent authority (within the meaning of the Planning Act) is void to the extent to which it fetters any discretion of the council or consent authority in the granting or refusal of a consent or approval under the Planning Act or the [Local Government Act 1993](#).

### **124 Publication of draft joint management agreement**

- (1) As soon as practicable after preparing a draft joint management agreement, the Director-General must:
  - (a) give a copy of the draft joint management agreement to the Scientific Committee for review, and
  - (b) publish notice of the preparation of the draft joint management agreement in a newspaper circulating generally throughout the State and in a newspaper circulating generally in the area or areas likely to be affected by the agreement, and
  - (c) publish notice of the preparation of the draft agreement in the Gazette.
- (2) The notice must:
  - (a) state that the draft joint management agreement has been prepared, and
  - (b) specify the address of the place at which copies of the draft joint management agreement may be inspected, and
  - (c) invite persons to make written submissions to the Director-General about the draft joint management agreement, and

- (d) specify the address of the place to which submissions about the draft joint management agreement may be forwarded and the date by which submissions must be made.

### **125 Consideration of submissions by Director-General**

- (1) The Director-General must consider all written submissions received by the Director-General on or before the date specified in the notice.
- (2) The Director-General may, with the consent of the other parties to the agreement, amend the draft joint management agreement to take into account any of those submissions and any comments made by the Scientific Committee about the draft agreement.

### **126 Amendment of joint management agreement**

A joint management agreement may only be amended by a joint management agreement.

## **Division 3 Conservation agreements**

### **126A Conservation agreements**

- (1) A conservation agreement relating to land that is entered into under the [National Parks and Wildlife Act 1974](#) for the purpose of the conservation of critical habitat or the conservation of threatened species, populations or ecological communities, or their habitats, may make provision for assistance in connection with the following:
  - (a) maintaining and promoting sustainable farming practices and achieving the objects of this Act,
  - (b) implementing the requirements of a recovery plan that relates to the land (if appropriate),
  - (c) ensuring the continued and appropriate agricultural use of the land by the owner of the land.
- (2) This section does not limit section 69C of the [National Parks and Wildlife Act 1974](#).

## **Division 4 Biodiversity certification of native vegetation reform package**

### **126B Native vegetation reform package**

For the purposes of this Division, the ***native vegetation reform package*** is the package of reforms comprising the following:

- (a) the [Native Vegetation Act 2003](#) and the regulations under that Act,

- (b) State-wide standards and targets for natural resource management issues recommended under the *Natural Resources Commission Act 2003* and adopted by the Government,
- (c) catchment action plans under the *Catchment Management Authorities Act 2003*,
- (d) protocols and guidelines adopted or made under the regulations under the *Native Vegetation Act 2003*, the *Catchment Management Authorities Act 2003* and the *Natural Resources Commission Act 2003*.

#### **126C Biodiversity certification of native vegetation reform package**

- (1) The Minister may by order published in the Gazette confer biodiversity certification on the native vegetation reform package for the purposes of this Act.
- (2) The Minister may confer biodiversity certification even if the native vegetation reform package does not comprise all the elements of the package.
- (3) The Minister may, by order published in the Gazette, suspend biodiversity certification of the native vegetation reform package if the composition of the package changes after its certification (for instance by any amendment of the *Native Vegetation Act 2003* or regulations under that Act, or by the approval or amendment of a State-wide standard or target or of a catchment action plan). The Minister may by order published in the Gazette lift any suspension under this subsection.
- (4) The Minister may, in an order conferring biodiversity certification or in another order published in the Gazette, exclude from the certification of the native vegetation reform package any specified class of activity.
- (5) In deciding on any action under this section, the Minister is to have regard to the likely impact of the native vegetation reform package (or any relevant aspect of its operation) on the achievement of the objects of this Act.

#### **Editorial note—**

For orders under this section, see Gazettes No 142 of 25.11.2005, p 9809 and No 97 of 1.8.2007, p 5338.

#### **126D Effect of biodiversity certification**

While biodiversity certification of the native vegetation reform package is in force, any activity on land within the area of operations of each catchment management authority has the benefit of that biodiversity certification (except any activity excluded from certification under section 126C (4)).

#### **Note—**

Biodiversity certification has the following effects:

- (a) the clearing of native vegetation as authorised by a property vegetation plan that is approved while the clearing has the benefit of biodiversity certification is a defence to a prosecution for certain offences under

Part 8A of the NPW Act, and

- (b) development consent to clearing of native vegetation 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*.)

**126E Suspension of certification in connection with implementation of package**

- (1) The Minister may by order published in the Gazette suspend 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.
- (2) During the suspension 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.
- (3) 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.

**126F Notification of certification, variation or suspension**

- (1) Notice of the grant of biodiversity certification under this Division or of any suspension of that certification under this Division is to be given within 14 days:
  - (a) to the Director-General of the Department of Planning, and
  - (b) on the website of the Department of Environment, Climate Change and Water.
- (2) The Minister is to keep a register containing copies of each notice of the grant of biodiversity certification under this Division and of any suspension or revocation of that certification.
- (3) The register is to be open for public inspection, without charge, during ordinary business hours, and copies of or extracts from the register are to be made available to the public on request, on payment of the fee fixed by the Minister.

## Division 5

(Repealed)

## Part 7AA Biodiversity certification

### Division 1 Preliminary

#### 126G Definitions

In this Part:

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

**biodiversity certification** means biodiversity certification conferred on land under this Part.

**biodiversity certification assessment**—see section 126P.

**biodiversity certification assessment methodology** or **methodology** means the rules made under section 126S.

**biodiversity certified land** means land on which biodiversity certification has been conferred and in respect of which biodiversity certification is in force.

**government authority** means a Minister or a public authority, but does not include a State owned corporation.

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

**planning authority** means:

- (a) the Minister for Planning, or
- (b) a local council, or
- (c) a determining authority (within the meaning of Part 5 of the Planning Act), or
- (d) the Director-General of the Department of Planning, or
- (e) any other person or body declared by the regulations to be a planning authority.

### Division 2 Biodiversity certification

#### 126H Biodiversity certification

The Minister may, by order published in the Gazette, confer biodiversity certification on specified land.

## **126I Effect of biodiversity certification**

- (1) **Projects under Part 3A of the Planning Act** The environmental assessment requirements for the approval of a project, or a concept plan for a project, under Part 3A of the Planning Act do not require an assessment of the impact of the project on biodiversity values if the project is carried out or proposed to be carried out on biodiversity certified land.
- (1A) **Infrastructure under Part 5.1 of the Planning Act** The environmental assessment requirements for the approval of State significant infrastructure under Part 5.1 of the Planning Act do not require an assessment of the impact of the infrastructure on biodiversity values if the infrastructure is carried out or proposed to be carried out on biodiversity certified land.
- (2) **Development under Part 4 of the Planning Act** Development on biodiversity certified land is taken, for the purposes of Part 4 of the Planning Act, to be development that is not likely to significantly affect any threatened species, population or ecological community under this Act, or its habitat.
- (3) A consent authority, when determining a development application in relation to development on biodiversity certified land under Part 4 of the Planning Act, is not required to take into consideration the likely impact of the development on biodiversity values (despite any provision of the Planning Act or any regulation or instrument made under that Act).
- (4) **Activities under Part 5 of the Planning Act** An activity to which Part 5 of the Planning Act applies which is carried out or proposed to be carried out on biodiversity certified land is taken, for the purposes of Part 5 of the Planning Act, to be an activity that is not likely to significantly affect any threatened species, population or ecological community under this Act, or its habitat.
- (5) A determining authority under Part 5 of the Planning Act is not required under that Part to consider the effect on biodiversity values of an activity carried out on biodiversity certified land (despite section 111 of the Planning Act).
- (6) **Native Vegetation Act** The [Native Vegetation Act 2003](#) does not apply to biodiversity certified land.

## **Division 3 Application for biodiversity certification**

### **126J Who may apply for biodiversity certification**

- (1) An application for biodiversity certification may be made to the Minister by any planning authority.
- (2) An application may also be made jointly by 2 or more planning authorities.

**126K Certification not to be conferred without biodiversity certification strategy**

- (1) Biodiversity certification may be conferred on land only if the applicant has a biodiversity certification strategy.
- (2) A **biodiversity certification strategy** is a policy or strategy for the implementation of conservation measures to ensure that the overall effect of biodiversity certification is to improve or maintain biodiversity values.
- (3) The biodiversity certification strategy is to be used as the basis for the assessment of the application for biodiversity certification.
- (4) A biodiversity certification strategy is to identify the following:
  - (a) the land proposed for biodiversity certification,
  - (b) the land proposed for biodiversity conservation (being any land on or in respect of which conservation measures are to be implemented),
  - (c) the proposed conservation measures,
  - (d) any person or body proposed as a party to the biodiversity certification.

**Note—**

Parties to a biodiversity certification are responsible for the implementation of the proposed conservation measures.

- (5) The land proposed for biodiversity conservation must comply with any requirements (whether geographic or scientific) provided for by the biodiversity certification assessment methodology.
- (6) The Minister may issue guidelines for the preparation of biodiversity certification strategies.

**126L Conservation measures**

- (1) Each of the following measures is a **conservation measure** for the purposes of this Part:
  - (a) the adoption or continuation of development controls under the Planning Act that limit or prohibit development on land or the taking of any other measures under that Act that conserve or enhance the natural environment,
  - (b) the entering into of a biodiversity certification agreement under this Part,
  - (c) the entering into of a planning agreement under the Planning Act that makes provision for development contributions to be used or applied towards the conservation or enhancement of the natural environment,

- (d) the making of a State infrastructure contribution under the Planning Act for the conservation or enhancement of the natural environment,
  - (e) the entering into of a conservation agreement under the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth,
  - (f) the reservation of land under Part 4 of the NPW Act,
  - (g) the entering into of a conservation agreement under the NPW Act in relation to land,
  - (h) the entering into of a trust agreement under the *Nature Conservation Trust Act 2001*,
  - (i) the entering into of a biobanking agreement under Part 7A of this Act,
  - (j) the acquisition or retirement of biodiversity credits under Part 7A of this Act,
  - (k) the adoption of a plan of management for a reserve under Division 6 of Part 5 of the *Crown Lands Act 1989*,
  - (l) the adoption of a plan of management for land under Division 2 of Part 2 of Chapter 6 of the *Local Government Act 1993*,
  - (m) the dedication or setting apart of any land as a flora reserve under section 25A of the *Forestry Act 1916*,
  - (n) consent to a property vegetation plan for land under the *Native Vegetation Act 2003* (not being a plan that proposes broadscale clearing of native vegetation within the meaning of that Act),
  - (o) any other measure that the Minister determines to be a conservation measure.
- (2) This section is subject to any requirements of the biodiversity certification assessment methodology.

**126M Biodiversity certification application**

- (1) An application for biodiversity certification must be made to the Minister.
- (2) The application must be made in a form approved by the Minister.
- (3) The application must include particulars of the applicant's biodiversity certification strategy.
- (4) The Minister may require an applicant to submit evidence that any person or body identified in the biodiversity certification strategy as a proposed party to the biodiversity certification consents to being made a party to the biodiversity certification.



- (5) The regulations may require other things to be submitted with the application.
- (6) A planning authority may enter into an agreement with a person who requests the authority to make an application for biodiversity certification for the payment of any costs and expenses incurred by the authority in undertaking studies and other matters required in relation to the application.

#### **126N Public notification requirements in relation to application**

- (1) Land cannot be biodiversity certified unless the applicant has complied with the public notification requirements in relation to the application for biodiversity certification.
- (2) The public notification requirements in relation to an application for biodiversity certification are as follows:
  - (a) an applicant must publish notice of the application for biodiversity certification in a newspaper circulating generally throughout the State and on the applicant's website,
  - (b) the notice must invite the public to make submissions relating to the application before a closing date for submissions specified in the notice (being a date that is not less than 30 days after the date the notice is first published in a newspaper under this section),
  - (c) until the closing date for submissions, an applicant is to cause copies of the application to be exhibited at its principal office in New South Wales and on its website,
  - (d) an applicant must provide a report to the Minister that indicates the applicant's response to any submissions relating to the application that were received before the closing date.
- (3) A planning authority may vary its application for biodiversity certification (including its biodiversity certification strategy) as a consequence of any submission received following public notification of the application or for any other reason.
- (4) Further public notification of the application, as varied, is not required unless the Minister otherwise directs.

### **Division 4 Assessment of application for biodiversity certification**

#### **126O Biodiversity certification to be conferred only if biodiversity values are improved or maintained**

The Minister may confer biodiversity certification only if biodiversity certification improves or maintains biodiversity values.

**126P When does biodiversity certification improve or maintain biodiversity values**

- (1) For the purposes of this Part, biodiversity certification improves or maintains biodiversity values only if the Minister determines, on the basis of a biodiversity certification assessment, that the overall effect of biodiversity certification is to improve or maintain biodiversity values.
- (2) A **biodiversity certification assessment** is an assessment of the effect of biodiversity certification on biodiversity values.
- (3) A biodiversity certification assessment is to be made in accordance with the biodiversity certification assessment methodology, and not otherwise.
- (4) This section applies to biodiversity certification as extended or modified under this Part in the same way as it applies to the conferral of biodiversity certification.

**126Q Minor variations to methodology permitted**

- (1) The Minister may, for the purpose of a biodiversity certification assessment, permit a variation to be made to the biodiversity certification assessment methodology if the Minister is of the opinion that:
  - (a) the variation to the methodology is minor, and
  - (b) the variation would result in a determination that the overall effect of biodiversity certification is to improve or maintain biodiversity values, and
  - (c) strict adherence to the methodology is in the particular case unreasonable and unnecessary.
- (2) A variation to the biodiversity certification assessment methodology is not to be permitted if the Minister is of the opinion that the variation is inconsistent with the classification of a plant species as a threatened species or as a component of an endangered ecological community.
- (3) The Minister must cause his or her reasons for permitting a variation to be made to the biodiversity certification assessment methodology to be published on the website of the Department.
- (4) The regulations may make further provision for the circumstances in which the Minister may permit a variation to be made to the biodiversity certification assessment methodology under this section.

**126R Refusal to confer certification**

- (1) The Minister must refuse to confer biodiversity certification if biodiversity certification does not improve or maintain biodiversity values.
- (2) In addition, the Minister may refuse to confer biodiversity certification:

- (a) if the application for certification does not comply with this Part or the regulations, or
- (b) if, in the opinion of the Minister, insufficient information is provided to enable biodiversity certification to be conferred, or
- (c) if, in the opinion of the Minister, the certification application does not sufficiently address the biodiversity certification assessment methodology, or
- (d) for any other reason the Minister considers sufficient.

## **Division 5 Biodiversity certification assessment methodology**

### **126S Biodiversity certification assessment methodology**

- (1) The Minister may, by order published in the Gazette, make rules with respect to the circumstances in which biodiversity certification is to be regarded as improving or maintaining biodiversity values.
- (2) In particular, the rules are to establish a methodology for assessing:
  - (a) the loss of biodiversity values on land proposed for biodiversity certification, and
  - (b) the impact, or likely impact, of proposed conservation measures on land proposed for biodiversity conservation (including conservation measures that are proposed to be implemented in the future).
- (3) The rules may make provision for any loss of biodiversity values that cannot be offset by conservation measures.
- (4) The rules must comply with any requirements of the regulations.
- (5) Subject to any requirements of the regulations, refraining from doing any thing (whether or not that thing was being done beforehand) may be treated by the rules as an action that improves biodiversity values, if refraining from doing that thing improves biodiversity values or the long term security of biodiversity values.
- (6) A methodology provided for by the rules may include provision for the use of specified computer programs or databases.
- (7) A decision of the Director-General made under the rules is final and not subject to appeal.

### **126T Establishment of methodology**

The biodiversity certification assessment methodology is not to be made unless:

- (a) notice of the proposed methodology has been given, in accordance with the public consultation requirements applicable to the methodology, and

- (b) the Director-General has provided a report to the Minister on the public consultation, and
- (c) the Minister has considered the report.

**126U Changes to methodology**

- (1) The Minister may, by order published in the Gazette, change the biodiversity certification assessment methodology by:
  - (a) amending the methodology, or
  - (b) repealing and replacing the methodology.
- (2) The biodiversity certification assessment methodology is not to be changed unless:
  - (a) notice of the proposed change has been given, in accordance with the public consultation requirements applicable to the methodology, and
  - (b) the Director-General has provided a report to the Minister on the public consultation, and
  - (c) the Minister has considered the report.

**126V Public consultation requirements applicable to methodology**

- (1) The public consultation requirements applicable to the methodology are as follows:
  - (a) the Director-General is to cause notice of the proposed methodology or change to the methodology (as the case requires) to be published in a newspaper circulating generally throughout the State and on the website of the Department,
  - (b) the notice must invite the public to make written submissions to the Director-General on the proposal before a closing date for submissions specified in the notice (being a date that is not less than 30 days after the date the notice is first published in a newspaper under this section),
  - (c) until the closing date for submissions, the Director-General is to cause copies of the proposed methodology or change to the methodology, and any other explanatory material or information the Director-General considers appropriate, to be exhibited at the head office of the Department and on the website of the Department.
- (2) After the closing date for submissions, the Director-General is to provide a report to the Minister on the public consultation that:
  - (a) summarises the main issues raised in any submissions received before the closing date for submissions, and
  - (b) makes such recommendations as the Director-General considers appropriate in

relation to those submissions.

**126W Minor changes to methodology not requiring public consultation**

- (1) The Minister may make an order that amends the biodiversity certification assessment methodology without complying with the public consultation requirements applicable to the methodology if:
  - (a) the Minister is of the opinion that the amendment is of a minor nature, and
  - (b) the Minister certifies in writing that the amendment is of a minor nature.
- (2) Without limiting the circumstances in which an amendment can be regarded as being of a minor nature, amendments of a minor nature include amendments that:
  - (a) correct any minor error or omission in the biodiversity certification assessment methodology, such as a spelling or grammatical error, a redundant or obsolete reference, obviously missing words, or wrong cross-references, or
  - (b) make any other change necessary to address matters that are of a consequential, transitional, machinery or other minor nature.

**126X Publication of methodology**

- (1) The Director-General is to ensure that a copy of the biodiversity certification assessment methodology is available for public inspection:
  - (a) at the head office of the Department, and
  - (b) on the website of the Department.
- (2) Copies of the biodiversity certification assessment methodology, or of any part of the methodology, are to be made available to the public on request, on payment of a fee (if any) fixed by the Minister.

**Division 6 Conferral, extension and review of biodiversity certification**

**126Y Approved measures under biodiversity certification**

- (1) The Minister may, in an order conferring biodiversity certification, specify any approved measures under the biodiversity certification.
- (2) The following matters may be specified as approved measures under a biodiversity certification:
  - (a) the proposed conservation measures on which the relevant biodiversity certification assessment was based,
  - (b) any requirements, as determined by the Minister, as to the timing of the implementation of the proposed conservation measures,

(c) any requirements, as determined by the Minister, as to monitoring, reporting or auditing of the implementation of proposed conservation measures,

(d) any other matters provided for by the regulations.

(3) This section applies to an order extending or modifying biodiversity certification in the same way as it applies to an order conferring biodiversity certification.

#### **126Z Parties to biodiversity certification**

(1) The Minister may, in an order conferring biodiversity certification, identify the party or parties to the biodiversity certification.

(2) The following persons or body may be identified as parties to a biodiversity certification:

(a) the planning authority, or planning authorities, that applied for the biodiversity certification,

(b) any person or body proposed by the applicant as a party to the biodiversity certification who consents to being made a party to the biodiversity certification.

(3) After biodiversity certification is conferred, the Minister may, by further order published in the Gazette, identify a person or body as a party to the biodiversity certification (in addition to, or in substitution for, any person or body previously identified as a party), but only if the person or body to be identified as a party consents to being made a party to the biodiversity certification.

(4) The regulations may make further provision for the circumstances in which a person or body may be identified as a party to a biodiversity certification in addition to, or in substitution for, another person or body.

(5) Subject to the regulations, this section applies to an order extending or modifying biodiversity certification in the same way as it applies to an order conferring biodiversity certification.

(6) Consent to being made a party to a biodiversity certification cannot be withdrawn by a person or body after the person or body has been made a party to the biodiversity certification.

#### **126ZA Duration of biodiversity certification**

(1) Biodiversity certification remains in force indefinitely or for such period as the Minister determines and specifies in the order conferring certification.

(2) This section does not prevent the extension of biodiversity certification or the further biodiversity certification of land.

### **126ZB Extension of biodiversity certification**

- (1) The Minister may, by order published in the Gazette, extend the period for which any biodiversity certification remains in force.
- (2) Biodiversity certification may be extended at any time before it expires.
- (3) Biodiversity certification may be extended only if biodiversity certification, as extended, improves or maintains biodiversity values.

**Note—**

See Division 4 for the circumstances in which biodiversity certification improves or maintains biodiversity values.

- (4) A biodiversity certification assessment in relation to the proposed extension is to take account of any proposed modifications to the description of the land proposed for biodiversity certification and the approved measures under the biodiversity certification (whether the modifications are proposed as a result of changes to the relevant biodiversity certification strategy or otherwise).
- (5) A biodiversity certification assessment in relation to the proposed extension may take account of the impact of conservation measures that have already been implemented in connection with the biodiversity certification.
- (6) The regulations may make further provision for or with respect to the extension of biodiversity certification.

### **126ZC Review of biodiversity certification**

- (1) The Minister is to undertake periodic reviews of any biodiversity certification.
- (2) A review is not required if less than 15 years has elapsed since the biodiversity certification was conferred or the most recent review was completed.

## **Division 7 Enforcement of approved measures**

### **126ZD Compliance with approved measures**

- (1) The Minister may, by order in writing, require a party to a biodiversity certification to rectify any failure to comply with the approved measures under the biodiversity certification:
  - (a) by implementing any of the approved measures within a time specified in the order, or
  - (b) by implementing any equivalent conservation measures within a time specified in the order.
- (2) If a party to biodiversity certification fails to comply with the order within the specified

time, or any further time allowed by the Minister, the Minister may, by order in writing, require the party to pay to the Minister a specified penalty.

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

#### **126ZE Equivalent conservation measures**

- (1) A reference in this Part to ***equivalent conservation measures***, in relation to the approved measures under a biodiversity certification, is a reference to conservation measures that are determined by the Minister to achieve the same biodiversity standard as the approved measures.
- (2) The biodiversity standard of the approved measures under a biodiversity certification is the standard by which biodiversity values are improved or maintained by the biodiversity certification, as quantified by the biodiversity certification assessment on which the conferral of biodiversity certification was based.

#### **126ZF Appeals**

- (1) A party to a biodiversity certification who is dissatisfied with a decision of the Minister to require the party to rectify a failure to comply with the approved measures may appeal to the Land and Environment Court against the decision.
- (2) A party to a biodiversity certification who is dissatisfied with a decision of the Minister to require the party to pay a penalty under this Division may appeal to the Land and Environment Court against the decision.
- (3) An appeal may be made by a party to a biodiversity certification no later than 3 months after being notified by the Minister of the decision.
- (4) This section does not confer a right of appeal on a party to a biodiversity certification if the party is a government authority.

#### **126ZG Disputes between Minister and other government authorities**

- (1) A dispute between a government authority which is a party to a biodiversity certification and the Minister as to any of the following matters may be referred to the Premier for settlement:



- (a) a failure by the party to comply with any of the approved measures under the biodiversity certification or to implement equivalent conservation measures,
  - (b) a decision of the Minister to require the party to pay a penalty under this Division.
- (2) The intra-government dispute resolution arrangements apply in respect of the dispute.

**Note—**

See Division 10 for intra-government dispute resolution arrangements.

## **Division 8 Biodiversity certification agreements**

### **126ZH Biodiversity certification agreements**

- (1) The Minister may enter into an agreement with a person in connection with biodiversity certification (including a proposal to confer, modify or extend biodiversity certification).
- (2) The agreement may make provision for any or all of the following:
  - (a) requiring the person to make monetary contributions to the Minister for the purpose of improving biodiversity values,
  - (b) requiring the person to dedicate land for conservation purposes,
  - (c) requiring the person to carry out specified actions, or to refrain from carrying out specified actions, on land owned by the person for the purpose of improving biodiversity values,
  - (d) providing for any other conservation measures that the person agrees to implement,
  - (e) requiring the person to provide security for the performance of any of the person's obligations in connection with biodiversity certification,
  - (f) providing for the timing of the implementation of any of the person's obligations in connection with biodiversity certification,
  - (g) providing for monitoring, reporting and audit requirements,
  - (h) providing for any other matter relating to biodiversity certification.
- (3) For the purposes of this Part, the agreement is a **biodiversity certification agreement**.
- (4) The Minister must not enter into a biodiversity certification agreement relating to Crown land (within the meaning of the *Crown Lands Act 1989*) except with the consent of the Minister administering that Act.

### **126ZI Duration of agreements**

- (1) A biodiversity certification agreement has effect from a day, or on the happening of an event, specified in the agreement.
- (2) A biodiversity certification agreement has effect indefinitely, or for the period specified in the agreement.

### **126ZJ Registered agreements run with land**

- (1) A biodiversity certification agreement that is registered by the Registrar-General under this section is binding on, and is enforceable against, the owner of the land from time to time as if each owner for the time being had entered into the agreement.
- (2) A biodiversity certification agreement can be registered by the Registrar-General under this section if the following persons agree to its registration:
  - (a) if the agreement relates to land under the *Real Property Act 1900*—each person who has an estate or interest in the land registered under that Act,
  - (b) if the agreement relates to land not under the *Real Property Act 1900*—each person who is seised or possessed of an estate or interest in the land.
- (3) On lodgment by a person of an application for registration in a form approved by the Registrar-General, the Registrar-General is to register a biodiversity certification agreement:
  - (a) by making an entry in the relevant folio of the Register kept under the *Real Property Act 1900* if the agreement relates to land under that Act, or
  - (b) by registering the agreement in the General Register of Deeds if the agreement relates to land not under the *Real Property Act 1900*.
- (4) This section applies to any amendment or revocation of a biodiversity certification agreement in the same way as it applies to the agreement.
- (5) In this Part, a reference to a **party** to a biodiversity certification agreement includes any owner of land against whom the agreement is enforceable because of this section.

### **126ZK Enforcement of agreements**

- (1) The Minister, or a person acting with the written consent of the Minister, may bring proceedings in the Land and Environment Court for an order to remedy or restrain a contravention of a biodiversity certification agreement.
- (2) If the Court is satisfied that a contravention of the biodiversity certification agreement has been committed or will, unless restrained by order of the Court, be committed, it may make such order as it thinks fit to remedy or restrain the contravention.

- (3) In proceedings to remedy or restrain a contravention of a biodiversity certification agreement, a consent to institute the proceedings, purporting to have been signed by the Minister, is evidence of that consent without proof of the signature of the Minister.

**126ZL Minister may order party to rectify contravention of agreement**

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

**126ZM Court cannot extinguish obligations**

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

**126ZN Regulations—biodiversity certification agreements**

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

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

**Division 9 Suspension, revocation and modification of certification**

### **126ZO Suspension and revocation of certification**

- (1) The Minister may, by order published in the Gazette, suspend or revoke any biodiversity certification.
- (2) Biodiversity certification may be suspended or revoked:
  - (a) if the approved measures under the biodiversity certification have not been complied with to the satisfaction of the Minister, or
  - (b) if the Minister is of the opinion that a party to the biodiversity certification has failed to comply with an order made by the Minister in respect of the party under this Part, or
  - (c) if the Minister is of the opinion that any agreement entered into in connection with the biodiversity certification has been contravened, or
  - (d) if the Minister is no longer of the opinion that biodiversity certification improves or maintains biodiversity values, or
  - (e) in any other circumstances prescribed by the regulations.
- (3) The regulations may make further provision for or with respect to the suspension or revocation of biodiversity certification.

### **126ZP Modification of certification**

- (1) The Minister may, by order published in the Gazette, modify any biodiversity certification by:
  - (a) modifying the description of land that is biodiversity certified (to extend or limit biodiversity certification), or
  - (b) modifying the approved measures under the biodiversity certification.
- (2) Biodiversity certification may be modified:
  - (a) on application by a party to the biodiversity certification or a party to a biodiversity certification agreement entered into in connection with the biodiversity certification, or
  - (b) on the Minister's own initiative.
- (3) Biodiversity certification may be modified only if biodiversity certification, as modified, improves or maintains biodiversity values.

#### **Note—**

See Division 4 for the circumstances in which biodiversity certification improves or maintains biodiversity values.

- (4) A biodiversity certification assessment in relation to the proposed modification is to take account of any proposed modifications to the description of the land that is biodiversity certified and the approved measures under the biodiversity certification (whether the modifications are proposed as a result of changes to the relevant biodiversity certification strategy or otherwise).
- (5) A biodiversity certification assessment is not required in respect of a proposed modification that substitutes equivalent conservation measures for any of the approved measures under a biodiversity certification.

**Note—**

Equivalent conservation measures are conservation measures that achieve the same biodiversity standard as the approved measures under a biodiversity certification.

- (6) The regulations may make further provision for or with respect to the modification of biodiversity certification.

**126ZQ Application for modification of biodiversity certification**

- (1) An application for modification of biodiversity certification must be made in a form approved by the Minister.
- (2) The application must include the particulars of the proposed modification to biodiversity certification (including particulars of any changes to the biodiversity certification strategy).
- (3) The regulations may require other things to be submitted with the application.

**126ZR Grounds for unilateral modification of certification**

Biodiversity certification may be modified on the Minister's own initiative:

- (a) if the approved measures under the biodiversity certification have not been complied with to the satisfaction of the Minister, or
- (b) if the Minister is of the opinion that a party to the biodiversity certification has failed to comply with an order made by the Minister in respect of the party under this Part, or
- (c) if the Minister is of the opinion that any agreement entered into in connection with the biodiversity certification has been contravened, or
- (d) if the Minister is of the opinion that biodiversity certification no longer improves or maintains biodiversity values, or
- (e) in any other circumstances prescribed by the regulations.

### **126ZS Appeals**

- (1) A party to a biodiversity certification, or a party to a biodiversity certification agreement entered into in connection with a biodiversity certification, who is dissatisfied with a decision of the Minister to suspend, revoke or modify the biodiversity certification may appeal to the Land and Environment Court against the decision.
- (2) An appeal may be made no later than 3 months after the order suspending, revoking or modifying biodiversity certification is published in the Gazette.
- (3) This section does not confer a right of appeal on a party to a biodiversity certification, or a party to a biodiversity certification agreement, if the party is a government authority.

### **126ZT Disputes between the Minister and other government authorities**

- (1) A dispute between a government authority which is a party to a biodiversity certification, or a party to a biodiversity certification agreement entered into in connection with a biodiversity certification, and the Minister about any of the following matters may be referred to the Premier for settlement:
  - (a) a decision of the Minister to suspend or revoke the biodiversity certification,
  - (b) a decision of the Minister to modify the biodiversity certification (otherwise than on the application of the government authority).
- (2) The intra-government dispute resolution arrangements apply in respect of the dispute.

**Note—**

See Division 10 for intra-government dispute resolution arrangements.

## **Division 10 General**

### **126ZU Notification of certification and changes to certification**

- (1) Notice of the conferral, extension, suspension, revocation or modification of biodiversity certification is to be given, within 21 days:
  - (a) on the website of the Department, and
  - (b) to the Director-General of the Department of Planning, and
  - (c) to each local council that is the council of an area in which the biodiversity certified land is located.
- (2) The Minister must make reasonable endeavours to give notice of the conferral, extension, suspension, revocation or modification of biodiversity certification, within

21 days:

- (a) to each party to the biodiversity certification, and
  - (b) to each party to a biodiversity certification agreement entered into in connection with the biodiversity certification.
- (3) The Minister is to keep a register containing copies of any order made under this Part conferring, extending, suspending, revoking or modifying biodiversity certification.
- (4) The register is to be open for public inspection, without charge, during ordinary business hours, and copies of or extracts from the register are to be made available to the public on request, on payment of the fee fixed by the Minister.
- (5) The regulations may make further provision for or with respect to the notification of the conferral, extension, suspension, revocation or modification of biodiversity certification.

**126ZV Suspension, revocation or expiry of biodiversity certification does not affect obligations under certification**

- (1) The suspension, revocation or expiry of biodiversity certification does not, unless the Minister otherwise directs:
- (a) affect the obligations of a party to the biodiversity certification under this Part, or
  - (b) affect any obligation a person has under a biodiversity certification agreement entered into in connection with the biodiversity certification.
- (2) The obligations of a party to the biodiversity certification under this Part include:
- (a) the obligation to comply with the approved measures under the biodiversity certification, and
  - (b) the obligation to comply with any order made by the Minister in respect of the party under this Part (whether the order is made before or after the suspension, revocation or expiry).

**126ZW Effect of changes to biodiversity certification on development and other activities**

- (1) The suspension, revocation, modification or expiry of biodiversity certification does not affect any of the following:
- (a) any approval of a project under Part 3A of the Planning Act granted before the suspension, revocation, modification or expiry,
  - (a1) any approval of State significant infrastructure under Part 5.1 of the Planning Act granted before the suspension, revocation, modification or expiry,
  - (b) any development consent under Part 4 of the Planning Act granted before the

suspension, revocation, modification or expiry,

(c) any approval of a Part 5 Planning Act activity granted before the suspension, revocation, modification or expiry,

(d) any Part 5 Planning Act activity carried out by a determining authority that the determining authority started to carry out before the suspension, revocation, modification or expiry.

(2) The Minister may, in an order that suspends, revokes or modifies biodiversity certification, specify the application of the suspension, revocation or modification to anything pending under the Planning Act at the time of the suspension, revocation or modification.

(3) The regulations may make provision for the application of this Part to anything pending under the Planning Act at the time of the expiry of any biodiversity certification.

(4) In this section:

**determining authority** has the same meaning as it has in Part 5 of the Planning Act.

**Part 5 Planning Act activity** means an activity to which Part 5 of the Planning Act applies.

#### **126ZX Intra-government dispute resolution arrangements**

(1) For the purposes of this Part, the **intra-government dispute resolution arrangements** are the arrangements provided for by this section.

(2) The Premier may, for the purpose of resolving a dispute referred to the Premier under this Part:

(a) appoint a person or panel to hold an inquiry and make a report to the Premier, or

(b) hold an inquiry into the dispute.

(3) After the completion of the inquiry, and after considering any report, the Premier may make such order with respect to the dispute, having regard to the public interest and to the circumstances of the case, as the Premier thinks fit.

(4) An order made by the Premier may direct the payment of any costs or expenses of or incidental to the holding of the inquiry.

(5) A government authority (including the Minister) is to comply with an order given under this section and is, despite the provisions of any Act, taken to have power to comply with any such order.

(6) If a matter that is referred to the Premier under this Part is also the subject of



proceedings before the Land and Environment Court:

- (a) the Premier may suspend or terminate action under this section pending a decision of the Land and Environment Court, and
- (b) a decision of the Land and Environment Court prevails.

#### **126ZY Powers of authorised officers**

Without limiting section 156B of the NPW Act, the functions conferred on an authorised officer by that section may also be exercised for the purpose of determining whether there has been compliance with the approved measures under a biodiversity certification or with a biodiversity certification agreement.

#### **126ZZ Effect of failure to comply with procedural requirements**

A conferral or extension of biodiversity certification, or the modification of biodiversity certification, is not open to challenge because of a failure to comply with the procedural requirements of this Part after the order conferring, extending or modifying the biodiversity certification has been published in the Gazette.

#### **126ZZA Part 5 of Planning Act does not apply to biodiversity certification process**

Biodiversity certification is not an approval for the purposes of Part 5 of the Planning Act.

#### **126ZZB Extent of biodiversity certification**

Biodiversity certification does not apply in respect of, and does not affect any requirements applicable to, threatened species, populations and ecological communities under Part 7A of the [Fisheries Management Act 1994](#).

#### **126ZZC Regulations**

- (1) The regulations may make further provision for or with respect to biodiversity certification.
- (2) In particular, the regulations may make provision for or with respect to the charging (including the waiver or reduction) of fees in connection with the operation of this Part.

## **Part 7A Biodiversity banking**

#### **Introductory note—**

This Part provides for the establishment of a biodiversity banking and offsets scheme (referred to as **the biobanking scheme**).

The biobanking scheme has the following key elements:

- (a) the establishment of biobank sites on land by means of biobanking agreements entered into between the Minister and the owners of the lands concerned,
- (b) the creation of biodiversity credits in respect of management actions carried out or proposed to be carried out on or in

respect of biobank sites that improve biodiversity values,

- (c) a system that enables those biodiversity credits, once created and registered, to be traded (including by being purchased by developers) and used as an offset against the impact of proposed development on biodiversity values,
- (d) the establishment of a biobanking assessment methodology, by order of the Minister published in the Gazette, for the purpose of determining both the number of biodiversity credits that may be created in respect of management actions or proposed management actions and the number of biodiversity credits that must be retired in connection with a development in order to ensure that it improves or maintains biodiversity values.

This Part provides for a procedure under which a person may apply to the Director-General for a biobanking statement in respect of a development proposal.

If a biobanking statement is issued, it will not be necessary for the development to be assessed in accordance with the threatened species protection measures provided for by Parts 4 and 5 of the Planning Act. However, the developer may be required to purchase and retire sufficient biodiversity credits to ensure that the impact of the development on biodiversity values is offset and to take other onsite measures to minimise any negative impact on biodiversity values.

Biobanking statements may also be issued in respect of projects proposed to be approved under Part 3A or Part 5.1 of the Planning Act.

## Division 1 Preliminary

### 127 Definitions

(1) In this Part:

**biobank site** means land that is designated by a biobanking agreement to be a biobank site for the purposes of this Act.

**biobanking agreement** means an agreement entered into under Division 2.

**biobanking assessment methodology** means the rules established under section 127B.

**biobanking scheme** means the biodiversity banking and offsets scheme established under this Part.

**biobanking statement** means a biobanking statement issued and in force under this Part.

**Biobanking Trust Fund** means the Biobanking Trust Fund established under this Part.

**Biodiversity Banking Account** means the Biodiversity Banking Account established under this Part.

**biodiversity credit** means a biodiversity credit created under this Part.

**credit retirement condition** has the meaning given by section 127ZN.

**deferred retirement arrangement** has the meaning given by section 127ZW.

**development** means development within the meaning of the Planning Act, and includes an activity within the meaning of Part 5 of that Act.

**development for which biobanking is available** has the meaning given by section 127ZJ.

**Fund Manager** means the person for the time being appointed under this Part as Fund Manager in respect of the Biobanking Trust Fund.

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

**management action** means an action or proposed action in respect of which a biodiversity credit may be created.

**mining authority** means an authority, mineral claim or opal prospecting licence under the *Mining Act 1992*.

**petroleum title** means a petroleum title under the *Petroleum (Onshore) Act 1991*.

**register of biobank sites** means the register of biobank sites kept by the Director-General under this Part.

**register of biobanking statements** means the register of biobanking statements kept by the Director-General under this Part.

**register of biodiversity credits** means the register of biodiversity credits kept by the Director-General under this Part.

**restorative action**, in relation to a development or activity, means any rehabilitation or restoration action taken on the site of a development or activity after the development or activity has been substantially completed.

- (2) In this Part, a reference to an action, or carrying out an action, includes a reference to doing any thing or refraining from doing any thing.

#### **127A Establishment of biobanking scheme**

- (1) There is established by this Part a biodiversity banking and offsets scheme (the **biobanking scheme**).
- (2) The biobanking scheme has the following key elements:
  - (a) the establishment of biobank sites on land by means of biobanking agreements entered into between the Minister and the owners of the lands concerned,
  - (b) the creation of biodiversity credits in respect of management actions carried out or proposed to be carried out on or in respect of biobank sites that improve biodiversity values,
  - (c) a system that enables those biodiversity credits, once created and registered, to be traded (including by being purchased by developers) and used as an offset

against the impact of proposed development on biodiversity values,

- (d) the establishment of a biobanking assessment methodology, by order of the Minister published in the Gazette, for the purpose of determining both the number of biodiversity credits that may be created in respect of management actions or proposed management actions and the number of biodiversity credits that must be retired in connection with a development to offset the impact of the development and ensure that it improves or maintains biodiversity values.

(3) The biobanking scheme is not to be implemented until:

- (a) a joint committee of the Legislative Assembly and the Legislative Council has been appointed with functions that include preparing a report that sets out suggested guidelines for the operation of the scheme during a trial period and examines options for applying the scheme to the clearing of native vegetation (within the meaning of the *Native Vegetation Act 2003*), and
- (b) the report has been provided to both Houses of Parliament, and
- (c) the Minister has caused to be tabled in each House of Parliament a report by the Minister setting out what the Government has done or proposes to do in response to the report of the joint committee.

(4) Despite subsection (3), the biobanking scheme may be implemented if the report of the joint committee referred to in subsection (3) (a) has not been prepared by the joint committee and provided to both Houses of Parliament by the end of the period of 6 months after the commencement of this Part.

(5) If a House of Parliament is not sitting when the joint committee seeks to provide its report to that House, the joint committee may instead present it to the Clerk of the House of Parliament concerned.

(6) Section 63C of the *Public Finance and Audit Act 1983* applies in respect of the presentation of the report of the joint committee to a Clerk of a House of Parliament under this section in the same way as it applies to the presentation of documents in accordance with that Act.

(7) For the purposes of subsections (3) and (4), each of the following actions constitutes implementation of the biobanking scheme:

- (a) the publication of the biobanking assessment methodology in the Gazette,
- (b) the establishment of any biobank site,
- (c) the issue of any biobanking statement.

**127B Biobanking assessment methodology**

- (1) The Minister may, by order published in the Gazette, establish rules with respect to the following:
  - (a) the actions or proposed actions in respect of which biodiversity credits may be created (**management actions**), being actions that will improve biodiversity values,
  - (b) the creation of biodiversity credits or different classes of biodiversity credits in respect of management actions that have been carried out, are being carried out or are proposed to be carried out on or in respect of biobank sites,
  - (c) the circumstances in which development is to be regarded as improving or maintaining biodiversity values, including where the impact of that development is offset against the impact of management actions for which biodiversity credits are created,
  - (d) any impact on biodiversity values that cannot be offset by the retirement of biodiversity credits.
- (2) In particular, the rules are to establish a methodology for the following:
  - (a) assessing the impact or likely impact of management actions or development on biodiversity values,
  - (b) determining the number and class of biodiversity credits that can be created in respect of a management action, and the times at which they may be created,
  - (c) determining the number and class of biodiversity credits that are required to be retired in respect of development, as an offset against the impact of the development on biodiversity values, pursuant to the issue of a biobanking statement.
- (3) The Minister is to have regard to the following principles when establishing the methodology under this section:
  - (a) biodiversity values should be conserved across appropriate local and regional scales,
  - (b) all types of ecological communities should be adequately conserved,
  - (c) any areas conserved under the biobanking scheme must be viable in the long term.
- (4) A methodology provided for by the rules may include provision for the use of specified computer programs or databases.
- (5) The rules must comply with any requirements set out in the regulations, including as

to the types of actions or proposed actions in respect of which biodiversity credits may be created.

- (6) Subject to any requirements of the regulations, refraining from doing any thing (whether or not that thing was being done beforehand) may be treated by the rules as an action that improves biodiversity values, if refraining from doing that thing improves biodiversity values or the long term security of biodiversity values. This does not limit the generality of subsection (1) (a).
- (7) The biobanking assessment methodology must include provisions that ensure that if an environmental contribution is required in respect of a development, the number of biodiversity credits required to be retired in respect of the development is reduced (or is nil) to take account of that environmental contribution.
- (8) The biobanking assessment methodology may provide for any other matters required or authorised by this Part.

**Note—**

See also Division 7, which allows the methodology to include provision for deferred retirement arrangements where restorative actions are taken in respect of a development.

- (9) A biobanking agreement cannot be entered into, and a biobanking statement cannot be issued, until the biobanking assessment methodology is published under this section.
- (10) In this section, **environmental contribution** means any of the following contributions, or a part of such a contribution, if the contribution or part is required, or is to be used or applied, for the conservation or enhancement of the natural environment:
  - (a) a contribution (including a dedication of land or other material benefit) required by a planning agreement under Subdivision 2 of Division 6 of Part 4 of the Planning Act,
  - (b) a contribution (including a dedication of land or levy) required under Subdivision 3 or 4 of Division 6 of Part 4 of that Act.

**127C Publication, amendment and review of biobanking assessment methodology**

- (1) The Director-General is to ensure that a copy of the biobanking assessment methodology is available for public inspection:
  - (a) at the head office of the Department, and
  - (b) on the website of the Department.
- (2) Copies of the biobanking assessment methodology, or of any part of the methodology, are to be made available to the public on request, on payment of a fee (if any) fixed

by the Director-General.

- (3) Subject to any requirements of the regulations, the biobanking assessment methodology may be amended, repealed or replaced by further order of the Minister published in the Gazette.
- (4) The regulations may:
  - (a) prescribe the circumstances in which the Minister is authorised to make an order that amends, repeals or replaces the biobanking assessment methodology, including by requiring consultation to be carried out before such an order is made, and
  - (b) require the Minister to undertake a periodic review of the biobanking assessment methodology and provide for consultation in respect of that review.

## Division 2 Biobanking agreements

### 127D Biobanking agreements

- (1) The Minister may enter into an agreement relating to land with the owner of the land for the purpose of establishing a biobank site (a **biobanking agreement**).
- (2) Any such agreement may designate any land to which the agreement relates to be a biobank site for the purposes of this Part.
- (3) The regulations may set out criteria for land to be designated as a biobank site by a biobanking agreement.
- (4) Without limiting subsection (3), the regulations may exclude any land, or land of a particular class, from being designated as a biobank site by a biobanking agreement.
- (5) Land may be designated as a single biobank site even if the land consists of separate parcels of land and whether or not the parcels are adjacent (but only if the land is owned by the same person or persons).
- (6) The regulations may prescribe a procedure for applying to the Minister to enter into a biobanking agreement, including by requiring a fee to be paid in respect of an application.
- (7) The Minister must consult with the Minister administering the Planning Act, the Minister administering Part 2 of the *Mining Act 1992* and the Minister administering the *Petroleum (Onshore) Act 1991* before entering into any biobanking agreement.
- (8) The regulations may:
  - (a) require the Minister, before entering into a biobanking agreement with a person, to consider whether the person (whether or not an individual) is a fit and proper

person to enter into, and fulfil the obligations imposed by, the agreement, and

- (b) specify the matters that may be considered by the Minister in determining whether the person is such a fit and proper person.

### **127E Content of biobanking agreements**

- (1) A biobanking agreement may contain any of the following terms, binding on the owner from time to time of the land:
  - (a) requiring or authorising the owner to carry out specified management actions on the land,
  - (b) providing for the number and class of biodiversity credits that can be created in respect of any of those management actions in accordance with the biobanking assessment methodology,
  - (c) providing for the timing of the creation of biodiversity credits and their release for sale,
  - (d) requiring the owner of the land to carry out or continue to carry out any management action in perpetuity, unless otherwise specified (even if a biodiversity credit has already been created in respect of the action or has been transferred or retired),
  - (e) restricting the use of the biobank site,
  - (f) requiring the owner to permit access to the biobank site by specified persons or persons of a specified class and to allow those persons to take any specified action on the land,
  - (g) providing for monitoring, reporting and audit requirements,
  - (h) providing for the entitlement of the owner to payments from the Biobanking Trust Fund,
  - (i) specifying the manner in which any money provided to the owner under the agreement is to be applied by the owner,
  - (j) requiring the owner to repay money paid to the owner under the agreement if a specified breach of the agreement occurs,
  - (k) specifying the remedial measures that must be taken in the event that any contingency that has a negative impact on the biodiversity values protected by the agreement or that prevents or disrupts the continuation of a management action in respect of which biodiversity credits are in force or have been retired,
  - (l) providing for any other matter relating to a biobank site.



- (2) A biobanking agreement may contain any of the following terms, binding on the Minister:
  - (a) requiring the Minister to direct that payments be made from the Biobanking Trust Fund to the owner of the land,
  - (b) requiring the Minister to provide technical advice,
  - (c) requiring the Minister to provide other assistance,
  - (d) requiring the Minister to carry out specified activities or do specified things,
  - (e) providing for any other matter relating to a biobank site.
- (3) If the biobanking assessment methodology is amended or replaced after a biobanking agreement is entered into, the biobanking agreement prevails to the extent of any inconsistency between the agreement and the provisions of the biobanking assessment methodology as amended or replaced.

**127F General provisions relating to biobanking agreements**

- (1) The Minister must not enter into a biobanking agreement relating to land unless:
  - (a) all the owners of the land are parties to the agreement or have consented in writing to the agreement, and
  - (b) where the land (not being land referred to in subsection (5)) is subject to a residential tenancy agreement or other lease, the tenant or the lessee has consented in writing to the biobanking agreement, and
  - (c) where the land is subject to a mortgage or charge, the mortgagee or chargee has consented in writing to the agreement, and
  - (d) where the land is subject to a covenant, the Minister has consulted with the person entitled to the benefit of the covenant about the terms of the agreement, and
  - (e) where the land is the subject of a mining lease or mineral claim under the *Mining Act 1992* or a production lease under the *Petroleum (Onshore) Act 1991*, the holder of the lease or claim has consented in writing to the agreement, and
  - (f) where the land is the subject of any mining authority or petroleum title not referred to in paragraph (e), the Minister has consulted with the holder of the mining authority or petroleum title about the terms of the agreement, and
  - (g) where the land is owned by a Local Aboriginal Land Council, the New South Wales Aboriginal Land Council has consented in writing to the agreement.

**Note—**

Subsection (1) (e) applies in respect of any mining lease under the *Mining Act 1992* that is granted over the land. This may include a mining lease granted over the subsoil of the land or over parts of the subsoil of the land.

- (2) The Minister may enter into a biobanking agreement relating to land that is Crown lands or lands of the Crown:
  - (a) with a public authority (not being a Department of the Public Service) that owns or has the control and management of the land, or
  - (b) if the land is under the control and management of a Department of the Public Service, with the responsible Minister.
- (3) If a biobanking agreement is entered into under subsection (2) by a public authority that, or responsible Minister who, is not the owner of the land concerned:
  - (a) the agreement is taken to have been entered into on behalf of the owner of the land, and
  - (b) a reference in this Part to the owner of the land (however expressed) includes, while a public authority has the control and management of the land, a reference to the public authority that has that control and management and, if the public authority is a Department of the Public Service, the responsible Minister.
- (4) The Minister must not enter into a biobanking agreement relating to Crown-timber lands within the meaning of the *Forestry Act 1916* except with the consent of the Minister administering that Act.
- (5) The Minister must not enter into a biobanking agreement for Crown land (within the meaning of the *Crown Lands Act 1989*), or Crown land dedicated for a public purpose under that Act, except with the consent of the Minister administering that Act.
- (6) In this section, a reference to a person entitled to the benefit of a covenant includes, in the case of a covenant imposed under section 88D or 88E of the *Conveyancing Act 1919*, a reference to a prescribed authority (within the meaning of those sections) or a person entitled to exercise, on behalf of the Crown, the functions of a prescribed authority under those sections.

#### **127G Duration of agreements**

- (1) A biobanking agreement has effect from a day, or on the happening of an event, specified in the agreement.
- (2) A biobanking agreement has effect in perpetuity, unless:
  - (a) it is terminated by consent of the Minister and all the owners (for the time being) of the biobank site concerned, or
  - (b) it is terminated by the Minister (without the consent of the owners), and that

termination is authorised by this Part.

- (3) The Minister must not consent to the termination of a biobanking agreement unless such measures as may be required by the Minister are taken by the owner of the biobank site to offset any negative impact of the termination on the biodiversity values protected by the agreement. This subsection does not apply if voluntary termination of the agreement is permitted under this section.
- (4) For the purposes of subsection (3), the required measures may include one or more of the following:
  - (a) the cancellation of credits created in relation to the biobank site,
  - (b) the retirement of credits created in relation to another biobank site,
  - (c) entering into a biobanking agreement for the purpose of establishing another biobank site.
- (5) The Minister must consent to the termination of a biobanking agreement on the request of the owner of the biobank site if voluntary termination of the agreement is permitted under this section.
- (6) For the purposes of this section, voluntary termination of a biobanking agreement is permitted only if the owner of the biobank site requests the termination of the agreement within 3 months after it is entered into, or after the expiry of 5 years after the agreement has been entered into, and at the time of termination:
  - (a) no biodiversity credits have been created in respect of the biobank site, or
  - (b) in a case where biodiversity credits have been created, the owner of the biobank site is the holder of all credits that have been created since registration of the biobank site, none of the credits created have been retired and all the credits are cancelled by the Director-General with the consent of the owner.
- (7) The regulations may prescribe a procedure for applying for the consent of the Minister to the termination of an agreement, including by requiring a fee to be paid in respect of an application.

#### **127H Variation of agreements**

- (1) A biobanking agreement may be varied:
  - (a) by a subsequent agreement between the Minister and the owners (for the time being) of the biobank site concerned, or
  - (b) by the Minister, without the consent of the owners, where that variation is authorised by this Part.
- (2) The Minister must not agree to any variation of a biobanking agreement with the

owners of the biobank site unless:

- (a1) if the land is subject to a residential tenancy agreement or other lease, the tenant or the lessee has consented in writing to the variation, and
- (a) if the land is subject to a mortgage or charge, the mortgagee or chargee has consented in writing to the variation, and
- (b) if the land is subject to a covenant, the Minister has consulted with the person entitled to the benefit of the covenant about the variation, and
- (c) if the land is the subject of a mining lease or mineral claim under the *Mining Act 1992* or a production lease under the *Petroleum (Onshore) Act 1991*, the holder of the lease or claim has consented in writing to the variation, and
- (d) if the land is the subject of any mining authority or petroleum title not referred to in paragraph (c), the Minister has consulted with the holder of the mining authority or petroleum title about the variation.

**Note—**

Subsection (2) (c) applies in respect of any mining lease under the *Mining Act 1992* that is granted over the land. This may include a mining lease granted over the subsoil of the land or over parts of the subsoil of the land.

- (3) The Minister must not agree to any variation of a biobanking agreement unless satisfied that the variation does not have a negative impact on the biodiversity values protected by the agreement or that other measures required by the Minister have been taken by the owner of the biobank site to offset any such negative impact.
- (4) For the purposes of subsection (3), the required measures may include one or more of the following:
  - (a) the cancellation of credits created in relation to the biobank site,
  - (b) the retirement of credits created in relation to another biobank site.
- (5) If a biobank site consists of more than one parcel of land, the Minister may consent to the variation of a biobanking agreement so as to terminate its application in respect of any single parcel of land, and the provisions of this section apply in respect of any such variation.
- (6) The regulations may prescribe a procedure for applying for the consent of the Minister to a variation of an agreement, including by requiring a fee to be paid in respect of an application.
- (7) In this section, a reference to a person entitled to the benefit of a covenant includes, in the case of a covenant imposed under section 88D or 88E of the *Conveyancing Act 1919*, a reference to a prescribed authority (within the meaning of those sections) or a

person entitled to exercise, on behalf of the Crown, the functions of a prescribed authority under those sections.

### **127I Registration of agreements**

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

### **127J Agreements to run with land**

- (1) A biobanking agreement that has been registered by the Registrar-General and that is in force is binding on, and enforceable by and against, the successors in title to the owner who entered into the agreement and those successors in title are taken to have notice of the agreement.
- (2) In this section:

**successors in title** includes a mortgagee, chargee, covenant chargee or other person, in possession of a biobank site pursuant to a mortgage, charge, positive covenant or other encumbrance entered into before or after the registration of the biobanking agreement.

### **127K Management actions under biobanking agreement exempt from Planning Act**

- (1) Management actions under a biobanking agreement for which biodiversity credits may be created under this Part are taken to be exempt development for the purposes of the Planning Act.
- (2) For the purposes of section 76 (3) of that Act, a reference to the environmental

planning instrument in respect of such exempt development is taken to be a reference to the biobanking agreement.

- (3) The regulations may exclude any management actions from the operation of this section.

#### **127L Enforcement of agreements**

- (1) Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of a biobanking agreement, whether or not any right of the person has been or may be infringed by or as a consequence of the breach.
- (2) If the Court is satisfied that a breach of the biobanking agreement has been committed or will, unless restrained by order of the Court, be committed, it may make such order as it thinks fit to remedy or restrain the breach.
- (3) Without limiting subsection (2), the Court may:
  - (a) in the case of proceedings brought in the Court by the Minister, award damages against the owner of a biobank site for a breach of the biobanking agreement that arose from an intentional, reckless or negligent act or omission by or on behalf of the owner or a previous owner of the land (being an act or omission of which the owner had notice) including a failure by the owner or previous owner to prevent another person from causing a breach of the biobanking agreement, and
  - (b) in any case, direct the owner of the biobank site to retire biodiversity credits of a specified number and class (if applicable) within a period specified in the order and, if the owner does not hold sufficient biodiversity credits to comply with the direction, to acquire the necessary biodiversity credits for the purpose of retiring them.
- (4) In assessing damages for breach of a biobanking agreement by an owner or previous owner, the Court may have regard to:
  - (a) any detriment to the public interest arising from the breach, and
  - (b) any financial or other benefit that the owner or previous owner gained or sought to gain by committing the breach, and
  - (c) any other matter that it considers relevant.
- (5) Proceedings under this section may be brought by a person on his or her own behalf or on behalf of himself or herself and on behalf of other persons (with their consent), or a body corporate or unincorporated body (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings.
- (6) Any person on whose behalf proceedings are brought is entitled to contribute to or

provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.

- (7) Section 89 of the *Conveyancing Act 1919* does not authorise any court to modify or wholly or partially extinguish any restriction or obligation created by a biobanking agreement except with the consent of the Minister.

#### **127M Powers of authorised officers**

Without limiting section 156B of the *National Parks and Wildlife Act 1974*, the functions conferred on an authorised officer by that section may also be exercised for the purpose of determining whether there has been compliance with or a contravention of a biobanking agreement.

#### **127N Minister may order owner to rectify breach of biobanking agreement**

- (1) The Minister may, by order under this section, direct a person who is the owner of a biobank site to carry out at the person's cost, within a period specified in the order, such work or other actions as the Minister considers necessary to rectify any breach of a biobanking agreement.
- (2) If the requirements of the order are not complied with within the period specified in it, the Minister:
- (a) may enter the land and cause the work or actions specified in the order to be carried out, and
  - (b) may, by proceedings brought in any court of competent jurisdiction, recover as a debt from the person to whom the order was given the reasonable cost of complying with those requirements.
- (3) This section does not prevent the Minister from seeking an award of damages against the owner of a biobank site for a breach of a biobanking agreement.

#### **127O Transfer of land to Minister**

- (1) Where a person has contravened, whether by act or omission, a biobanking agreement, the Minister may apply to the Land and Environment Court for an order that the land be conveyed or transferred to the Minister, or to another person or body nominated by the Minister.
- (2) Notice of the application is to be served on the owner of the land by the Minister, and otherwise the application is to be made, in accordance with any rules of the Court.
- (2A) Notice of the application must also be served on the New South Wales Aboriginal Land Council if the owner of the land is a Local Aboriginal Land Council.
- (3) An order may be made under this section only where the Court is satisfied, on the

balance of probabilities:

- (a) that there is a serious risk to the biodiversity values protected by the biobanking agreement because of the contravention by the person, or
  - (b) that there is no reasonable likelihood of the person complying with the obligations imposed by the biobanking agreement, or
  - (c) that the person has previously committed frequent contraventions of the biobanking agreement, or
  - (d) that the person has persistently and unreasonably delayed complying with the obligations imposed by the biobanking agreement.
- (4) If the Court makes the order requested, the Court may impose such conditions on the conveyance or transfer of the land as the Court thinks fit.
- (5) Where land is conveyed or transferred to the Minister, or to a person or body nominated by the Minister, in accordance with an order made under this section, the consideration payable by the Minister, person or body, is to be determined in the same way as the compensation payable under the *Land Acquisition (Just Terms Compensation) Act 1991* in respect of an acquisition of land, but is to be reduced by the amount that, in the opinion of the Court, is equivalent to any outstanding liability of the person to the Minister arising out of contravention of the biobanking agreement.
- (6) In calculating the consideration payable as referred to in subsection (5), the value of the land is to be determined having regard to the fact that it is subject to a biobanking agreement, and any increase in the value of the land attributable to anything done or omitted to be done in contravention of the biobanking agreement is to be disregarded.

#### **127P Application of Planning Act**

- (1) For the purposes of section 28 of the Planning Act:
- (a) a biobanking agreement is taken to be a regulatory instrument, and
  - (b) the Minister is responsible for the administration of such a regulatory instrument.

#### **Note—**

Section 28 of the Planning Act allows an environmental planning instrument to suspend the operation of a regulatory instrument for the purpose of enabling development to be carried out. Such a suspension cannot be given effect to without the concurrence in writing of the Minister responsible for the administration of the regulatory instrument.

- (2) The Minister is not to concur, under section 28 of the Planning Act, to the suspension of a biobanking agreement unless satisfied that:
- (a) the suspension, or any development the suspension of the biobanking agreement



would enable to be carried out, does not have a negative impact on the biodiversity values protected by the agreement, or

(b) other measures are to be taken that will satisfactorily offset the negative impact of the suspension or development on the biodiversity values protected by the agreement (which may include the cancellation or retirement of biodiversity credits).

(3) In relation to any particular biobanking agreement, a provision of an environmental planning instrument made under section 28 of the Planning Act and in force:

(a) immediately before the commencement of this section, or

(b) immediately before the biobanking agreement takes effect,

does not affect the operation of the biobanking agreement unless the provision is subsequently amended to expressly affect the operation of the biobanking agreement.

**127Q Proposals by public authorities affecting biobank sites**

(1) A public authority must not carry out development on a biobank site unless:

(a) it has given written notice of the proposed development to the Minister and the owner of the biobank site, and

(b) it has received written notice from the Minister consenting to the development.

(2) The Minister may consent to the development only if:

(a) the Minister is of the opinion that the proposed development will neither adversely affect any management actions that may be carried out on the land under the biobanking agreement nor adversely affect the biodiversity values protected by the agreement, or

(b) the Minister is satisfied that any adverse effect of the development on biodiversity values (including any future improvement to biodiversity values that would otherwise be achieved by the management actions on the biobank site) will be offset by the retirement of biodiversity credits by the public authority, or

(c) the development is required for an essential public purpose or for a purpose of special significance to the State.

(3) The Minister may, as a condition of granting consent under this section, direct the public authority to retire biodiversity credits of a number and class (if any) specified by the Minister and, if the person does not hold a sufficient number of biodiversity credits to comply with the direction, direct the public authority to acquire the necessary biodiversity credits for the purpose of retiring them.

(4) The Minister may approve an arrangement under which:

- (a) the retirement of some or all of the biodiversity credits is deferred pending the completion of restorative actions that will restore or improve the biodiversity values affected by the development, and
  - (b) the biodiversity credits the retirement of which is deferred pending the completion of those actions are required to be transferred to the Minister.
- (5) Division 7 applies in respect of any such arrangement as if it were a deferred retirement arrangement approved by the Director-General under that Division.
- (6) The Minister may, by order published in the Gazette, vary or terminate the biobanking agreement relating to a biobank site without the consent of the owner of the biobank site if consent to development is granted under this section and the variation or termination is necessary to enable the public authority to carry out the development.
- (7) The owner of a biobank site is not entitled to any compensation as a result of the variation or termination of an agreement under this section.
- (8) Subsection (7) does not affect any right to compensation the owner may have under the *Land Acquisition (Just Terms Compensation) Act 1991* or any other Act in respect of the development.
- (9) This section does not apply:
- (a) to any part of a biobank site that is a wilderness area within the meaning of the *Wilderness Act 1987* or that is critical habitat, or
  - (b) in respect of development proposed to be carried out by a public authority on a biobank site if the public authority is the owner of the biobank site and the proposed development is not inconsistent with the terms of the biobanking agreement.
- (10) The consent of the Minister under this section is not an approval for the purposes of Part 5 of the Planning Act.

#### **127R Resolution of certain disputes**

- (1) If a dispute arises as to the failure of the Minister to consent to a development proposal of a public authority under section 127Q, or as to the conditions of any consent granted or proposed to be granted under that section by the Minister, a party to the dispute may submit that dispute to the Premier for settlement.
- (2) On the submission of a dispute to the Premier, the Premier may:
- (a) appoint a Commissioner of Inquiry to hold an inquiry and make a report to the Premier, or
  - (b) hold an inquiry into the dispute.

- (3) After the completion of the inquiry, and after considering any report, the Premier may make such order with respect to the dispute, having regard to the public interest and to the circumstances of the case, as the Premier thinks fit.
- (4) An order made by the Premier may direct the payment of any costs or expenses of or incidental to the holding of the inquiry.
- (5) A Minister or public authority is to comply with an order given under this section and is, despite the provisions of any Act, taken to be empowered to comply with any such order.

**1275 Prospecting and mining on biobank sites**

- (1) The Minister may, by order published in the Gazette, vary or terminate a biobanking agreement without the consent of the owner of the biobank site if a mining authority or petroleum title is granted in respect of the biobank site and the Minister is of the opinion that the activity authorised by the mining authority or petroleum title:
  - (a) will adversely affect any management actions that may be carried out on the land under the biobanking agreement, or
  - (b) will adversely affect the biodiversity values protected by the biobanking agreement.
- (2) If the Minister varies or terminates the biobanking agreement under this section, the Minister may, by order in writing to the holder of the mining authority or petroleum title, direct the holder to retire biodiversity credits of a number and class (if any) specified by the Minister within a time specified in the order.
- (3) A direction may be given to a person under subsection (2) only if biodiversity credits have already been created in respect of management actions that were carried out or proposed to be carried out on the biobank site and have been transferred to any person.
- (4) The maximum number of biodiversity credits that the holder of the mining authority or petroleum title may be required to retire under the direction is the number of biodiversity credits that have been created in respect of the biobank site.
- (5) A person must not, without reasonable excuse, fail to comply with a direction under subsection (2).

Maximum penalty: 10,000 penalty units.

- (6) It is not an excuse for a failure to comply with a direction under this section that the person who is the subject of the direction does not, at the time the direction is given, hold a sufficient number of biodiversity credits to comply with the direction.

**Note—**

If the person who is the subject of the direction does not hold a sufficient number of credits to comply with the direction, the person may obtain the required number by purchasing them.

- (7) A court that convicts a person of an offence under subsection (5) may, in addition to or in substitution for any pecuniary penalty for the offence, by order direct the person to retire, in accordance with this Part, biodiversity credits of a specified number and class (if applicable) within a time specified in the order and, if the person does not hold sufficient biodiversity credits to comply with the direction, to acquire the necessary biodiversity credits for the purpose of retiring them.
- (8) The owner of a biobank site is not entitled to any compensation as a result of the variation or termination of an agreement under this section.
- (9) Subsection (8) does not affect any right to compensation the owner may have under the *Mining Act 1992*, the *Petroleum (Onshore) Act 1991* or any other legislation in respect of the grant of the mining authority or petroleum title.
- (10) In this section:

**conviction** includes the making of an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999*.

#### **127T General provisions relating to variation or termination of agreements without consent of owner**

- (1) This section applies if the Minister proposes to vary or terminate a biobanking agreement without the consent of the owner of the biobank site by order under section 127Q or 127S.
- (2) The Minister is not to make such an order unless:
  - (a) written notice of the Minister's intention to vary or terminate the agreement has been given to the owner of the biobank site stating that the owner may make submissions to the Minister within the period specified in the notice (being a period of not less than 28 days), and
  - (b) the Minister has considered any submissions made by the owner of the biobank site, being submissions made within that specified period.
- (3) If the order is made, a copy of the order is to be laid before each House of Parliament within 30 sitting days of that House, or such other period as may be prescribed by the regulations, after publication of the order.
- (4) If the order varies the agreement, the owner of the biobank site may, by written notice given to the Minister, terminate the agreement, but only if:
  - (a) no biodiversity credits have been created in respect of the biobank site, or
  - (b) in a case where biodiversity credits have been created, the owner of the biobank

site is the holder of all credits that have been created since registration of the biobank site (that is, none of the credits created have been retired) and all the credits are cancelled by the Director-General with the consent of the owner.

**127U Activities authorised by mining authorities and petroleum titles not affected by biobanking agreement**

Nothing in this Division:

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

**Division 3 Creation of biodiversity credits**

**127V Creation of biodiversity credits**

- (1) Biodiversity credits may be created by the Director-General in accordance with this Part.
- (2) A biodiversity credit is to be created in a form approved by the Director-General.

**127W Application for creation of biodiversity credit**

- (1) An owner of land that is a biobank site may apply to the Director-General for the creation of biodiversity credits.
- (2) An application for the creation of a biodiversity credit:
  - (a) is to be made in a form approved by the Director-General, and
  - (b) is to contain, or be accompanied by, such information as the Director-General requires in order to determine the application, and
  - (c) is to be accompanied by a fee (if any) approved by the Director-General.
- (3) If an application is duly made, the Director-General may determine the application by creating biodiversity credits or refusing the application.
- (4) The Director-General may create biodiversity credits in respect of a biobank site without requiring an application to be lodged under this section if it is required or permitted by the relevant biobanking agreement.
- (5) The Director-General may create a biodiversity credit only if satisfied that the management action or actions in respect of which the credit is to be created has been carried out, is being carried out or will be carried out in accordance with the

biobanking agreement.

- (6) The Director-General is to determine the number and class of credits to be created in accordance with the biobanking assessment methodology and any relevant provisions of the biobanking agreement.
- (7) If the Director-General creates a biodiversity credit, the Director-General must:
  - (a) register the creation of the credit by making an entry in relation to the credit in the register of biodiversity credits, and
  - (b) record the owner of the land as the holder of the credit.
- (8) A biodiversity credit has no force or effect until it is so registered.
- (9) The Director-General may refuse an application for the creation of a biodiversity credit:
  - (a) if the Director-General is not satisfied that the relevant management actions have been carried out, are being carried out or will be carried out, in accordance with the biobanking agreement, or
  - (b) if the creation of the credit would not comply with the biobanking agreement or the biobanking assessment methodology, or
  - (c) if any provision of the biobanking agreement has not been complied with (whether or not the relevant management actions have been carried out or are being carried out), or
  - (d) for any other reason specified in the regulations.
- (10) The Director-General must refuse an application for the creation of a biodiversity credit if the biobank site concerned is not a registered biobank site.
- (11) The regulations may prescribe a period after making an application for the creation of a biodiversity credit at the end of which, if the Director-General fails to either create or refuse to create the credit, the Director-General is taken to have refused to create the credit.

#### **127X Registration of biobank sites**

- (1) The Director-General must register land as a biobank site if the Minister enters into a biobanking agreement under which the land is designated as a biobank site for the purposes of this Act.
- (2) The Director-General registers land as a biobank site by creating an entry in relation to the land in the register of biobank sites and recording in the register a description of the land and a copy of the biobanking agreement relating to that land.

- (3) Registration of land as a biobank site remains in force unless it is suspended or cancelled by the Director-General, by notice in writing to the owner of the land.
- (4) The Director-General must cancel the registration of land as a biobank site if there ceases to be any biobanking agreement in force that designates the land as a biobank site for the purposes of this Act.
- (5) The Director-General may suspend or cancel the registration of land as a biobank site if the owner of the land breaches any conditions of the biobanking agreement or contravenes a provision of this Part or the regulations under this Part.
- (6) The cancellation or suspension of registration of a biobank site does not affect any obligations of the owner of a biobank site under a biobanking agreement. In particular, it does not affect any requirement that the owner carry out, or continue to carry out, management actions in respect of the land, even though the owner ceases to be entitled (as a result of the cancellation or suspension) to create biodiversity credits.

#### **127Y Duration of biodiversity credit**

A biodiversity credit, when registered in the register of biodiversity credits, remains in force unless it is cancelled or retired under this Part.

**Note—**

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

### **Division 4 Trading in biodiversity credits**

#### **127Z Transfers of biodiversity credits**

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

#### **127ZA Payment of amount into Biobanking Trust Fund on first transfer of credit**

- (1) The regulations may require a specified amount to be paid into the Biobanking Trust Fund before a first transfer of a biodiversity credit is registered under this Division.
- (2) The amount to be paid into the Biobanking Trust Fund, or the manner of its

calculation, is to be as specified in the regulations.

- (3) The regulations may specify exemptions from the requirement to pay an amount into the Biobanking Trust Fund on the first transfer of the credit. If, because of such an exemption, no amount is payable to the Biobanking Trust Fund in respect of a first transfer of a credit, the regulations may require the amount to be paid into the Biobanking Trust Fund in respect of any subsequent transfer of the credit before the transfer is registered.
- (4) If a biodiversity credit is retired or proposed to be retired without having been transferred by the owner of a biobank site, the regulations may require any amount that would have been payable if the biodiversity credit had been transferred to be paid into the Biobanking Trust Fund before the credit is retired.

#### **127ZB Registration of transfer of biodiversity credit**

- (1) The transfer of a biodiversity credit does not have effect until the transfer is registered by the Director-General under this Part.
- (2) An application for registration of a transfer of a biodiversity credit may be made to the Director-General by the parties to the transfer.
- (3) The application:
  - (a) is to be made in a form approved by the Director-General, and
  - (b) is to be accompanied by:
    - (i) the fee (if any) for registration of the transfer approved by the Director-General, and
    - (ii) such other information as the Director-General requires in relation to the transfer.
- (4) The Director-General registers a transfer by making a recording in the register of biodiversity credits in relation to the credit to indicate that the person to whom the credit has been transferred is the holder of the biodiversity credit.
- (5) If an application for the transfer of a biodiversity credit is duly made, the Director-General must register the transfer unless authorised or required to refuse to register the transfer by this Act or the regulations.
- (6) The Director-General must refuse to register a transfer of a biodiversity credit in respect of which an amount is required to be paid to the Biobanking Trust Fund unless satisfied that the amount required to be paid to that Fund has been so paid.
- (7) If the Director-General refuses to register a transfer of a biodiversity credit in respect of which an amount has been paid to the Biobanking Trust Fund, the Director-General



may direct the Fund Manager to repay that amount to the person who paid it, and the Fund Manager is authorised to comply with that direction.

### **127ZC Other transactions involving biodiversity credits**

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

## **Division 5 Cancellation, suspension and retirement of biodiversity credits**

### **127ZD Grounds for cancellation of biodiversity credit**

- (1) The Director-General may cancel a biodiversity credit that is in force, or that has been suspended under this Part:
  - (a) if the Director-General is of the opinion that any management action in respect of which the biodiversity credit was created has not been carried out or completed, or is not being carried out, in accordance with the biobanking agreement, or
  - (b) if the person who applied for the creation of the credit provided any information to the Director-General in, or in connection with, the application that was false or misleading in a material particular, or
  - (c) if the credit was created in error, or
  - (d) if the holder of the credit has requested or agreed to the cancellation, or
  - (e) if authorised to do so by any other provision of this Act or the regulations.
- (2) Without limiting subsection (1), if the Minister varies or terminates a biobanking agreement because of activities authorised by a mining authority or petroleum title granted in respect of a biobank site, the Director-General may cancel any biodiversity credits created in respect of the biobank site that have not been transferred by the biobank site owner.
- (3) The Director-General must not cancel a biodiversity credit unless before doing so the Director-General:
  - (a) gives notice to the holder of the credit that he or she intends to do so, and
  - (b) specifies in that notice the reasons for his or her intention to do so, and
  - (c) gives the holder of the credit a reasonable opportunity to make submissions in relation to the proposed cancellation, and
  - (d) takes into consideration any such submissions by the holder of the credit.
- (4) The Director-General is not to cancel a credit if the Director-General is satisfied that

the holder of the credit is a bona fide purchaser of the credit without notice of the circumstances that are grounds for the cancellation of the credit.

**Note—**

However, the Director-General may require a wrongdoer to retire a specified number or class of credits under section 127ZI.

- (5) Subsections (3) and (4) do not apply if the holder of a biodiversity credit has requested or agreed to the cancellation of the credit.

**127ZE General provisions relating to cancellation of biodiversity credits**

- (1) The Director-General cancels a biodiversity credit by making a recording in the register of biodiversity credits, in relation to the biodiversity credit concerned, that indicates that the credit is cancelled.
- (2) The Director-General must give the holder of the credit notice in writing of the cancellation.
- (3) No compensation is payable for the cancellation of a biodiversity credit.
- (4) However, if a biodiversity credit is cancelled because of activities authorised by a mining authority or petroleum title granted in respect of a biobank site, the reasonable costs incurred by the biobank site owner in carrying out, before the cancellation, the management actions in respect of which the biodiversity credits were created are taken, for purposes of the *Mining Act 1992* or the *Petroleum (Onshore) Act 1991*, to be a loss caused by deprivation of the possession or of the use of the surface of the land concerned as a result of the exercise of the rights conferred by the mining authority or petroleum title.
- (5) If a biodiversity credit is cancelled, the Minister may vary or terminate the relevant biobanking agreement (with or without the consent of the owner of the biobank site) to make it clear that any obligation to carry out, or to continue to carry out, a management action that arises only because of the creation of that credit ceases to have effect.
- (6) If the variation or termination is made without the consent of the owner:
- (a) the variation or termination is to be made by the Minister by order published in the Gazette, and
- (b) a copy of the order is to be laid before each House of Parliament within 30 sitting days of that House, or such other period as may be prescribed by the regulations, after publication of the order.
- (7) The Minister is not to make an order referred to in subsection (6) unless:
- (a) written notice of the Minister's intention to vary or terminate the agreement has

been given to the owner of the biobank site stating that the owner may make submissions to the Minister within the period specified in the notice (being a period of not less than 28 days), and

(b) the Minister has considered any submissions made by the owner of the biobank site, being submissions made within that specified period.

(8) The cancellation of a biodiversity credit does not prevent the Minister from seeking an award of damages against the owner of a biobank site for a breach of a biobanking agreement.

#### **127ZF Suspension of biodiversity credit**

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

#### **127ZG Application for retirement of biodiversity credits**

(1) The holder of a biodiversity credit that is in force may, by application in writing to the Director-General, retire the credit.

##### **Note—**

Once the creation of a biodiversity credit is registered, it remains in force unless it is cancelled or retired—see section 127Y.

- (2) Any application to retire a biodiversity credit may be made by the holder of the credit:
  - (a) for the purpose of complying with a credit retirement condition specified in a biobanking statement, or
  - (b) for the purpose of complying with a direction made by the Minister or a court under this Part or under the *National Parks and Wildlife Act 1974*, or
  - (c) for the purpose of complying with a condition of an approval or consent granted by the Minister under Part 3A, Part 4 or Part 5.1 of the Planning Act, or
  - (d) on a voluntary basis.
- (3) If the Director-General accepts the application, the Director-General is to retire the

biodiversity credit.

**Note—**

Biodiversity credits may also be retired under Division 7.

**127ZH General provisions relating to retirement of biodiversity credits**

- (1) The Director-General retires a biodiversity credit by making a recording in the entry relating to the credit in the register of biodiversity credits to indicate that the credit has been retired.
- (2) The retirement of a biodiversity credit does not affect any requirement imposed on the owner of a biobank site under a biobanking agreement. In particular, it does not affect any requirement that the owner carry out, or continue to carry out, management actions in respect of the land in relation to which the credit was created.
- (3) A biodiversity credit that has been suspended by the Director-General may not be retired during any period in which the suspension has effect.
- (4) The regulations may make further provision for the retirement of biodiversity credits, including the procedure for retiring a credit and the circumstances in which the Director-General may refuse an application to retire a credit.

**127ZI Order requiring biobank site owner to retire biodiversity credits**

- (1) The Minister may, by order in writing to a person, direct the person to retire biodiversity credits of a specified number and class (if applicable) within a time specified in the order.
- (2) A direction may be given to a person under this section only if:
  - (a) the person is the owner of a biobank site (or a former owner), and
  - (b) the Minister is satisfied that, because of any act or omission by the person, one or more biodiversity credits were created in respect of a management action that was not carried out or completed, or that is not being carried out, in accordance with the relevant biobanking agreement, and
  - (c) the biodiversity credit or credits created have been transferred to another person or retired.
- (3) The number of biodiversity credits, and class (if applicable), that are required to be retired is to be equivalent to the number and class of biodiversity credits that, in the opinion of the Minister, were created in respect of management actions not carried out or completed, or not being carried out, in accordance with the biobanking agreement and which have been transferred or retired.
- (4) A direction may be given to a person under this section only if before doing so the

Minister:

- (a) gives notice to the person that he or she intends to make the direction, and
- (b) specifies in that notice the reasons for his or her intention to do so, and
- (c) gives the person a reasonable opportunity to make submissions in relation to the proposed direction, and
- (d) takes into consideration any such submissions by the person.

(5) A person must not, without reasonable excuse, fail to comply with an order under this section.

Maximum penalty: 5,000 penalty units.

**Note—**

If the owner of a biobank site fails to comply with the order, that failure is also grounds for the cancellation or suspension of registration of a biobank site.

(6) It is not an excuse for a failure to comply with an order under this section that the person who is the subject of the order does not, at the time the order is made, hold a sufficient number of biodiversity credits to comply with the order.

**Note—**

If the person who is the subject of the order does not hold a sufficient number of credits to comply with the order, the person may obtain the required number by purchasing them or carrying out the necessary management actions to create them.

(7) A court that convicts a person of an offence under subsection (5) may, in addition to or in substitution for any pecuniary penalty for the offence, by order direct the person to retire, in accordance with this Part, biodiversity credits of a specified number and class (if applicable) within a time specified in the order and, if the person does not hold sufficient biodiversity credits to comply with the direction, to acquire the necessary biodiversity credits for the purpose of retiring them.

(8) Any action taken under this section does not prevent the Minister from seeking an award of damages against the owner or former owner of a biobank site for a breach of a biobanking agreement.

(9) In this section:

**conviction** includes the making of an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999*.

## Division 6 Biobanking statements

### **127ZJ Development for which biobanking is available**

For the purposes of this Part, ***development for which biobanking is available*** means any development (whether or not development that is a project to which Part 3A of the Planning Act applies or development that is State significant infrastructure under Part 5.1 of that Act, development that requires development consent under Part 4 of that Act or development that is an activity to which Part 5 of that Act applies) other than the following:

- (a) any clearing of native vegetation that must not be carried out except in accordance with a development consent granted in accordance with the *Native Vegetation Act 2003* or a property vegetation plan under that Act,
- (b) development declared by the regulations to be development in respect of which biobanking is not available.

#### **Note—**

A biobanking statement may be issued in respect of any development that is development for which biobanking is available. However, participation in the scheme is voluntary (that is, it is not necessary to obtain a biobanking statement in respect of the development). If a statement is obtained, the proponent of the development obtains the benefit of the statement (as set out in sections 127ZO and 127ZP). The conditions of the statement will be incorporated into the conditions of the development consent or approval for the activity given under the Planning Act.

### **127ZK Application for biobanking statement in respect of development**

- (1) A person who proposes to carry out any development for which biobanking is available may apply to the Director-General for a biobanking statement in respect of the development.
- (2) The application must be made in a form approved by the Director-General and be accompanied by such fee, if any, as may be approved by the Director-General.
- (3) An application for a biobanking statement must be accompanied by:
  - (a) a description of the development to which the application relates, and
  - (b) a statement of any onsite measures that are proposed to be taken in connection with the development to minimise the impact of the development on biodiversity values, and
  - (c) an assessment of the impact or likely impact of the development on biodiversity values, prepared in accordance with the biobanking assessment methodology, and
  - (d) a statement of the number and class (if applicable) of biodiversity credits proposed to be retired to offset the impact or likely impact of the development on biodiversity values, prepared in accordance with the biobanking assessment methodology.

- (4) The regulations may prescribe other things that are required to be submitted with the application.

**127ZL Circumstances in which biobanking statement may be issued**

- (1) The Director-General may, on application made in accordance with this Part, issue a biobanking statement in respect of a proposed development if the development will improve or maintain biodiversity values.
- (2) For the purposes of this Division, a development will improve or maintain biodiversity values only if a determination is made by the Director-General, on the basis of an assessment of the development in accordance with the biobanking assessment methodology (including the number and class of biodiversity credits to be retired as an offset against the negative impact of the development on biodiversity values), that the development will improve or maintain biodiversity values.
- (3) The Director-General must refuse to issue a biobanking statement in respect of a development that does not improve or maintain biodiversity values.
- (4) In addition, the Director-General may refuse an application for the issue of a biobanking statement:
  - (a) if the application does not comply with this Part or the regulations, or
  - (b) if, in the opinion of the Director-General, insufficient information is provided to enable a biobanking statement to be issued, or
  - (c) if, in the opinion of the Director-General, the application does not sufficiently address the biobanking assessment methodology, or
  - (d) if, in the opinion of the Director-General, the applicant has not demonstrated that all cost effective onsite measures to minimise any negative impact of the development on biodiversity values are being or will be carried out, or
  - (e) for any other reason specified in the regulations.
- (5) The Director-General must refuse an application for the issue of a biobanking statement if:
  - (a) the application relates to development that is not development for which biobanking is available, or
  - (b) the application relates to development that requires planning concurrence under section 127ZM and the Director-General of the Department of Planning does not concur with the issue of the statement.
- (6) A biobanking statement may apply generally to the proposed development or may be limited by reference to one or more of the following:

- (a) the impact or potential impact of the proposed development on specified biodiversity values,
  - (b) a specified aspect of the proposed development,
  - (c) a specified part of the land on which the development is to be carried out.
- (7) The regulations may prescribe a period after making an application for a biobanking statement at the end of which, if the Director-General fails to either issue or refuse to issue a biobanking statement, the Director-General is taken to have refused to issue the biobanking statement.
- (8) A refusal by the Director-General to issue a biobanking statement in respect of development does not prevent the development being evaluated or assessed in accordance with the provisions of the Planning Act that would apply in respect of the development, but for this Part.

**Note—**

Participation in the biobanking scheme is voluntary. If a biobanking statement is not obtained in respect of a development (including because it is refused by the Director-General) the development may still be evaluated or assessed in accordance with the relevant provisions of the Planning Act. These provisions may require (among other things) the preparation of a species impact statement and the concurrence of, or consultation with, the Minister for the Environment and the Director-General.

- (9) A consent authority or determining authority cannot refuse to consent to or approve a development or activity under Part 4 or 5 of the Planning Act on the ground that an application for a biobanking statement in respect of the development or activity was refused.
- (10) A biobanking statement is not an approval for the purposes of Part 5 of the Planning Act.

**127ZM Concurrence of Director-General of Department of Planning required in certain cases**

- (1) If the Director-General is of the opinion that a proposed development requires planning concurrence, the Director-General must not issue a biobanking statement in relation to the development unless:
- (a) the Director-General has given the Director-General of the Department of Planning notice of the proposal to issue the biobanking statement, and
  - (b) the Director-General of the Department of Planning concurs with the issue of the biobanking statement.
- (2) For the purposes of this section, development requires planning concurrence if the development is of a kind declared by a State environmental planning policy made under the Planning Act to be development requiring planning concurrence.



- (3) The Director-General of the Department of Planning may concur, or refuse to concur, with the issue of a biobanking statement by the Director-General of the Department of Environment, Climate Change and Water.
- (4) The Director-General of the Department of Planning may refuse to concur with the issue of a biobanking statement on any grounds specified in a State environmental planning policy made under the Planning Act.
- (5) If the Director-General of the Department of Planning fails to notify the Director-General of the Department of Environment, Climate Change and Water whether the Director-General concurs, or refuses to concur, with the issue of a biobanking statement by the end of the relevant consultation period, the Director-General of the Department of Planning is taken to have concurred with the issue of the biobanking statement.
- (6) For the purposes of this section, the **relevant consultation period** means the period of 21 days after the Director-General of the Department of Environment, Climate Change and Water gives the Director-General of the Department of Planning notice of the proposal to issue a biobanking statement or such other period as may be agreed (either generally or in a particular case) by the Director-General of the Department of Environment, Climate Change and Water and the Director-General of the Department of Planning.
- (7) For the purposes of the Planning Act, the kinds of development for which planning concurrence is required under this section, and the grounds on which the Director-General of the Department of Planning may refuse to concur to the issue of a biobanking statement, are taken to be matters of State environmental planning significance.

#### **127ZN Form and conditions of biobanking statement**

- (1) A biobanking statement must:
  - (a) describe the development to which the statement relates, and
  - (b) specify any conditions applicable to the statement, being conditions of the following kind:
    - (i) a condition or conditions relating to the onsite measures that must be taken in connection with the development to minimise any negative impact on biodiversity values,
    - (ii) a credit retirement condition, being a condition that specifies the number and class of biodiversity credits (if any) that are to be retired to ensure that the development improves or maintains biodiversity values, and the timing of that retirement.

- (2) If the biobanking statement specifies a credit retirement condition, it must also describe any deferred retirement arrangement that applies in respect of the credit retirement condition.
- (3) A biobanking statement is to be issued in a form approved by the Director-General.
- (4) The Director-General may, before issuing a biobanking statement, provide a draft of the statement proposed to be issued to the applicant.
- (5) The Director-General may provide a copy of a biobanking statement, or a draft of a statement proposed to be issued by the Director-General, to the Minister administering the Planning Act, a consent authority, a determining authority (within the meaning of Part 5 of that Act), or to any other person prescribed by the regulations.

**127ZO Effect of issue of biobanking statement—development requiring development consent**

- (1) If development described in a biobanking statement supplied to a consent authority is development for which consent is required under Part 4 of the Planning Act, the development is taken, for the purposes of that Part, to be development that is not likely to significantly affect any threatened species, population or ecological community under this Act, or its habitat.
- (2) If a consent authority grants consent, under Part 4 of the Planning Act, to the carrying out of development in respect of which a biobanking statement has been issued and supplied to the consent authority, being a statement that specifies conditions, the consent authority must impose (and is taken to be authorised under that Act to impose) a condition on the grant of that consent that requires those conditions to be complied with.

**Note—**

The carrying out of development in contravention of the conditions of a development consent is an offence under section 126 of the Planning Act.

- (3) A person cannot appeal to the Land and Environment Court under the Planning Act in respect of a condition imposed by a consent authority under subsection (2).
- (4) Subsection (2) does not affect the right of a consent authority to impose conditions under section 80A of the Planning Act not inconsistent with the conditions of a biobanking statement or to refuse consent.
- (5) Despite section 79C of the Planning Act, if a biobanking statement has been issued in respect of a development, a consent authority is not required to take into consideration the likely impact of the development on biodiversity values.
- (6) An applicant for development consent under Part 4 of the Planning Act may request the consent authority to review its determination to impose any conditions on the

consent (not being an environmental contribution condition) that are additional to the conditions of a biobanking statement on the ground that the condition is inconsistent with the conditions of the biobanking statement. In particular, a review may be requested because the additional condition relates to impacts that were assessed by the Director-General, in accordance with the biobanking assessment methodology, prior to the issue of the biobanking statement.

- (7) Section 82A of the Planning Act applies in respect of any such review, with any necessary modifications, whether or not the consent authority is a council, and whether or not the determination is a determination to which that section would otherwise apply.
- (8) This section applies subject to any terms of the biobanking statement that limit the statement to:
  - (a) a particular aspect of the development, or
  - (b) a particular part of the land on which the development is to be carried out, or
  - (c) the impact of the development on particular biodiversity values.
- (9) Nothing in this section affects the operation of Part 4 of the Planning Act in respect of any development that is likely to significantly affect any threatened species, population or ecological community within the meaning of Part 7A of the *Fisheries Management Act 1994*.
- (10) In this section:

***environmental contribution condition*** means a condition that requires an environmental contribution (within the meaning of section 127B).

**127ZP Effect of issue of biobanking statement—activities under Part 5 of Planning Act**

- (1) If development described in a biobanking statement supplied to a determining authority is an activity to which Part 5 of the Planning Act applies, the activity is taken, for the purposes of that Part, to be an activity that is not likely to significantly affect any threatened species, population or ecological community under this Act, or its habitat.
- (2) If a determining authority approves an activity under Part 5 of the Planning Act in respect of which a biobanking statement has been issued and supplied to the determining authority, being a statement that specifies conditions, the determining authority must impose (and is taken to be authorised to impose) a condition on the approval of the activity that requires those conditions to be complied with.
- (3) Subsection (2) does not affect the right of a determining authority to impose conditions on the approval of the activity under section 112 of the Planning Act not inconsistent with the conditions of a biobanking statement or to refuse to approve the

activity.

- (4) If there is a right of appeal under any Act in respect of conditions imposed on the approval, that right does not apply in respect of a condition imposed by the determining authority under subsection (2).
- (5) If a determining authority is the proponent of an activity under Part 5 of the Planning Act in respect of which a biobanking statement has been issued, being a statement that specifies conditions, the determining authority must carry out the activity in accordance with the conditions of the biobanking statement.
- (6) Subsection (5) does not affect the right of a determining authority to refrain from carrying out the activity or to modify its activity in a manner not inconsistent with the conditions of the biobanking statement.
- (7) Despite section 111 of the Planning Act, if a biobanking statement has been issued in respect of an activity, a determining authority is not required to consider the effect of the activity on biodiversity values.
- (8) A determining authority is to make arrangements that enable a proponent of an activity to seek a review by the determining authority of any conditions imposed on an approval that are additional to the conditions of a biobanking statement, for the purpose of ensuring that the additional conditions are consistent with the conditions of the biobanking statement. In particular, the arrangements should enable a review to be obtained in relation to any additional condition that relates to impacts that were assessed by the Director-General, in accordance with the biobanking assessment methodology, prior to the issue of the biobanking statement.
- (9) This section applies subject to any terms of the biobanking statement that limit the statement to:
  - (a) a particular aspect of the activity, or
  - (b) a particular part of the land on which the activity is to be carried out, or
  - (c) the effect of the activity on particular biodiversity values.
- (10) For the purposes of this or any other Act, if a determining authority fails to comply with this section in relation to an activity the determining authority is taken not to have complied with Part 5 of the Planning Act.
- (11) Nothing in this section affects the operation of Part 5 of the Planning Act in respect of any activity that is likely to significantly affect any threatened species, population or ecological community within the meaning of Part 7A of the *Fisheries Management Act 1994*.

### **127ZQ Modification, revocation and lapsing of biobanking statement**

- (1) A person may apply to the Director-General for the modification or revocation of a biobanking statement.
- (2) An application may be made by:
  - (a) the person who applied for the biobanking statement, or
  - (b) any other person entitled to act on a development consent or approval under the Planning Act given in relation to the development described in the biobanking statement.
- (3) Subject to the regulations, this Division applies to an application to modify or revoke a biobanking statement in the same way as it applies to the original application.
- (4) A biobanking statement (unless revoked sooner) ceases to have any effect under this Part:
  - (a) at the end of the period of 2 years after it is issued by the Director-General, or
  - (b) if it is extended by the Director-General before the end of that 2-year period, at the end of the extended period.
- (5) A biobanking statement does not cease to have effect at the end of the 2-year period referred to in subsection (4) if the statement is acted on before the end of that period.
- (6) If a biobanking statement is revoked before the statement is acted on, and a new biobanking statement is not issued in respect of the development, the Planning Act applies in respect of the assessment and evaluation of the development to which the biobanking statement applied, and any consent or approval granted in respect of the development, as if the statement had not been issued.

**Note—**

Participation in the biobanking scheme is voluntary. Accordingly, a developer who has obtained a biobanking statement may apply for the revocation of that statement and have the development evaluated, consented to or approved in accordance with the relevant provisions of the Planning Act. These provisions may require (among other things) the preparation of a species impact statement and the concurrence of, or consultation with, the Minister for the Environment and the Director-General.

- (7) For the purposes of this section, a biobanking statement is acted on if:
  - (a) in the case of a statement that relates to a project to which Part 3A of the Planning Act applies, the Minister administering that Act approves that project, or
  - (a1) in the case of a statement that relates to State significant infrastructure to which Part 5.1 of the Planning Act applies, the Minister administering that Act approves the infrastructure, or
  - (b) in the case of a statement that relates to development for which consent is

required under Part 4 of the Planning Act—development consent is granted in respect of the development, or

- (c) in the case of a statement that relates to an activity under Part 5 of the Planning Act—a determining authority approves the activity or commences carrying out the activity.

**127ZR Minister may require retirement of credits**

- (1) The Minister may, by order in writing to a person, direct the person to retire biodiversity credits of a specified number and class (if applicable) within a time specified in the order.
- (2) A direction may be given to a person under this section if:
  - (a) the person carries out development in respect of which a biobanking statement has been issued, and
  - (b) the person fails to retire biodiversity credits in accordance with a credit retirement condition specified in the biobanking statement that has effect.
- (3) For the purposes of this section, a credit retirement condition has effect if:
  - (a) in the case of a statement that relates to a project to which Part 3A of the Planning Act applies, the Minister administering that Act imposes the credit retirement condition as a condition of approval under that Part, or
  - (a1) in the case of a statement that relates to State significant infrastructure to which Part 5.1 of the Planning Act applies, the Minister administering that Act imposes the credit retirement condition as a condition of approval under that Part, or
  - (b) in the case of a statement that relates to development for which consent is required under Part 4 of the Planning Act—the development consent requires compliance with the credit retirement condition, or
  - (c) in the case of a statement that relates to an activity under Part 5 of the Planning Act—an approval of a determining authority requires compliance with the credit retirement condition or, if the activity is to be carried out by the determining authority, the determining authority commences carrying out that activity.
- (4) A person must not, without reasonable excuse, fail to comply with a direction under this section.

Maximum penalty: 10,000 penalty units.

- (5) It is not an excuse for a failure to comply with a direction under this section that the person who is the subject of the direction does not, at the time the direction is given, hold a sufficient number of biodiversity credits to comply with the direction.

**Note—**

If the person who is the subject of the direction does not hold a sufficient number of credits to comply with the direction, the person may obtain the required number by purchasing them.

- (6) A court that convicts a person of an offence under subsection (4) may, in addition to or in substitution for any pecuniary penalty for the offence, by order direct the person to retire, in accordance with this Part, biodiversity credits of a specified number and class (if applicable) within a time specified in the order and, if the person does not hold sufficient biodiversity credits to comply with the direction, to acquire the necessary biodiversity credits for the purpose of retiring them.
- (7) In this section:

**conviction** includes the making of an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999*.

**127ZS Director-General may verify retirement of biodiversity credits**

- (1) The Director-General may issue a statement confirming that a number and class (if applicable) of biodiversity credits specified in the statement have been retired by a person for the purpose of complying with a credit retirement condition.
- (2) The Director-General may issue such a statement at the request of the Minister administering the Planning Act, a consent authority, a determining authority (within the meaning of Part 5 of that Act), the person who applied for the biobanking statement concerned or in any other circumstances prescribed by the regulations.

**Division 7 Arrangements for deferral of retirement of biodiversity credits**

**127ZT Deferred retirement arrangements**

- (1) If the Director-General proposes to issue a biobanking statement subject to a credit retirement condition and is satisfied that restorative actions will be taken in relation to the development that will restore or improve the biodiversity values affected by the development, the Director-General may approve an arrangement (a **deferred retirement arrangement**) under which:
  - (a) the retirement of some or all of the biodiversity credits under the credit retirement condition is deferred pending the completion of those actions, and
  - (b) the biodiversity credits the retirement of which is deferred pending the completion of those actions are required to be transferred to the Minister.
- (2) A credit retirement condition specified in a biobanking statement has effect subject to any such deferred retirement arrangement.

- (3) Subject to the powers of the Director-General under this Division, the Minister is to hold biodiversity credits transferred to the Minister under a deferred retirement arrangement pending completion of the relevant restorative actions and is not permitted to transfer, retire, or otherwise deal with, the biodiversity credits.
- (4) The biobanking assessment methodology may make provision with respect to deferred retirement arrangements, including:
  - (a) the types of restorative actions in respect of which deferred retirement arrangements are available, and
  - (b) the number and class of biodiversity credits that may be transferred back to a former holder of biodiversity credits (or to any person who acquires the rights of a former holder to apply for such a transfer) on completion of those actions.
- (5) An application for registration of the transfer of biodiversity credits to the Minister under a deferred retirement arrangement is to be made in the manner required by Division 4. However, it is not necessary for the Minister to be a party to a transfer or application for registration of transfer.
- (6) The provisions of Division 5 relating to the cancellation and suspension of biodiversity credits, and section 127ZZ (which relates to cost recovery), apply in respect of a biodiversity credit transferred to the Minister under a deferred retirement arrangement as if a reference to the holder of the biodiversity credit were a reference to the person who was the holder of the credit immediately before it was transferred to the Minister.

**127ZU Transfer or retirement of biodiversity credits held subject to deferred retirement arrangement**

- (1) A former holder of a biodiversity credit may, on the completion of any restorative actions the subject of a deferred retirement arrangement, apply to the Director-General for the transfer to the former holder of any biodiversity credits held by the Minister under that deferred retirement arrangement.
- (2) An application under this section:
  - (a) is to be in a form approved by the Director-General, and
  - (b) is to be accompanied by the fee (if any) approved by the Director-General for applications under this section and such information as the Director-General requires.
- (3) The Director-General is to determine the application in accordance with any relevant requirements of the biobanking assessment methodology.
- (4) If, as a result of the application, the Director-General determines that any of the biodiversity credits held by the Minister under the deferred retirement arrangement



may be transferred back to the former holder:

- (a) the Director-General is to register a transfer, from the Minister to the former holder of biodiversity credits, of those biodiversity credits (without requiring an application for registration of transfer), and
  - (b) the Director-General may retire any remaining biodiversity credits held by the Minister under the deferred retirement arrangement.
- (5) If, as a result of the application, the Director-General determines that no biodiversity credits held by the Minister under the deferred retirement arrangement should be transferred to the former holder, the Director-General may retire all biodiversity credits held by the Minister under the arrangement.
- (6) The Director-General must, before retiring biodiversity credits under this section, give notice of the retirement to the former holder of the biodiversity credits.
- (7) The notice is to specify the date on which the biodiversity credits will be retired, being a date that is not less than 28 days after the notice is given to the former holder.
- (8) The Director-General may reject an application under this section for the transfer of biodiversity credits to a former holder of the credits if an application has already been made and determined in respect of the development concerned, or for any other reason specified in the regulations.
- (9) In this section, a **former holder** of a biodiversity credit means:
- (a) the person who held the biodiversity credit immediately before the biodiversity credit was transferred to the Minister under a deferred retirement arrangement, or
  - (b) a person who acquires the rights of the person referred to in paragraph (a) to apply for a transfer under this section in respect of the biodiversity credit.

**127ZV Deadline for completion of restorative actions**

- (1) A deferred retirement arrangement may provide for a period at the end of which the deferred retirement arrangement ceases to have effect.
- (2) At the end of that period, the Director-General may retire any biodiversity credits transferred to the Minister under the deferred retirement arrangement that continue to be held by the Minister.
- (3) The Director-General must, before retiring biodiversity credits under this section, give notice of the retirement to the person who held those credits immediately before they were transferred to the Minister.
- (4) The notice is to specify the date on which the biodiversity credits will be retired, being a date that is not less than 28 days after the notice is given to the former holder.

## **Division 8 Financial matters**

### **127ZW Biobanking Trust Fund**

(1) There is to be established by this Act a fund called the “Biobanking Trust Fund”.

**Note—**

The regulations may require a specified amount to be paid into the Fund when a biodiversity credit is first transferred to another person. It is intended that amounts so paid will be the principal source of revenue for the Fund.

(2) The following amounts are to be paid into the Fund, subject to any requirements specified in the regulations:

- (a) amounts required to be paid to the Fund under the regulations in respect of the transfer or retirement of a biodiversity credit,
- (b) any amount paid out of the Fund to the owner of a biobank site that is repaid by or recovered from the owner,
- (c) the proceeds of investment of money in the Fund,
- (d) any other money appropriated by Parliament for the purposes of the Fund or required by law to be paid into the Fund,
- (e) such other amounts as are payable to the Fund under this Act or the regulations.

(3) The following may be paid out of the Fund, subject to any requirements specified in the regulations:

- (a) such amounts as the Minister directs to be paid from the Fund to an owner of a biobank site in respect of management actions carried out, being carried out or to be carried out in accordance with a biobanking agreement,
- (b) such amounts as the Minister directs to be paid from the Fund to the Fund Manager, in payment of the remuneration of the Fund Manager,
- (c) any amounts payable by the Fund Manager in discharging the liabilities incurred by the Fund Manager in the exercise of its functions,
- (d) such other amounts as are authorised to be paid out of the Fund by this Act or the regulations.

### **127ZX Management and control of Fund**

(1) The Fund Manager is to manage and control the Biobanking Trust Fund in accordance with this Act and the regulations.

(2) The Fund Manager:

- (a) is to act as trustee of money vested in the Biobanking Trust Fund, and
  - (b) is to invest the money vested in the Biobanking Trust Fund not immediately required for the purposes for which it is to be applied in the same way as trustees may invest trust funds under the *Trustee Act 1925*, subject to any requirements specified in the regulations, and
  - (c) is to make payments from the Biobanking Trust Fund as authorised by this Act and the regulations.
- (3) The Fund Manager has such other functions as may be conferred on the Fund Manager by the regulations.
- (4) The Fund Manager may do all things necessary or convenient to be done in connection with the exercise of the Fund Manager's functions.
- (5) The regulations may make further provision with respect to the Biobanking Trust Fund, including by providing for the following:
- (a) the investment of the money vested in the Fund,
  - (b) the establishment of committees to advise the Fund Manager on the exercise of the Fund Manager's functions under this Division or to oversee the exercise of those functions,
  - (c) the obligation of the Fund Manager to report to the Minister on the exercise of the Fund Manager's functions under this Division,
  - (d) the winding up of the Fund,
  - (e) the review of any complaints made against the Fund Manager.

**127ZY Fund Manager**

- (1) The Minister is to appoint a person as Fund Manager in respect of the Biobanking Trust Fund.
- (2) It is not necessary for the person appointed as Fund Manager to be a public authority.
- (3) However, if the person appointed as Fund Manager is not a public authority, the Fund Manager is not, and does not represent, the Crown. Accordingly, any such Fund Manager:
- (a) is not an instrumentality or agency of the State, and
  - (b) is not entitled to any immunity or privilege of the State, and
  - (c) cannot render the State liable for any debts, liabilities or obligations of the Fund, and

(d) is not a public authority for any purpose and is taken not to have been constituted or established for a public purpose or for a purpose of the State.

- (4) The regulations may make further provision for the appointment of the Fund Manager, and make provision for the termination of the appointment of the Fund Manager and remuneration of the Fund Manager.

### **127ZZ Cost recovery**

- (1) The regulations may require any participant in the biobanking scheme to pay to the Minister a contribution towards the following:
- (a) the costs of management and administration of the scheme (including payment for services provided by any person or body exercising functions under the scheme),
  - (b) the costs of ensuring compliance with the scheme,
  - (c) any other costs relating to the scheme.
- (2) The amount of the contribution (or the manner in which it is to be calculated) and other matters concerning its payment are to be set out in the regulations.
- (3) The contribution is recoverable by the Minister as a debt in a court of competent jurisdiction.
- (4) The regulations may authorise the payment of the contribution by instalments. If an instalment is not paid by the due date, the balance then becomes due and payable (together with any interest or penalty (or both) that the regulations require to be paid in respect of a late payment).
- (5) The regulations may:
- (a) exempt any person or class of persons from payment of a contribution referred to in this section, and
  - (b) authorise the Minister to waive payment, or extend the time for payment, of a contribution, or part of a contribution, or any interest or penalty payable under this section.
- (6) In this section:
- participant** in the biobanking scheme means any of the following persons:
- (a) the owner of a biobank site,
  - (b) the holder of a biodiversity credit,
  - (c) a person who applies for a biobanking statement, a person who owns the land on

which development described in a biobanking statement may be carried out or a person entitled to act on a development consent or approval under the Planning Act given in relation to a development described in a biobanking statement,

(d) a person accredited as a conservation broker under the regulations.

(7) For the purposes of this section, the Minister or Director-General is not considered to be a participant in the biobanking scheme in respect of any thing done on behalf of the Crown.

### **127ZZA Biodiversity Banking Account**

(1) There is to be established in the Special Deposits Account an account called the "Biodiversity Banking Account".

(2) Money in the account is under the control of the Minister and can be expended by the Minister only for the purposes authorised by this section.

(3) There is to be paid into the account:

(a) all contributions paid by participants in the biobanking scheme under a regulation referred to in section 127ZZ, and

(b) all fees and charges paid in connection with this Part, other than any amount that is payable under this Part to the Biobanking Trust Fund, and

(c) all costs or damages recovered in connection with enforcement action taken against an owner of a biobank site in respect of a failure to comply with a biobanking agreement, this Part or the regulations under this Part, other than amounts payable to the Biobanking Trust Fund, and

(d) all money received in respect of penalties recovered pursuant to this Part or the regulations under this Part, and

(e) the proceeds of investment of money in the account, and

(f) any money acquired by the Minister under section 148 of the *National Parks and Wildlife Act 1974* for the purposes of this Part, and

(g) any money received by the Minister pursuant to section 149 of the *National Parks and Wildlife Act 1974* in respect of land or other property, or an interest in land or property, acquired by the Minister for the purposes of this Part, or by purchase with money from the Biodiversity Banking Account, and

(h) any other money provided by Parliament for the purposes of the account or required by law to be paid into the account.

(4) There may be paid out of the account:

- (a) the costs of management and administration of the biobanking scheme, and
  - (b) the costs of ensuring compliance with the biobanking scheme, and
  - (c) such costs as the Minister directs are to be paid from the account to an owner of a biobank site, and
  - (d) such costs as the Minister directs to be paid from the account in payment of the remuneration of the Fund Manager, and
  - (e) such other costs relating to the biobanking scheme as the Minister directs to be paid out of the account.
- (5) There may be paid out of the account to the Consolidated Fund any amount in the account that, in the opinion of the Minister, is in excess of the amounts required to meet the costs referred to in subsection (4).

## **Division 9 Registers**

### **127ZZB Register of biobank sites**

- (1) The Director-General is to keep a register of biobank sites.
- (2) The register of biobank sites is to contain the following information:
  - (a) the location of each biobank site,
  - (b) a copy of the biobanking agreement relating to each biobank site.
- (3) The register of biobank sites may also contain other information of a kind prescribed by the regulations (including in relation to a biobank site the registration of which has been suspended or cancelled).
- (4) Information on the register is to be made available for public inspection at the head office of the Department and on the website of the Department.
- (5) The regulations may prescribe a fee for the provision of copies of information on the register.
- (6) The regulations may specify information on the register that is not to be made available to the public under this section.
- (7) The register may be kept wholly or partly by electronic means.

### **127ZZC Register of biodiversity credits**

- (1) The Director-General is to keep a register of biodiversity credits.
- (2) The register of biodiversity credits is to contain the following information in relation to each biodiversity credit created under this Part:

- (a) particulars of the biobank site and management actions in respect of which the biodiversity credit was created,
  - (b) the class of the biodiversity credit (if applicable),
  - (c) the name of the current holder, and any previous holders, of the biodiversity credit,
  - (d) any suspension, cancellation or retirement of the biodiversity credit.
- (3) The register of biodiversity credits may also contain other information of a kind prescribed by the regulations.
  - (4) Subject to the regulations, information on the register is to be made available for public inspection at the head office of the Department and on the website of the Department.
  - (5) The regulations may prescribe a fee for the provision of copies of information on the register.
  - (6) The regulations may specify information on the register that is not to be made available to the public under this section.
  - (7) The register may be kept wholly or partly by electronic means.

**127ZZD Register of biobanking statements**

- (1) The Director-General is to keep a register of biobanking statements.
- (2) The register of biobanking statements is to contain the following information in relation to each biobanking statement issued under this Part:
  - (a) a copy of the biobanking statement,
  - (b) the name of the person who applied for the biobanking statement.
- (3) The register of biobanking statements may also contain other information of a kind prescribed by the regulations.
- (4) Information on the register is to be made available for public inspection at the head office of the Department and on the website of the Department.
- (5) The regulations may prescribe a fee for the provision of copies of information on the register.
- (6) The regulations may specify information on the register that is not to be made available to the public under this section.
- (7) The register may be kept wholly or partly by electronic means.

### **127ZZE Evidentiary provisions**

- (1) A register kept under this Division is evidence of any particulars registered in it.
- (2) If a register is wholly or partly kept by electronic means, a document issued by the Director-General producing in writing particulars included in the register, or the part kept by electronic means, is admissible in legal proceedings as evidence of those particulars.

### **127ZZF Correction of register**

The Director-General may correct any error in or omission from a register kept under this Part, or update a register in accordance with the requirements (if any) specified in the regulations.

## **Division 10 Miscellaneous**

### **127ZZG Appeals**

- (1) A person who owns land that is a biobank site and who is dissatisfied with the decision of the Director-General to suspend or cancel the registration of the biobank site may appeal to the Land and Environment Court against the decision.
- (2) The holder of a biodiversity credit who is dissatisfied with a decision of the Director-General to cancel a biodiversity credit may appeal to the Land and Environment Court against the decision.
- (3) A person who applies for the registration of a transfer of a biodiversity credit and who is dissatisfied with a decision of the Director-General to refuse to register the transfer may appeal to the Land and Environment Court against the decision, but only in the circumstances (if any) authorised by the regulations.
- (4) A person who applies for the transfer to the person of a biodiversity credit held by the Minister pursuant to a deferred retirement arrangement and who is dissatisfied with a decision of the Director-General in respect of the application may appeal to the Land and Environment Court against the decision.
- (5) A person cannot appeal under subsection (4) against the provisions of the biobanking assessment methodology or the reasonableness of any determination of the Director-General made in accordance with that methodology.
- (6) A person who held biodiversity credits immediately before they were transferred to the Minister pursuant to a deferred retirement arrangement and who is dissatisfied with a decision of the Director-General to retire those credits (other than a decision made as a result of an application referred to in subsection (4)) may appeal to the Land and Environment Court against the decision.
- (7) An appeal may be made by a person under this section no later than 3 months after



being notified by the Director-General of the decision.

**127ZZH Special arrangements for creation of national parks and other reservations**

- (1) The fact that land is a biobank site does not prevent the land from being reserved under Part 4 or Part 4A of the *National Parks and Wildlife Act 1974*.
- (2) On the reservation of a biobank site as a national park, historic site, state conservation area, regional park, karst conservation reserve, nature reserve or Aboriginal area under the *National Parks and Wildlife Act 1974*, the land concerned ceases to be a biobank site and the biobanking agreement applicable to the land is terminated.

**127ZZI Conservation brokers**

- (1) The regulations may make provision for or with respect to conservation brokers.
- (2) For the purposes of this section, a **conservation broker** is a person who provides, or offers to provide, any of the following services (whether or not for fee or reward):
  - (a) the identification of potential biobank sites or management actions,
  - (b) the negotiation of a biobanking agreement on behalf of a land owner,
  - (c) assistance with an application for registration of a biodiversity credit or an application for a biobanking statement,
  - (d) assistance with buying or selling biodiversity credits,
  - (e) any other service in connection with the biobanking scheme that is prescribed by the regulations for the purposes of this definition.
- (3) Without limiting subsection (1), the regulations may:
  - (a) provide for the accreditation of persons as conservation brokers, including by specifying matters that may be taken into consideration in determining whether a person (whether or not an individual) is a fit and proper person to be accredited as a conservation broker, and
  - (b) exempt any person or class of persons from those requirements, and
  - (c) prohibit any person from holding himself or herself out to be a conservation broker, or advertising a service of a kind referred to in subsection (2), unless accredited.

**127ZZJ Participation of Minister**

The Minister may participate in the biobanking scheme, including by purchasing, holding and transferring biodiversity credits.

### **127ZZK Exemption from liability**

- (1) The Minister, the Director-General and any other persons employed in the administration of this Part are not liable in any civil proceedings for anything done or omitted to be done in good faith in the exercise or purported exercise of any function under this Part.
- (2) This section does not extend to the Fund Manager.

### **127ZZL Regulations**

- (1) The regulations may make further provision for or with respect to the biobanking scheme.
- (2) In particular, the regulations may:
  - (a) require the Director-General to periodically review the operation of the scheme and report on its operation to the Minister, and
  - (b) make provision for the arrangements that may be entered into between participants in the biobanking scheme (within the meaning of section 127ZZ), or between those participants and other persons, in connection with the scheme, and
  - (c) make provision for the resolution of disputes arising in connection with the operation of the scheme.

### **127ZZM Regulations not subject to staged repeal**

A regulation that contains only the following provisions is not repealed by the operation of Part 3 of the [Subordinate Legislation Act 1989](#):

- (a) provisions that relate to the biobanking scheme established by this Part (including any provisions required or authorised by this Part, and any ancillary, consequential, savings or transitional provisions),
- (b) provisions that deal with the citation and commencement of the regulation, or other provisions of a machinery nature.

### **127ZZN Review of operation of biobanking scheme**

- (1) The Minister is to cause a review of the operation of the biobanking scheme to be carried out as soon as possible after the period of 2 years after the biobanking assessment methodology is first published in the Gazette.
- (2) The Minister may:
  - (a) determine the terms of reference of the review, and
  - (b) appoint a person or persons to carry out the review.

- (3) The Minister is to ensure that the public are given an opportunity to make submissions on the review.
- (4) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 2 years.

## **Part 8 Scientific Committee**

### **Introductory note—**

This Part establishes, and describes the functions, membership and procedure of, and the manner of service of documents on, the Scientific Committee. The Part provides that the Scientific Committee is not subject to Ministerial control or direction.

### **128 Establishment of Scientific Committee**

There is established by this Act a body corporate with the corporate name “Scientific Committee”.

### **128A Functions of Scientific Committee**

- (1) The Scientific Committee has the functions conferred or imposed on it by or under this or any other Act or law.
- (2) The principal functions of the Scientific Committee are as follows:
  - (a) to determine which species are to be listed under this Act as threatened species,
  - (b) to determine which populations are to be listed under this Act as endangered populations and to advise the Director-General on the identification of their critical habitat,
  - (c) to determine which ecological communities are to be listed under this Act as endangered, critically endangered or vulnerable ecological communities and to advise the Director-General on the identification of their critical habitat,
  - (d) to determine which threatening processes are to be listed under this Act as key threatening processes,
  - (e) to review draft joint management agreements and the performance of parties under executed joint management agreements,
  - (f) to advise the Director-General on the exercise of the Director-General’s functions under this Act,
  - (g) to advise the Minister and the NRC on any matter relating to the conservation of threatened species, populations or ecological communities that is referred to the Committee by the Minister or that the Committee considers appropriate.
- (3) The Scientific Committee may, in the exercise of its functions, make use of consultants or obtain assistance or advice from other persons.

### **129 Members of Scientific Committee**

- (1) The Scientific Committee is to consist of 11 members appointed by the Minister.
- (2) Of the members of the Scientific Committee:
  - (a) two are to be scientists employed by the National Parks and Wildlife Service nominated by the Director-General,
  - (b) one is to be a scientist employed by a public authority, having expertise in one or more of the areas of study referred to in subsection (3), selected by the Minister,
  - (b1) one is to be a scientist who is employed by a public authority that has land management responsibilities and who is selected by the Minister,
  - (c) one is to be a scientist nominated by the Commonwealth Scientific and Industrial Research Organisation,
  - (d) one is to be a scientist employed and nominated by the Australian Museum Trust,
  - (e) one is to be a scientist employed and nominated by the Royal Botanic Gardens and Domain Trust,
  - (f) one is to be a scientist nominated by the Ecological Society of Australia,
  - (g) one is to be a scientist nominated by the Entomological Society of Australia,
  - (h) one is to be a scientist who is employed by a tertiary educational institution and who is selected by the Minister,
  - (i) one is to be a scientist having expertise in agricultural science and natural resource management who is selected by the Minister.
- (3) A person appointed as a member of the Scientific Committee is to have expertise in one or more of the following areas of study:
  - (a) vertebrate biology,
  - (b) invertebrate biology,
  - (c) plant biology,
  - (d) terrestrial ecology,
  - (e) plant community ecology,
  - (f) limnology,
  - (g) aquatic biology,
  - (h) genetics of small populations,

- (i) population dynamics (including population viability analysis or evolutionary ecology).
- (4) If the person or body responsible for nominating a member of the Scientific Committee under this section (***the nominating body***) fails to submit a nomination to the Minister, within such time and in such manner as may be specified by the Minister by notice in writing to the nominating body, the Minister:
  - (a) may seek a nomination from any other person or body that the Minister considers to be a suitable substitute for the nominating body, and
  - (b) may appoint any scientist nominated, or employed and nominated, by that other person or body as a member of the Scientific Committee, in place of a scientist nominated, or employed and nominated, by the nominating body.

### **130 Provisions relating to members of Scientific Committee**

- (1) Subject to this Act, a member of the Scientific Committee holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (1A) A person who serves as a member of the Scientific Committee for 2 consecutive periods is not eligible to be a member of the Scientific Committee for 3 years after the end of those consecutive periods.
- (1B) In determining the term of office to be provided for by a member's instrument of appointment, the Minister is to have regard to the desirability of maintaining some continuity of membership of the Committee. That is, the Minister is to endeavour to ensure that the terms of office of all members do not expire at or about the same time.
- (2) A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.
- (3) The office of a member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not reappointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Minister under this section or by the Governor under Part 8 of the *Public Sector Management Act 1988*, or
  - (e) is absent from 4 consecutive meetings of the Scientific Committee of which reasonable notice has been given to the member personally or in the ordinary

course of post, except on leave granted by the Scientific Committee or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Scientific Committee for having been absent from those meetings, or

(f) becomes a mentally incapacitated person, or

(g) ceases to have the qualification required for the member's appointment.

(4) The Minister may remove a member from office.

(5) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member.

(6) If by or under any Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

### **131 Chairperson and Deputy Chairperson**

A Chairperson and a Deputy Chairperson of the Scientific Committee are to be appointed by the Minister from among the members of the Scientific Committee.

### **132 Disclosure of pecuniary interests**

(1) If:

(a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Scientific Committee, and

(b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Scientific Committee.

(2) A disclosure by a member at a meeting of the Scientific Committee that the member:

(a) is a member, or is in the employment, of a specified company or other body, or

(b) is a partner, or is in the employment, of a specified person, or

(c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subsection (1).

- (3) Particulars of any disclosure made under this section must be recorded by the Scientific Committee in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee (if any) determined by the Scientific Committee.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Scientific Committee otherwise determines:
  - (a) be present during any deliberation of the Scientific Committee with respect to the matter, or
  - (b) take part in any decision of the Scientific Committee with respect to the matter.
- (5) For the purposes of the making of a determination by the Scientific Committee under subsection (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
  - (a) be present during any deliberation of the Scientific Committee for the purpose of making the determination, or
  - (b) take part in the making by the Scientific Committee of the determination.
- (6) A contravention of this section does not invalidate any decision of the Scientific Committee.

### **133 Procedure of Scientific Committee**

- (1) The procedure for the calling of meetings of the Scientific Committee and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Scientific Committee.
- (2) The quorum for a meeting of the Scientific Committee is 6 members.
- (3) The Chairperson of the Scientific Committee or, in the absence of the Chairperson, the Deputy Chairperson or, in the absence of both the Chairperson and the Deputy Chairperson, another member elected to chair the meeting, is to preside at a meeting of the Scientific Committee. The person presiding at a meeting has a deliberative vote but not a casting vote.
- (4) A decision supported by a majority of the votes cast at a meeting of the Scientific Committee at which a quorum is present is the decision of the Scientific Committee.

- (5) The Scientific Committee may invite suitably qualified persons to attend meetings to advise or inform the Scientific Committee on any matter.

**134 Transaction of business outside meeting or by telephone or other means**

- (1) The Scientific Committee may, if it thinks fit, transact any of its business by the circulation of papers among all the members for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Scientific Committee.
- (2) The Scientific Committee may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
  - (a) the approval of a resolution under subsection (1), or
  - (b) a meeting held in accordance with subsection (2),the Chairperson and each other member have the same voting rights as they have at an ordinary meeting of the Scientific Committee.
- (4) A resolution approved under subsection (1) is, subject to the regulations, to be recorded in the minutes of the meeting of the Scientific Committee.
- (5) Papers may be circulated among the members for the purposes of subsection (1) by facsimile or other transmission of the information in the papers concerned.

**135 Scientific Committee not subject to Ministerial control**

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

**135A Exclusion of personal liability**

- (1) Any matter or thing done or omitted to be done by a member of the Scientific Committee, or by any person acting under the direction of the Scientific Committee, does not, if the matter or thing was done or omitted to be done in good faith for the purpose of exercising functions under this Act, subject that member or person personally to any action, liability, claim or demand.
- (2) However, any such liability attaches instead to the Crown.

**136 Service of documents on Scientific Committee**

For the purposes of this Act, a nomination for listing under Part 2 or any other document is made, issued or given to the Scientific Committee if it is addressed to the Scientific Committee and is:



- (a) lodged at the head office of the National Parks and Wildlife Service, or
- (b) sent by post to the head office of the National Parks and Wildlife Service, or
- (c) sent by facsimile transmission or other electronic means notified by the Scientific Committee as being an available means of communication, or
- (d) sent by any means provided for the service of documents by another Act or law.

## **Part 9 Biological Diversity Strategy**

### **136A References to Minister and Director-General**

- (1) In this Part, a reference to the Minister includes a reference to the Minister administering the *Fisheries Management Act 1994* and a reference to the Director-General includes a reference to the Director of NSW Fisheries.
- (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:
  - (a) the Minister administering this Act and the Minister administering the *Fisheries Management Act 1994*, or
  - (b) the Director-General and the Director of NSW Fisheries,to take the action jointly or decide the matter jointly.
- (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.

### **137-139 (Repealed)**

### **140 The Strategy**

- (1) The Director-General is to prepare a Biological Diversity Strategy within 9 months after the commencement of this Part setting out how the objects of this Act are to be achieved.
- (2) The Strategy is to include proposals for:
  - (a) ensuring the survival and evolutionary development in nature of all species, populations and communities, including appropriate protection under the *Wilderness Act 1987* or the *National Parks and Wildlife Act 1974* or under the *Fisheries Management Act 1994*, and
  - (b) preparing or contributing to the preparation of strategies for ecologically sustainable development in New South Wales, including the integration of biological diversity conservation and natural resource management, and

- (c) an education program targeted at the community and public authorities, and
  - (d) a biological diversity research program, and
  - (e) encouraging greater community involvement in decision making affecting biological diversity.
- (3) The Strategy must also include:
- (a) the objectives and performance targets of the Strategy, and
  - (b) a statement of the means by which these objectives and performance targets are to be achieved, and
  - (c) a statement of the manner in which the National Parks and Wildlife Service constituted by the *National Parks and Wildlife Act 1974* and NSW Fisheries propose to assess their performance with respect to attainment of the objectives and performance targets of the Strategy.
- (4) The Director-General may amend the Strategy.
- (5) The Strategy is to be amended within 12 months after the commencement of the amendments to this section made by the *Fisheries Management Amendment Act 1997* so as to extend the Strategy to fish and marine vegetation.

#### **141 Procedure for making or amending Strategy**

- (1) The Director-General is to prepare a draft Strategy and publish notice of the draft Strategy in a newspaper circulating generally throughout the State.
- (2) A notice is to:
- (a) be in the form prescribed by the regulations, and
  - (b) state the date by which submissions may be made to the Director-General, which is to be at least 30 days after the date on which the notice is published, and
  - (c) specify the manner in which submissions may be made, and
  - (d) fix a time and place at which a copy of the draft Strategy will be available to the public for inspection.
- (3) Any person may make submissions to the Director-General about the draft Strategy.
- (4) The Director-General may, after the expiration of the period referred to in subsection (2) (b) and after examination of submissions received, amend the Strategy. The Director-General is to refer the Strategy and any submissions received to the Scientific Committee for its consideration and advice.
- (5) Before adopting the Strategy, the Director-General is to consider the comments and

suggestions of the Scientific Committee and is to seek the advice of any other relevant public authority.

- (6) The Director-General may adopt the Strategy without alteration or with such alterations as the Director-General thinks fit.
- (7) After the Strategy has been adopted, the Director-General is to publish notice of its making in the Gazette and in a newspaper circulating generally throughout the State.
- (8) The procedures applicable to the making of the Strategy apply to the making of an amendment to the Strategy that is not a minor amendment.
- (9) In this section a reference to the Scientific Committee includes a reference to the Fisheries Scientific Committee under Part 7A of the *Fisheries Management Act 1994*.

## Part 9A Advisory Councils

### 141A References to Minister and Director-General

- (1) In this Part, a reference to the Minister includes a reference to the Minister administering the *Fisheries Management Act 1994* and a reference to the Director-General includes a reference to the Director-General of the Department of Industry and Investment.
- (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:
  - (a) the Minister administering this Act and the Minister administering the *Fisheries Management Act 1994*, or
  - (b) the Director-General and the Director-General of the Department of Industry and Investment,to take the action jointly or decide the matter jointly.
- (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.

### 141B Biological Diversity Advisory Council

- (1) There is to be a Biological Diversity Advisory Council (**BDAC**).
- (2) The Minister is to determine by instrument in writing the membership and the terms and conditions of appointment of members of BDAC.
- (3) The members of BDAC are to have expertise in one or more of the following areas:
  - (a) biological diversity,

- (b) biological science,
- (c) environmental science.

(4) BDAC may advise the Minister, the Director-General and the NRC on:

- (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
- (b) such other related matters as may be referred to BDAC by the Minister, the Director-General or the NRC.

#### **141C Social and Economic Advisory Council**

(1) There is to be a Social and Economic Advisory Council (**SEAC**).

(2) The Minister is to determine by instrument in writing the membership and the terms and conditions of appointment of members of SEAC.

(3) The members of SEAC are to have expertise in one or more of the following areas:

- (a) natural resource management,
- (b) economics,
- (c) social impact assessment,
- (d) industry or agriculture sectors.

(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.

## Part 9B Criminal and other proceedings

### Division 1 Proceedings for offences generally

#### 141E Proceedings for offences

- (1) Proceedings for an offence under this Act or the regulations may be dealt with:
  - (a) summarily before the Local Court, or
  - (b) summarily before the Land and Environment Court.
- (2) The maximum pecuniary penalty that the Local Court may impose in respect of an offence against this Act or the regulations is 200 penalty units or the maximum penalty provided by this Act or the regulations in respect of the offence, whichever is the lesser.

### Division 2 Restraining orders

#### 141F Restraint of breaches of Act or regulations

- (1) Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of this Act or the regulations, whether or not any right of that person has been or may be infringed by or as a consequence of that breach.
- (2) Proceedings under this section may be brought by a person on the person's own behalf or on behalf of the person and other persons (with their consent), or a body corporate or unincorporated (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings.
- (3) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.
- (4) In this section, **breach** includes a threatened or apprehended breach.

### Division 3 Court orders in connection with offences

#### 141G Operation of Division

- (1) **Application to proved offences** This Division applies where a court finds an offence under this Act or the regulations proved.
- (2) **Meaning of proved offences** Without limiting the generality of subsection (1), a court finds an offence proved if:
  - (a) the court convicts the offender of the offence, or
  - (b) the court makes an order under section 10 of the *Crimes (Sentencing Procedure)*

*Act 1999* against the offender in relation to the offence (in which case any order under this Division is not a punishment for the purposes of that section).

(3) **Definitions** In this Division:

**the court** means the court that finds the offence proved.

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

#### **141H Orders generally**

- (1) **Orders may be made** One or more orders may be made under this Division against the offender.
- (2) **Orders are additional** Orders may be made under this Division in addition to any penalty that may be imposed or any other action that may be taken in relation to the offence.
- (3) **Other action not required** Orders may be made under this Division regardless of whether any penalty is imposed, or other action taken, in relation to the offence.

#### **141I Orders for restoration and prevention**

- (1) The court may order the offender to take such steps as are specified in the order, within such time as is so specified (or such further time as the court on application may allow):
  - (a) to prevent, control, abate or mitigate any harm caused by the commission of the offence, or
  - (b) to retire, in accordance with Part 7A, biodiversity credits of a number and class (if applicable) specified in the order and, if the offender does not hold sufficient biodiversity credits to comply with the direction, to acquire the necessary biodiversity credits for the purpose of retiring them, or
  - (c) to make good any resulting damage, or
  - (d) to prevent the continuance or recurrence of the offence.
- (2) The court may order the offender to provide security to the court or to the Director-General for the performance of any obligation imposed under this section.
- (3) An order under subsection (2) must specify:
  - (a) the amount of the security required to be provided, and
  - (b) the kind of security required to be provided, and
  - (c) the manner and form in which the security is to be provided.

**141J Orders for costs, expenses and compensation at time offence proved**

- (1) The court may, if it appears to the court that:
  - (a) a public authority has incurred costs and expenses in connection with:
    - (i) the prevention, control, abatement or mitigation of any harm caused by the commission of the offence, or
    - (ii) making good any resulting damage, or
  - (b) a person (including a public authority) has, by reason of the commission of the offence, suffered loss of or damage to property or has incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage,

order the offender to pay to the public authority or person the costs and expenses so incurred, or compensation for the loss or damage so suffered, as the case may be, in such amount as is fixed by the order.

- (2) An order made by the Land and Environment Court under subsection (1) is enforceable as if it were an order made by the Court in Class 4 proceedings under the [Land and Environment Court Act 1979](#).
- (3) The Local Court may not make an order under subsection (1) for the payment of an amount that exceeds the amount for which an order may be made by the court when exercising jurisdiction under the [Civil Procedure Act 2005](#). An order made by the court is enforceable as if it were an order made by the court when exercising jurisdiction under that Act.

**141K Recovery of costs, expenses and compensation after offence proved**

- (1) If, after the court finds the offence proved:
  - (a) a public authority has incurred costs and expenses in connection with:
    - (i) the prevention, control, abatement or mitigation of any harm caused by the commission of the offence, or
    - (ii) making good any resulting damage, or
  - (b) a person (including a public authority) has, by reason of the commission of the offence, suffered loss of or damage to property or has incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage,

the person or public authority may recover from the offender the costs and expenses incurred or the amount of the loss or damage in the Land and Environment Court.

- (2) The amount of any such costs and expenses (but not the amount of any such loss or damage) may be recovered as a debt.

**141L Orders regarding costs and expenses of investigation**

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

**141M Orders regarding monetary benefits**

- (1) The court may order the offender to pay, as part of the penalty for committing the offence, an additional penalty of an amount the court is satisfied, on the balance of probabilities, represents the amount of any monetary benefits acquired by the offender, or accrued or accruing to the offender, as a result of the commission of the offence.
- (2) The amount of an additional penalty for an offence is not subject to any maximum amount of penalty provided elsewhere by or under this Act.
- (3) In this section:

**monetary benefits** means monetary, financial or economic benefits.

**the court** does not include the Local Court.

**141N Additional orders**

- (1) **Orders** The court may do any one or more of the following:
  - (a) order the offender to take specified action to publicise the offence (including the



circumstances of the offence) and its consequences and any other orders made against the person,

- (b) order the offender to take specified action to notify specified persons or classes of persons of the offence (including the circumstances of the offence) and its consequences and of any orders made against the person (including, for example, the publication in an annual report or any other notice to shareholders of a company or the notification of persons aggrieved or affected by the offender's conduct),
- (c) order the offender to carry out a specified project for the restoration or enhancement of the environment in a public place or for the public benefit.

The Local Court is not authorised to make an order referred to in paragraph (c).

- (2) **Machinery** The court may, in an order under this section, fix a period for compliance and impose any other requirements the court considers necessary or expedient for enforcement of the order.
- (3) **Failure to publicise or notify** If the offender fails to comply with an order under subsection (1) (a) or (b), the prosecutor or a person authorised by the prosecutor may take action to carry out the order as far as may be practicable, including action to publicise or notify:
  - (a) the original contravention, its consequences, and any other penalties imposed on the offender, and
  - (b) the failure to comply with the order.
- (4) **Cost of publicising or notifying** The reasonable cost of taking action referred to in subsection (3) is recoverable by the prosecutor or person taking the action, in a court of competent jurisdiction, as a debt from the offender.

#### **1410 Offence**

A person who fails to comply with an order under this Division (except an order under section 141J or 141L) is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—1,100 penalty units for each day the offence continues, or
- (b) in the case of an individual—550 penalty units for each day the offence continues.

## **Part 10 Miscellaneous**

**Introductory note—**

This Part makes provision for a number of miscellaneous matters relating to the operation of the Act. These include:

- a statement that the Act binds the Crown
- a requirement that the Director-General report on the operation of the Act in the Director-General's annual report to Parliament
- a provision enabling third parties to bring proceedings in the Land and Environment Court for orders remedying or restraining breaches of the Act
- a statement that the Act is not intended to affect native title rights and interests
- a provision providing that the Director-General may decline to disclose the location of critical habitat (or proposed critical habitat) other than to specified persons if the Director-General is of the opinion that disclosure would be likely to expose the critical habitat (or proposed critical habitat) to a significant risk and that withholding of the location is in the public interest, and if affected landholders have requested, or are agreeable to, the withholding of the location
- a provision enabling third parties to bring proceedings in the Land and Environment Court for orders remedying or restraining breaches of the Act
- provisions as to the form and service of notices and other documents under the proposed Act
- a provision concerning review of the operation of the Act as soon as possible after the period of 18 months after the date of assent to the proposed Act.

The Part also authorises the making of regulations, and contains formal provisions giving effect to the Schedules amending other Acts and inserting savings, transitional and other provisions.

## **142 Act binds Crown**

This Act binds the Crown, not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its capacities.

### **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.

### **142B Director-General may accredit persons to prepare assessments and surveys**

- (1) The Director-General may institute arrangements for the accreditation of suitably qualified and experienced persons to undertake and prepare surveys and assessments for use in connection with:
  - (a) biodiversity certification of land under Part 7AA, or
  - (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 Planning Act, or
  - (c) the biobanking scheme established under Part 7A.
- (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.

- (3) An accreditation is to be for the period (not exceeding 3 years) 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.
- (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.
- (5) The Director-General may vary conditions or restrictions (if any) attaching to an accreditation and may suspend or cancel an accreditation.

#### **143 Annual report by Director-General on operation of Act**

- (1) The Director-General is to report on the operation of this Act in the annual report of the National Parks and Wildlife Service.
- (2) The report is to include a report on the implementation of Parts 3, 4 and 5 of this Act.

#### **144 Relationship of Act to [National Parks and Wildlife Act 1974](#)**

Except as otherwise provided by this Act, nothing in this Act affects the operation of the [National Parks and Wildlife Act 1974](#) in relation to animals and plants.

#### **145 Native title rights and interests**

This Act does not affect the operation of the [Native Title Act 1993](#) of the Commonwealth or the [Native Title \(New South Wales\) Act 1994](#) in respect of the recognition of native title rights and interests within the meaning of the Commonwealth Act or in any other respect.

#### **146 Decision not to disclose location of critical habitat**

- (1) The Director-General may, by notice in writing, determine that any matter in any document in the possession of the National Parks and Wildlife Service that may identify the location of critical habitat or any area or areas of land proposed to be identified as critical habitat should not be disclosed to the public.
  - (1A) Despite the other provisions of this Act, the Director-General may decline:
    - (a) to give public notice (by publication in a newspaper or in the Gazette) of a proposal (or amended proposal) to identify an area or areas of land as critical habitat, the approval of such a proposal, a declaration of critical habitat or the amendment or revocation of such a declaration, and
    - (b) to serve a copy of a map of critical habitat on any one or more of the persons or

bodies referred to in section 54 (Maps of critical habitat to be served), and

- (c) to include a copy of a declaration of critical habitat or a map of critical habitat in the register kept under section 55 (Director-General to keep register of critical habitat).
- (2) The Director-General may exercise a function under subsection (1) or (1A) only if:
- (a) the Director-General is of the opinion that:
    - (i) not to exercise the function would be likely to expose the critical habitat (or the proposed critical habitat) and the endangered or critically endangered species, population or ecological community that occupies it to a significant threat, and
    - (ii) the public interest requires the function to be exercised, and
  - (b) each landholder of land concerned has requested or is agreeable to the exercise of the function.
- (3) Nothing in this section prevents the Director-General from disclosing the location of critical habitat to:
- (a) landholders or other persons having any legal or equitable estate, interest, easement, servitude, privilege or right in or over the land, or
  - (b) public authorities exercising functions in relation to the land, or
  - (c) any other person entitled by or under this or any other Act or law to notice of the declaration of critical habitat or the existence of interests in or proposals affecting the land.

**Note—**

Matter that is the subject of a determination referred to in subsection (1) is information for which there is a conclusive presumption of an overriding public interest against disclosure under the [Government Information \(Public Access\) Act 2009](#).

**146A Decision not to disclose other information**

- (1) The Scientific Committee may make a written recommendation to the Minister that the following matter should not be disclosed to the public:
- (a) information provided to the Scientific Committee relating to the location of threatened species, populations or ecological communities,
  - (b) information provided to the Scientific Committee that may identify any individual who made a nomination under Part 2 or made a submission in respect of a nomination.
- (2) The Minister may, by notice in writing:

- (a) accept the recommendation of the Committee that the matter should not be disclosed to the public, or
  - (b) reject the recommendation of the Scientific Committee.
- (3) The Minister may accept a recommendation referred to in subsection (1) (a) only if the Minister is of the opinion that the public interest requires that the matter not be disclosed.
- (4) The Minister may accept a recommendation referred to in subsection (1) (b) only if the Minister is of the opinion that the matter should not be disclosed:
- (a) in the interests of safety or welfare of the individual who might otherwise be identified, or
  - (b) to protect that individual against intimidation, harassment or other unwarranted reprisals in connection with the nomination or submission.

**147** (Renumbered as sec 141F)

**148 Form of notices**

Any notice or other document issued, made or given for the purposes of this Act or the regulations must be in writing, except where this Act expressly authorises another means of giving notice.

**149 Service of documents**

- (1) Any notice or other document that is authorised or required under this Act or the regulations to be served on any person may be served:
- (a) personally or by post, or
  - (b) by leaving it with a person apparently of or above the age of 16 years at, or by posting it to, the person's place of business or, in the case of a corporation, the registered office of the corporation.
- (2) This section does not apply with respect to the service of documents in accordance with section 136 (Service of documents on Scientific Committee).

**150 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for the carrying out or giving effect to this Act.
- (2) A regulation may create an offence punishable by a penalty not exceeding 200 penalty units.

**151** (Renumbered as sec 141E)

**152 Offences by corporations**

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision, unless the person satisfies the court that:
  - (a) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or
  - (b) the person, if in such a position, used all due diligence to prevent the contravention by the corporation.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or has been convicted under the provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation under this Act or the regulations.
- (4) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a corporation (while acting in his or her capacity as such) had, at any particular time, a particular state of mind, is evidence that the corporation had that state of mind.
- (5) In this section, the **state of mind** of a person includes:
  - (a) the knowledge, intention, opinion, belief or purpose of the person, and
  - (b) the person's reasons for the intention, opinion, belief or purpose.

**153 Time within which proceedings may be commenced**

- (1) Proceedings for an offence under this Act or the regulations may be commenced:
  - (a) within but not later than 2 years after the date on which the offence is alleged to have been committed, or
  - (b) within but not later than 2 years after the date on which evidence of the alleged offence first came to the attention of any authorised officer (within the meaning of the NPW Act).
- (2) If subsection (1) (b) is relied on for the purpose of commencing proceedings for an offence, the court attendance notice, summons or application must contain particulars of the date on which evidence of the offence first came to the attention of an authorised officer and need not contain particulars of the date on which the offence was committed. The date on which evidence first came to the attention of an

authorised officer is the date specified in the court attendance notice, summons or application, unless the contrary is established.

- (3) This section applies despite anything in the *Criminal Procedure Act 1986* or any other Act.
- (4) In this section, **evidence** of an offence means evidence of any act or omission constituting the offence.

#### **154 Ancillary offences**

A person who:

- (a) aids, abets, counsels or procures another person to commit, or
- (b) attempts to commit, or
- (c) conspires to commit,

an offence under another provision of this Act or the regulations is guilty of an offence under that other provision and is liable, on conviction, to the same penalty applicable to an offence under that other provision.

#### **154A Evidentiary provisions etc**

- (1) An allegation, in a court attendance notice, summons or application in respect of an offence under this Act or the regulations, that an animal or plant is a member of a species, population or ecological community specified in that court attendance notice, summons or application is sufficient proof of the matter alleged unless the defendant proves to the contrary.
- (2) In any prosecution under this Act, any allegation in any court attendance notice, summons or application that any person is unlicensed or acting without permission or authority need not be proved, and that person is taken to be unlicensed or acting without permission or authority, as the case may be, until the contrary is proved by the production of a licence, permit or authority or otherwise.
- (3) In any proceedings for an offence under this Act or the regulations, a certificate purporting to be signed by the Director-General stating that:
  - (a) any person was or was not, on a date or within a period specified, the holder of any specified licence, certificate, consent, authority or other thing issued or granted by instrument in writing under this Act, or
  - (b) on a date or within a period so specified, any such licence, certificate, consent, authority or other thing:
    - (i) related to any specified premises, or

- (ii) was subject to any specified conditions or restrictions, or
- (iii) was, to any specified extent, unconditional or unrestricted, or
- (c) an amount specified in the certificate is the amount of any charge, cost or expense incurred as specified by reason of the offence, or
- (d) an amount specified in the certificate is the amount of any loss or damage sustained, as specified, as a result of the offence, or
- (e) at a time, or during a period, specified in the certificate:
  - (i) a conservation agreement relating to land so specified was in force, and
  - (ii) the agreement contained the terms specified in the certificate,is evidence of the matter or matters so certified.
- (4) A copy of any declaration or map of critical habitat published in the Gazette, being a copy purporting to be certified by the Director-General, as being a true copy of the declaration or map published, is admissible in any proceedings and is evidence of the matter or matters contained in the declaration or map.

**154B Onus of proof of reasonable excuse or lawful excuse**

In any proceedings under this Act, the onus of proving that a person had a reasonable excuse or lawful excuse (as referred to in any provision of this Act or the regulations) lies with the defendant.

**155 Repeal of [Endangered Fauna \(Interim Protection\) Act 1991 No 66](#) and amending Acts**

- (1) The [Endangered Fauna \(Interim Protection\) Act 1991](#) is repealed.
- (2) Section 7 of the [Endangered Fauna \(Interim Protection\) Act 1991](#) has no operation and is taken never to have had any operation. This subsection applies whether or not it commences before or after 31 December 1995.
- (3) The following Acts are also repealed:

[Endangered Fauna \(Interim Protection\) Amendment Act 1992 No 97](#)

[Endangered Fauna \(Interim Protection\) Amendment Act 1993 No 53](#)

[Endangered Fauna \(Interim Protection\) Amendment Act 1995 No 33.](#)

**156 Savings, transitional and other provisions**

Schedule 7 has effect.



## 157 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act are being fulfilled and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to the *Threatened Species Legislation Amendment Act 2004*.
- (3) The Minister is to make arrangements for public consultation with respect to the review.
- (4) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## Schedule 1 Endangered species, populations and ecological communities

(Section 6)

### Part 1 Endangered species

#### Animals

#### Vertebrates

#### Amphibians

##### Hylidae

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

##### Myobatrachidae

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

*Philoria richmondensis* Knowles, Mahony, Armstrong and  
Donnellan, 2004

a frog

## Reptiles

### Agamidae

*Ctenophorus decresii* (Duméril & Bibron, 1837)

Tawny Crevice-dragon

\* *Tympanocryptis pinguicolla* Mitchell, 1948

Grassland Earless Dragon

### Cheloniidae

\* *Caretta caretta* (Linnaeus, 1758)

Loggerhead Turtle

### Dermochelyidae

\* *Dermochelys coriacea* (Vandelli, 1761)

Leatherback Turtle

### Gekkonidae

\* *Diplodactylus conspicillatus* Lucas & Frost, 1897

Fat-tailed Diplodactylus

*Oedura rhombifer* J.E. Gray, 1845

Zigzag Velvet Gecko

### Pygopodidae

*Aprasia inaurita* Kluge, 1974

Mallee Worm-lizard

*Delma australis* Kluge, 1974

Marble-faced Delma

### Scincidae

\* *Anomalopus mackayi* Greer & Cogger, 1985

Five-clawed Worm-skink

*Ctenotus pantherinus ocellifer* (Peters, 1866)

Leopard Ctenotus

*Cyclodomorphus melanops elongatus* (Werner, 1910)

Mallee Slender Blue-tongue Lizard

\* *Cyclodomorphus praealtus* Shea, 1995

Alpine She-oak Skink

*Cyclodomorphus venustus* Shea & Miller, 1995

\* *Eulamprus leuraensis* Wells & Wellington, 1984

Water skink

### Elapidae

*Echiopsis curta*(Schlegel, 1837)

Bardick

\* *Hoplocephalus bungaroides* (Schlegel, 1837)

Broad-headed Snake

*Pseudonaja modesta* (Günther, 1872)

Ringed Brown Snake

Typhlopidae

*Ramphotyphlops endoterus* (Waite, 1918)

Interior Blind Snake

**Birds**

Megapodiidae

\* *Leipoa ocellata* Gould, 1840

Malleefowl

Anatidae

*Nettapus coromandelianus* (J.F. Gmelin, 1789)

Cotton Pygmy-goose

Procellariidae

\* *Macronectes giganteus* (J.F. Gmelin, 1789)

Southern Giant Petrel

Diomedidae

\* *Diomedea exulans* Linnaeus, 1758

Wandering Albatross

Ciconiidae

*Ephippiorhynchus asiaticus* (Latham, 1790)

Black-necked Stork

Ardeidae

*Botaurus poiciloptilus* (Wagler, 1827)

Australasian Bittern

Falconidae

*Falco hypoleucos* Gould, 1841

Grey Falcon

Rallidae

*Gallirallus sylvestris* (P.L. Sclater, 1869)

Lord Howe Woodhen

Otididae

*Ardeotis australis* (J.E. Gray, 1829)

Australian Bustard

Pedionomidae

\* *Pedionomus torquatus* Gould, 1840

Plains-wanderer

Scolopacidae

*Calidris ferruginea* (Pontoppidan, 1763)

Curlew Sandpiper

Rostratulidae

\* *Rostratula australis* (Gould, 1838)

Australian Painted Snipe

Burhinidae

*Burhinus grallarius* (Latham, 1801)

Bush Stone-curlew

Haematopodidae

*Haematopus longirostris* Vieillot, 1817

Pied Oystercatcher

Laridae

*Sternula albifrons* (Pallas, 1764)

Little Tern

Columbidae

*Phaps histrionica* (Gould, 1841)

Flock Bronzewing

\* *Geophaps scripta* (Temminck, 1821)

Squatter Pigeon

Psittacidae

\* *Lathamus discolor* (Shaw, 1790)

Swift Parrot

\* *Polytelis anthopeplus monarchoides* Schodde, 1993

Regent Parrot (eastern subspecies)

Maluridae

\* *Amytornis barbatus barbatus*, Favaloro & McEvey, 1968

Grey Grasswren

Dasyornithidae

\* *Dasyornis brachypterus* (Latham, 1801)

Eastern Bristlebird

Acanthizidae

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

Striated Fieldwren

Estrildidae

\* *Poephila cincta cincta* (Gould, 1837)

Black-throated Finch (southern subspecies)

**Mammals**

Dasyuridae

*Antechinomys laniger* (Gould, 1856)

Kultarr

*Dasyurus viverrinus* (Shaw, 1800)

Eastern Quoll

Peramelidae

\* *Isodon obesulus obesulus* (Shaw, 1797)

Southern Brown Bandicoot (eastern)

## Vombatidae

*Lasiorhinus latifrons* (Owen, 1845)

Southern Hairy-nosed Wombat

## Burramyidae

\* *Burramys parvus* Broom, 1896

Mountain Pygmy-possum

*Cercartetus concinnus* (Gould, 1845)

Western Pygmy Possum

## Potoroidae

\* *Potorous longipes* Seebeck & Johnston, 1980

Long-footed Potoroo

## Macropodidae

*Macropus dorsalis* (Gray, 1837)

Black-striped Wallaby

\* *Petrogale penicillata* (Gray, 1825)

Brush-tailed Rock-wallaby

\* *Petrogale xanthopus* Gray, 1855

Yellow-footed Rock-wallaby

## Molossidae

*Mormopterus eleryi* Reardon and McKenzie, 2008

Bristle-faced free-tailed bat, Hairy-nosed Freetail Bat

## Muridae

\* *Notomys fuscus* (Jones, 1925)

Dusky Hopping-mouse

*Pseudomys apodemoides* Finlayson, 1932

Silky Mouse

*Pseudomys bolami* Troughton, 1932

Bolam's Mouse

*Pseudomys delicatulus* (Gould, 1842)

Delicate Mouse

\* *Pseudomys oralis* Thomas, 1921

Hastings River Mouse

## Marine mammals

### Dugongidae

*Dugong dugon* (Müller, 1776)

Dugong

### Balaenopteridae

\* *Balaenoptera musculus* (Linnaeus, 1758)

Blue Whale

## Invertebrates

### Annelida

### Oligochaeta

## Opisthopera

### Megascolecidae

*Pericryptodrilus nanus* Jamieson, 1977

## Molluscs

### Bulimulidae

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

### Camaenidae

*Meridolum corneovirens* (Pfeiffer, 1851) a land snail

\* *Thersites mitchellae* (Cox, 1864) a land snail

## Arthropoda

### Insecta

#### Blattodea

##### Blaberidae

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

#### Coleoptera

##### Carabidae

*Nurus atlas* Castelnau, 1867

*Nurus brevis* Motschulsky, 1865

#### Lepidoptera

##### Castniidae

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

##### Hesperiidae

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

##### Nymphalidae

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

Lycaenidae

\* *Paralucia spinifera* Edwards and Common, 1978

Bathurst Copper Butterfly

Noctuidae

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

**Odonata**

Petaluridae

*Petalura gigantea* (Leach, 1815)

Giant Dragonfly

*Petalura litorea* Theischinger 1999

**Phasmatodea**

Phasmatidae

\* *Dryococelus australis* Montrouzier, 1855

Lord Howe Island Phasmid

**Fungi**

**Basidiomycota**

Hygrophoraceae

*Camarophylloopsis kearneyi* A.M. Young

*Hygrocybe austropratensis* A.M. Young

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

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

*Hygrocybe lanecovensisi* A.M. Young

**Alga**

**Charophyta**

Characeae

*Nitella partita* Nordst.

**Plants**

Acanthaceae

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

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

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

\* *Xerothamnella parvifolia* C. White

Anthericaceae

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

Apiaceae

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

\* *Trachymene scapigera* (Domin) B.L. Burtt

Apocynaceae

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

Aponogetonaceae

*Aponogeton queenslandicus* H. Bruggen

Araceae

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

Araliaceae

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

*Astrotricha cordata* A. Bean

\* *Astrotricha roddii* Makinson

Araucariaceae

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

Asclepiadaceae

\* *Cynanchum elegans* (Benth.) Domin

\* *Marsdenia longiloba* Benth.

\* *Tylophora woollsii* Benth.

Asteraceae

*Brachyscome ascendens* G.L. Davis

\* *Calotis moorei* P. Short

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



*Cratystylis conocephala* (F. Muell.) S. Moore

*Erodiophyllum elderi* F. Muell.

*Kippistia suaedifolia* F. Muell.

*Leptorhynchus orientalis* Paul G. Wilson

*Leptorhynchus waitzia* Sonder

\* *Olearia flocktoniae* Maiden & E. Betcher

\* *Rutidosia leptorrhynchoides* F. Muell.

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

*Senecio spathulatus* A. Rich.

*Senecio squarrosus* A. Rich.

#### Brassicaceae

*Irenepharsus magicus* Hewson

\* *Irenepharsus trypherus* Hewson

\* *Lepidium hyssopifolium* Desv.

\* *Lepidium monoplocoides* F. Muell.

\* *Lepidium peregrinum* Thell.

\* *Lepidium pseudopapillosum* Thell.

#### Calomniaceae

*Calomnion complanatum* (Hook.f. & Wilson)

#### Campanulaceae

*Wahlenbergia scopulicola* Carolin ex P.J. Smith

#### Capparaceae

*Capparis canescens* Banks ex DC.

*Capparis loranthifolia* Lindley var. *loranthifolia*

#### Caryophyllaceae

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

#### Casuarinaceae

\* *Allocasuarina defungens* L. Johnson

\* *Allocasuarina glareicola* L. Johnson

- \* *Allocasuarina portuensis* L. Johnson

*Casuarina obesa* Miq.

Chenopodiaceae

*Atriplex sturtii* S. Jacobs

*Dysphania platycarpa* Paul G. Wilson

*Dysphania plantaginella* F. Muell.

*Osteocarpum scleropterum* (F. Muell.) Volkens

- \* *Sclerolaena napiformis* Paul G. Wilson

*Threlkeldia inchoata* (J. Black) J. Black

Convolvulaceae

- \* *Calystegia affinis* Endl.

*Convolvulus tedmoorei* R.W. Johnson

*Ipomoea diamantinensis* J. Black

*Ipomoea polymorpha* Roemer & Schultes

*Wilsonia rotundifolia* Hook.

Cupressaceae

*Callitris baileyi* C. White

Cyperaceae

*Carex archeri* Boott

*Carex klaphakei* K.L. Wilson

*Carex raleighii* Nelmes

*Cyperus aquatilis* R. Br.

*Cyperus conicus* (R. Br.) Boeck

- \* *Cyperus semifertilis* S.T. Blake

*Eleocharis tetraquetra* Nees

Davalliaceae

*Arthropteris palisotii* (Desv.) Alston

Davidsoniaceae

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

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

Dilleniaceae

*Hibbertia hexandra* C. White

*Hibbertia procumbens* (Labill.) DC.

*Hibbertia puberula* Toelken

*Hibbertia* sp. nov. 'Menai' A.T. Fairley 15 Dec 2004

*Hibbertia superans* Toelken

*Hibbertia tenuifolia* Toelken

Droseraceae

*Aldrovanda vesiculosa* L.

Dryopteridaceae

*Lastreopsis hispida* (Sw.) Tind.

*Polystichum moorei* H. Christ

Ebenaceae

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

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

Elaeocarpaceae

- \* *Elaeocarpus* sp. Rocky Creek (G. Read AQ 562114)

- \* *Elaeocarpus williamsianus* Guyer

Epacridaceae

- \* *Epacris hamiltonii* Maiden & E. Betcher

- \* *Leucopogon confertus* Benth.

*Leucopogon fletcheri* subsp. *fletcheri* Maiden & E. Betcher

- \* *Melichrus hirsutus* J.B. Williams ms

- \* *Melichrus* sp. Gibberagee (A.S. Benwell & J.B. Williams 97239)

*Monotoca rotundifolia* J.H. Willis

Eriocaulaceae

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

- \* *Eriocaulon carsonii* F. Muell.

Euphorbiaceae

*Acalypha eremorum* Muell. Arg.

*Bertya* sp. (Chambigne NR, M. Fatemi 24)

*Bertya* sp. (Clouds Creek, M. Fatemi 4)

\* *Bertya ingramii* T. James

*Chamaesyce psammogeton* (P.S. Green) P.I. Foster and R.J. Henderson

*Euphorbia sarcostemmoides* J.H. Willis

*Monotaxis macrophylla* Benth.

*Phyllanthus maderaspatanus* L.

*Phyllanthus microcladus* Muell. Arg.

*Pseudanthus ovalifolius* F. Muell.

Fabaceae

*Acacia acanthoclada* F. Muell.

*Acacia acrionastes* Pedley

*Acacia atrox* Kodela

\* *Acacia bynoeana* Benth.

*Acacia chrysotricha* Tind

*Acacia dangarensis* Tindale & Kodela

\* *Acacia gordonii* (Tind.) Pedley

*Acacia jucunda* Maiden & Blakely

*Acacia notabilis* F. Muell.

*Acacia petraea* Pedley

\* *Acacia pubifolia* Pedley

*Acacia rivalis* J. Black

\* *Acacia ruppii* Maiden & E. Betche

\* *Acacia terminalis* (Salisb.) J.F. Macbr. subsp. *terminalis*

\* *Almaleea cambagei* (Maiden & E. Betche) Crisp & P. Weston

*Caesalpinia bonduc* (L.) Roxb.

*Carmichaelia exsul* F. Muell.

*Cassia brewsteri* var. *marksiana* Bailey

*Crotalaria cunninghamii* R. Br.

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

*Desmodium campylocaulon* F. Muell.

*Dillwynia glauca* Jobson & P.H. Weston

*Indigofera baileyi* F. Muell.

\* *Indigofera efoliata* F. Muell.

*Indigofera helmsii* Peter G. Wilson

*Indigofera leucotricha* E. Pritzel

*Indigofera longibractea* J. Black

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

\* *Pultenaea parviflora* Sieber ex DC.

*Pultenaea pedunculata* Hook

*Senna acclinis* (F. Muell.) Randell

*Sophora tomentosa* L.

*Swainsona adenophylla* J. Black

*Swainsona colutoides* F. Muell.

*Swainsona flavicarinata* J. Black

\* *Swainsona recta* A. Lee

*Swainsona viridis* J. Black

#### Flacourtiaceae

*Xylosma parvifolium* Jessup

*Xylosma terrae-reginae* C. White & Sleumer

#### Gentianaceae

\* *Gentiana baeuerlenii* L. Adams

#### Geraniaceae

*Pelargonium* sp. (G.W. Carr 10345)

#### Goodeniaceae

*Dampiera fusca* Rajput & Carolin

*Goodenia occidentalis* Carolin

*Goodenia nocoleche* Pellow & J.L. Porter

*Scaevola collaris* F. Muell.

Grammitaceae

*Grammitis stenophylla* B.S. Parris

Gyrostemonaceae

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

Haloragaceae

\* *Haloragodendron lucasii* (Maiden & E. Betcher) Orch.

Lamiaceae

*Plectranthus alloplectus* S.T. Blake

\* *Plectranthus nitidus* P. Forst.

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

\* *Prostanthera junonis* B.J. Conn

\* *Prostanthera staurophylla* F. Muell. sensu stricto

\* *Westringia kydrensis* Conn

Lauraceae

\* *Endiandra floydii* B. Hyland

*Endiandra muelleri* subsp. *bracteata* B. Hyland

Lindsaeaceae

*Lindsaea brachypoda* (Baker) Salomon

*Lindsaea fraseri* Hook.

*Lindsaea incisa* Prent.

Lobeliaceae

\* *Hypsela sessiliflora* F. Wimmer

Loganiaceae

*Geniostoma huttonii* B.J. Conn

*Mitrasacme pygmaea* R. Br.

Loranthaceae

- \* *Amyema plicatula* (Krause) Danser
- Muellerina myrtifolia* (Cunn. ex Benth.) Barlow

Lythraceae

*Rotala tripartita* Beesley

Malvaceae

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

*Sida rohlenae* Domin

Marattiaceae

*Angiopteris evecta* Hoffm.

Marsileaceae

*Pilularia novae-hollandiae* A. Braun

Menispermaceae

*Tinospora smilacina* Benth.

Monimiaceae

- \* *Daphnandra* sp. C Illawarra (R. Schodde 3475)

Myrsinaceae

- \* *Myrsine richmondensis* Jackes

Myrtaceae

*Angophora exul* K.D. Hill

- \* *Baeckea kandos* A.R. Bean
- Choricarpia subargentea* (C. White) L. Johnson
- Eucalyptus camphora* subsp. *relicta* L. Johnson & K. Hill
- Eucalyptus castrensis* K.D. Hill
- \* *Eucalyptus copulans* L. Johnson & K. Hill
- Eucalyptus magnificata* L. Johnson & K. Hill
- Eucalyptus microcodon* L. Johnson & K. Hill
- \* *Eucalyptus pachycalyx* subsp. *banyabba* K.D. Hill

- \* *Eucalyptus parvula* L.A.S. Johnson & K.D. Hill
  - Eucalyptus saxatilis* Kirkpatr. & Brooker
  - Eucalyptus saxicola* J.T. Hunter
- \* *Eucalyptus scoparia* Maiden
  - Eucalyptus* sp. Cattai (NSW 318983)
- \* *Eucalyptus* sp. Howes Swamp Creek (M. Doherty 19/7/85, NSW 207054)
- \* *Gossia fragrantissima* (F. Muell. ex Benth.) N. Snow & Guymer
  - Homoranthus binghiensis* J.T. Hunter
  - Homoranthus croftianus* J.T. Hunter
  - Kardomia prominens* (A.R. Bean) Peter G. Wilson
  - Kardomia silvestris* (A.R. Bean) Peter G. Wilson
  - Melaleuca irbyana* R.T. Baker
- \* *Micromyrtus grandis* J.T. Hunter
- \* *Micromyrtus minutiflora* (F. Muell.) Benth.
- \* *Syzygium paniculatum* Gaertn.
- \* *Triplarina imbricata* (Sm.) A.R. Bean
- \* *Triplarina nowraensis* A.R. Bean
- \* *Uromyrtus australis* A.J. Scott

Orchidaceae

- \* *Caladenia arenaria* Fitzg.
- \* *Caladenia concolor* Fitzg.
  - Caladenia porphyrea* D.L. Jones
- \* *Caladenia tessellata* Fitzg.
  - Calochilus pulchellus* D.L. Jones
  - Chiloglottis anaticeps* D.L. Jones
  - Corybas dowlingii* D.L. Jones
  - Dendrobium melaleucaphilum* M.A. Clem. & D.L. Jones
- \* *Diuris aequalis* F. Muell. ex Fitzg.
  - Diuris arenaria* D.L. Jones
- \* *Diuris bracteata* Fitzg.



*Diuris disposita* D.L. Jones

\* *Diuris ochroma* D.L. Jones

\* *Diuris pedunculata* R. Br.

*Diuris* sp. aff. *chrysantha* (Byron Bay) (D.L. Jones ORG 2761)

*Diuris* sp. (Oaklands, D.L. Jones 5380)

*Genoplesium insignis* D.L. Jones

\* *Genoplesium rhyoliticum* D.L. Jones & M.A. Clem.

*Genoplesium superbum* D.L. Jones

*Geodorum densiflorum* (Lam.) Schltr.

\* *Microtis angusii* D.L. Jones

*Oberonia complanata* (A. Cunn.) M.A. Clem. & D.L. Jones

\* *Phaius australis* F. Muell.

\* *Phaius tancarvilleae* (Banks ex L'Her.) Blume

\* *Prasophyllum affine* Lindl.

*Prasophyllum bagoensis* D.L. Jones

\* *Prasophyllum petilum* D.L. Jones & R.J. Bates

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

\* *Pterostylis gibbosa* R. Br.

*Pterostylis metcalfei* D.L. Jones

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

\* *Pterostylis* sp. Botany Bay (A. Bishop J221/1-13)

*Sarcochilus dilatatus* F. Muell.

#### Platydomataceae

*Platydoma microphyllum* R. Br.

#### Poaceae

*Alexfloydia repens* B.K. Simon

\* *Austrostipa nullanulla* (J. Everett & S.W.L. Jacobs) S.W.L. Jacobs & J. Everett

\* *Austrostipa wakoolica* (Vickery, S.W.L. Jacobs & J. Everett) S.W.L. Jacobs & J. Everett

\* *Deyeuxia appressa* Vickery

\* *Digitaria porrecta* S.T. Blake

*Distichlis distichophylla* (Labill.) Fassett

*Elyonurus citreus* (R. Br.) Munro ex Benth.

\* *Plinthanthesis rodwayi* (C.E. Hubb) S.T. Blake

*Rytidosperma vickeryae* M. Gray & H. P. Linder

Podocarpaceae

\* *Pherosphaera fitzgeraldii* (F. Muell.) F. Muell. ex Hook. f.

Polygalaceae

*Polygala linariifolia* Willd.

Polypodiaceae

*Belvisia mucronata* (Fée) Copel.

*Drynaria rigidula* (Sw.) Beddome

Primulaceae

*Lysimachia vulgaris* var. *davurica* (Ledeb.) Knuth

Proteaceae

\* *Eidothea hardeniana* P.H. Weston & R.M. Kooyman

\* *Grevillea acanthifolia* subsp. *paludosa* Makinson & Albrecht

\* *Grevillea beadleana* McGillivray

\* *Grevillea caleyi* R. Br.

*Grevillea divaricata* R. Br.

\* *Grevillea guthrieana* P. Olde & N. Marriott

*Grevillea hilliana* F. Muell.

\* *Grevillea masonii* P. Olde & N. Marriott

\* *Grevillea mollis* P. Olde & Molyneux

\* *Grevillea obtusiflora* R. Br.

*Grevillea parviflora* subsp. *supplicans* Makinson

*Grevillea renwickiana* F. Muell.

\* *Grevillea rivularis* L. Johnson & McGillivray

\* *Grevillea wilkinsonii* R. Makinson

\* *Hakea dohertyi* Haegi

- \* *Hakea pulvinifera* L. Johnson
- \* *Persoonia bargoensis* P.H. Weston & L.A.S. Johnson
  - Persoonia glaucescens* Sieber ex Spreng.
  - Persoonia hindii* P.H. Weston & L.A.S. Johnson
- \* *Persoonia hirsuta* Pers.
- \* *Persoonia mollis* subsp. *maxima* Krauss & L. Johnson
- \* *Persoonia nutans* R. Br.

Psilotaceae

*Psilotum complanatum* Sw.

Rhamnaceae

- Pomaderris adnata* N.G. Walsh & F. Coates
- \* *Pomaderris cotoneaster* Wakef.
  - Pomaderris elachophylla* F. Muell.
  - Pomaderris queenslandica* C. White
- \* *Pomaderris sericea* Wakef.

Rubiaceae

- Coprosma inopinata* I. Hutton & P.S. Green
- Dentella minutissima* C. White & Francis
- Galium australe* DC.
- Oldenlandia galioides* (F. Muell.) F. Muell.
- \* *Randia moorei* F. Muell. ex Benth.
  - Triflorensia cameronii* (C. T. White) S. T. Reynolds

Rutaceae

- \* *Acronychia littoralis* T. Hartley & J. Williams
  - Asterolasia buxifolia* Benth.
- \* *Asterolasia elegans* McDougall & Porteners
  - Asterolasia* sp. "Dungowan Creek" (Beckers s.n. 25 Oct. 1995)
  - Boronia boliviensis* ms
  - Boronia hapalophylla* Duretto, F.J. Edwards & P.G. Edwards

- \* *Boronia repanda* (F. Muell. ex E. Bêche) Maiden & E. Bêche  
*Boronia ruppii* Cheel *sensu stricto*
- \* *Correa lawrenceana* var. *genoensis* Paul G. Wilson  
*Geijera paniculata* (F. Muell.) Druce
- \* *Leionema lachnaeoides* (A. Cunn.) Paul G. Wilson  
*Melicope vitiflora* (F. Muell.) T.G. Hartley  
*Phebalium bifidum* P.H. Weston & M. Turton
- \* *Phebalium glandulosum* subsp. *eglandulosum* (Blakely) Paul G. Wilson  
*Philotheca myoporoides* subsp. *obovatifolia* M.J. Bayly  
*Zieria adenodonta* (F. Muell.) J.A. Armstrong
- \* *Zieria baeuerlenii* J.A. Armstrong
- \* *Zieria citriodora* J.A. Armstrong
- \* *Zieria coventyi* J.A. Armstrong
- \* *Zieria floydii* J.A. Armstrong
- \* *Zieria granulata* C. Moore ex Benth.
- \* *Zieria ingramii* J.A. Armstrong
- \* *Zieria involucreta* R. Br. ex Benth.
- \* *Zieria lasiocaulis* J.A. Armstrong
- \* *Zieria obcordata* A. Cunn.
- \* *Zieria prostrata* J.A. Armstrong

Santalaceae

*Santalum murrayanum* (Mitchell) Gardner

Sapindaceae

*Cupaniopsis serrata* (F. Muell.) Radlk.

- \* *Diploglottis campbellii* Cheel  
*Dodonaea microzyga* F. Muell. var. *microzyga*  
*Dodonaea sinuolata* subsp. *acrodentata* J. West

Sapotaceae

*Niemeyera chartacea* (Bailey) C. White

Scrophulariaceae

*Centranthera cochinchinensis* (Lour.) Merr.

\* *Euphrasia collina* subsp. *muelleri* (Wettst.) W.R. Barker

*Euphrasia orthocheila* subsp. *peraspera* W.R. Barker

*Euphrasia scabra* R. Br.

*Lindernia alsinoides* R. Br.

Simaroubaceae

\* *Quassia* sp. Mooney Creek (J. King s.n., 1949)

Sinopteridaceae

*Cheilanthes sieberi* subsp. *pseudovellea* H. Quirk & T.C. Chambers

Solanaceae

*Solanum amourense* A.R. Bean

*Solanum celatum* A.R. Bean

*Solanum limitare* A.R. Bean

Stackhousiaceae

*Stackhousia clementii* Domin

Sterculiaceae

\* *Rulingia prostrata* Maiden & Betche

Thymelaeaceae

*Pimelea axiflora* F. Muell. ex Meissner subsp. *pubescens* Rye

*Pimelea elongata* Threlfall

*Pimelea serpyllifolia* R. Br. subsp. *serpyllifolia*

\* *Pimelea spicata* R. Br.

\* *Pimelea venosa* Threlfall

Tiliaceae

\* *Corchorus cunninghamii* F. Muell.

Urticaceae

*Dendrocnide moroides* (Wedd.) Chew

Violaceae

*Viola cleistogamoides* (L. Adams) Seppelt

Zamiaceae

*Macrozamia humilis* D.L. Jones

*Macrozamia johnsonii* D.L. Jones & K. Hill

Zannichelliaceae

*Zannichellia palustris* L.

## Part 2 Endangered populations

### Animals

#### Vertebrates

#### Amphibians

Myobatrachidae

*Adelotus brevis* (Günther, 1863)

Tusked Frog population in the Nandewar and New England Tableland Bioregions

#### Reptiles

Scincidae

*Egernia whitii* (Lacepede, 1804)

White's Skink population in the Broken Hill Complex Bioregion

#### Birds

Casuariidae

*Dromaius novaehollandiae* (Latham, 1790)

Emu population in the New South Wales North Coast Bioregion and Port Stephens local government area

Megapodiidae

*Alectura lathamii* Gray, 1831

Australian Brush-turkey population in the Nandewar and Brigalow Belt South Bioregions

Cacatuidae

*Callocephalon fimbriatum* (Grant, 1803)

Gang-gang Cockatoo population in the Hornsby and Ku-ring-gai local government areas

*Calyptorhynchus lathamii* (Temminck, 1807)

Glossy Black-Cockatoo, Riverina population

Spheniscidae

*Eudyptula minor* (Forster, 1781)

Little Penguin in the Manly Point Area (being the area on and near the shoreline from Cannae Point generally northward to the point near the intersection of Stuart Street and Oyama Cove Avenue, and extending 100 metres offshore from that shoreline)

Climacteridae

*Climacteris affinis* Blyth, 1864

White-browed Treecreeper population in Carrathool local government area south of the Lachlan River and Griffith local government area

Meliphagidae

*Epthianura albifrons* (Jardine & Selby, 1828)

White-fronted Chat population in the Sydney Metropolitan Catchment Management Area

**Mammals**

Macropodidae

Muridae

*Mastacomys fuscus* Thomas, 1882

Broad-toothed Rat at Barrington Tops in the local government areas of Gloucester, Scone and Dungog

Peramelidae

*Perameles nasuta* Geoffroy, 1804

Long-nosed Bandicoot, North Head

*Perameles nasuta* Geoffroy, 1804

Long-nosed Bandicoot population in inner western Sydney

Petauridae

*Petaurus australis* Shaw, 1791

Yellow-bellied Glider population on the Bago Plateau

*Petaurus norfolcensis* (Kerr, 1792)

Squirrel Glider in the Wagga Wagga local government area

*Petaurus norfolcensis* (Kerr, 1792)

Squirrel Glider on Barrenjoey Peninsula, north of Bushrangers Hill

Pseudocheiridae

*Petauroides volans* (Kerr, 1792)

Greater Glider population in the Eurobodalla local government area

Phascolarctidae

*Phascolarctos cinereus* (Goldfuss, 1817)

Koala, Hawks Nest and Tea Gardens population

*Phascolarctos cinereus* (Goldfuss, 1817)

Koala in the Pittwater Local Government Area

Potoroidae

*Potorous tridactylus* (Kerr, 1792)

Long-nosed Potoroo, Cobaki Lakes and Tweed Heads West population

**Invertebrates**

**Arthropoda**

**Coleoptera**

Chrysomelidae

*Menippus darcyi* Reid & Nally, 2008

*Menippus darcyi* population in the Sutherland Shire

**Plants**

Asclepiadaceae

*Marsdenia viridiflora* R. Br. subsp. *viridiflora*

*Marsdenia viridiflora* R. Br. subsp. *viridiflora* population in the Bankstown, Blacktown, Camden, Campbelltown, Fairfield, Holroyd, Liverpool and Penrith local government areas



Campanulaceae

*Wahlenbergia multicaulis* Benth.

Tadgell's Bluebell in the local government areas of Auburn, Bankstown, Baulkham Hills, Canterbury, Hornsby, Parramatta and Strathfield

Cupressaceae

*Callitris endlicheri* (Parl.) Bailey

Black Cypress Pine, Woronora Plateau population

Fabaceae

*Acacia pendula* A. Cunn. ex G. Don

*Acacia pendula* population in the Hunter catchment

*Acacia prominens* Cunn. ex Don

Gosford Wattle, Hurstville and Kogarah Local Government Areas

*Chorizema parviflorum* Benth.

*Chorizema parviflorum* Benth. in the Wollongong and Shellharbour Local Government Areas

*Dillwynia tenuifolia* Sieber ex D.C.

*Dillwynia tenuifolia*, Kemps Creek

*Dillwynia tenuifolia* Sieber ex D.C.

*Dillwynia tenuifolia* Sieber ex D.C. in the Baulkham Hills local government area

*Glycine clandestina* (broad leaf form) (Pullen 13342)

*Glycine clandestina* (broad leaf form) in the Nambucca Local Government Area

*Lespedeza juncea* subsp. *sericea* (Thunb.) Steenis

*Lespedeza juncea* subsp. *sericea* in the Wollongong Local Government Area

*Pultenaea villifera* Sieber ex DC.

*Pultenaea villifera* Sieber ex DC. population in the Blue Mountains local government area

Myrtaceae

*Darwinia fascicularis* subsp. *oligantha*

*Darwinia fascicularis* subsp. *oligantha* population in the Baulkham Hills and Hornsby Local Government Areas

*Eucalyptus camaldulensis* Dehnh.

*Eucalyptus camaldulensis* population in the Hunter catchment

*Eucalyptus langleyi* L.A.S. Johnson & Blaxell

*Eucalyptus langleyi* population north of the Shoalhaven River in the Shoalhaven local government area

*Eucalyptus oblonga* DC.

*Eucalyptus oblonga* population at Bateau Bay, Forresters Beach and Tumbi Umbi in the Wyong local government area

*Eucalyptus parramattensis* C. Hall. subsp. *parramattensis*

*Eucalyptus parramattensis* C. Hall. subsp. *parramattensis* in Wyong and Lake Macquarie local government areas

*Eucalyptus seeana* Maiden

*Eucalyptus seeana* population in the Greater Taree local government area

#### Orchidaceae

*Cymbidium canaliculatum* R. Br.

*Cymbidium canaliculatum* population in the Hunter Catchment

*Diuris tricolor* Fitzg.

Pine Donkey Orchid population in the Muswellbrook local government area

*Rhizanthella slateri* (Rupp) M.A. Clem. & Cribb

*Rhizanthella slateri* (Rupp) M.A. Clem. & Cribb in the Great Lakes local government area

#### Rhamnaceae

*Pomaderris prunifolia* Fenzl

*P. prunifolia* in the Parramatta, Auburn, Strathfield and Bankstown Local Government Areas

#### Rutaceae

*Leionema lamprophyllum* (F. Muell.) Paul G. Wilson subsp. *obovatum* F.M. Anderson

*Leionema lamprophyllum* subsp. *obovatum* population in the Hunter Catchment

*Zieria smithii* Jackson

Low growing form of *Z. smithii*, Diggers Head

#### Sterculiaceae

*Keraudrenia corollata* var. *denticulata* C. T. White

*Keraudrenia corollata* var. *denticulata* in the Hawkesbury local government area

### Part 3 Endangered ecological communities

*Acacia loderi* Shrublands (as described in the determination of the Scientific Committee under Division 5 of Part 2)

*Acacia melvillei* Shrubland in the Riverina and Murray-Darling Depression Bioregions (as described in the final determination of the Scientific Committee to list the ecological community)

Agnes Banks Woodland in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

*Allocasuarina luehmannii* Woodland in the Riverina and Murray-Darling Depression Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Araluen Scarp Grassy Forest in the South East Corner Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Artesian Springs Ecological Community (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Bangalay Sand Forest of the Sydney Basin and South East Corner Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Ben Halls Gap National Park Sphagnum Moss Cool Temperate Rainforest (as described in the final determination of the Scientific Committee to list the ecological community)

Blue Mountains Shale Cap Forest in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Brigalow within the Brigalow Belt South, Nandewar and Darling Riverine Plains Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Brigalow-Gidgee woodland/shrubland in the Mulga Lands and Darling Riverine Plains Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Brogo Wet Vine Forest in the South East Corner Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Byron Bay Dwarf Graminoid Clay Heath Community (as described in the final determination of the Scientific Committee to list the ecological community)

*Cadellia pentastylis* (Ooline) community in the Nandewar and Brigalow Belt South Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Carbeen Open Forest community in the Darling Riverine Plains and Brigalow Belt South Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Carex Sedgeland of the New England Tableland, Nandewar, Brigalow Belt South and NSW North Coast Bioregions (as described in the final determination of the Scientific Committee to list the ecological community)

Castlereagh Swamp Woodland Community (as described in the final determination of the Scientific Committee to list the ecological community)

Central Hunter Grey Box—Ironbark Woodland in the New South Wales North Coast and Sydney Basin Bioregions (as described in the final determination of the Scientific Committee to list the ecological community)

Central Hunter Ironbark—Spotted Gum—Grey Box Forest in the New South Wales North Coast and Sydney Basin Bioregions (as described in the final determination of the Scientific Committee to list the ecological community)

Coastal Cypress Pine Forest in the New South Wales North Coast Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Coastal Saltmarsh in the New South Wales North Coast, Sydney Basin and South East Corner Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Cooks River/Castlereagh Ironbark Forest in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Coolibah-Black Box Woodland of the northern riverine plains in the Darling Riverine Plains and Brigalow Belt South bioregions (as described in the final determination of the Scientific Committee to list the ecological community)

Dry Rainforest of the South East Forests in the South East Corner Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Duffys Forest Ecological Community in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

\* Eastern Suburbs Banksia Scrub in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Elderslie Banksia Scrub Forest (as described in the final determination of the Scientific Committee to list the ecological community)

Freshwater Wetlands on Coastal Floodplains of the New South Wales North Coast, Sydney Basin and South East Corner Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Fuzzy Box Woodland on alluvial soils of the South Western Slopes, Darling Riverine Plains and Brigalow Belt South Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Genowlan Point *Allocasuarina nana* heathland (as described in the final determination of the Scientific Committee to list the ecological community)

Grey Box—Grey Gum Wet Sclerophyll Forest in the NSW North Coast Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

*Halosarcia lylei* low open-shrubland in the Murray Darling Depression Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Howell Shrublands in the New England Tableland and Nandewar Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2 published in the Gazette on 2 December 2011)

Hunter Floodplain Red Gum Woodland in the NSW North Coast and Sydney Basin Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Hunter Lowland Redgum Forest in the Sydney Basin and New South Wales North Coast Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Hunter Valley Vine Thicket in the NSW North Coast and Sydney Basin Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

\* Hunter Valley Weeping Myall Woodland of the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Hygrocybeae Community of Lane Cove Bushland Park (as described in the final determination of the Scientific Committee to list the ecological community)

Illawarra Lowlands Grassy Woodland in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Illawarra Subtropical Rainforest in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Inland Grey Box Woodland in the Riverina, NSW South Western Slopes, Cobar Penepplain, Nandewar and Brigalow Belt South Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Kurnell Dune Forest in the Sutherland Shire and City of Rockdale (as described in the final determination of the Scientific Committee to list the ecological community)

Kurri Sand Swamp Woodland in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Littoral Rainforest in the New South Wales North Coast, Sydney Basin and South East Corner Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Low woodland with heathland on indurated sand at Norah Head (as described in the final determination of the Scientific Committee to list the ecological community)

Lower Hunter Spotted Gum—Ironbark Forest in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Lowland Grassy Woodland in the South East Corner Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Lowland Rainforest in the NSW North Coast and Sydney Basin Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Lowland Rainforest on Floodplain in the New South Wales North Coast Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Maroota Sands Swamp Forest (as described in the final determination of the Scientific Committee to list the ecological community)

McKies Stringybark/Blackbutt Open Forest in the Nandewar and New England Tableland Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

*Melaleuca armillaris* Tall Shrubland in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Milton Ulladulla Subtropical Rainforest in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Moist Shale Woodland in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Montane Peatlands and Swamps of the New England Tableland, NSW North Coast, Sydney Basin, South East Corner, South Eastern Highlands and Australian Alps Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Mt Canobolas *Xanthoparmelia* Lichen Community (as described in the final determination of the Scientific Committee to list the ecological community)

Mount Gibraltar Forest in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Myall Woodland in the Darling Riverine Plains, Brigalow Belt South, Cobar Penplain, Murray-Darling Depression, Riverina and NSW South Western Slopes bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Native Vegetation on Cracking Clay Soils of the Liverpool Plains (as described in the determination of the Scientific Committee under Division 5 of Part 2)

New England Peppermint (*Eucalyptus nova-anglica*) Woodland on Basalts and Sediments in the New England Tableland Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Newnes Plateau Shrub Swamp in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

O'Hares Creek Shale Forest (as described in the final determination of the Scientific Committee to list the ecological community)

Pittwater Spotted Gum Forest (as described in the final determination of the Scientific Committee to list the ecological community)

Quorrobolong Scribbly Gum Woodland in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Ribbon Gum—Mountain Gum—Snow Gum Grassy Forest/Woodland of the New England Tableland Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

River-Flat Eucalypt Forest on Coastal Floodplains of the New South Wales North Coast, Sydney Basin and South East Corner Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Robertson Basalt Tall Open-forest in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Robertson Rainforest in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Sandhill Pine Woodland in the Riverina, Murray-Darling Depression and NSW South Western Slopes Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

\* Semi-evergreen Vine Thicket in the Brigalow Belt South and Nandewar Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Shale Gravel Transition Forest in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

\* Shale/Sandstone Transition Forest (as described in the final determination of the Scientific Committee to list the ecological community)

Southern Highlands Shale Woodlands in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Southern Sydney sheltered forest on transitional sandstone soils in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Subtropical Coastal Floodplain Forest of the New South Wales North Coast Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Swamp Oak Floodplain Forest of the New South Wales North Coast, Sydney Basin and South East Corner Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Swamp Sclerophyll Forest on Coastal Floodplains of the New South Wales North Coast, Sydney Basin and South East Corner Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Sydney Freshwater Wetlands in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

\* Sydney Turpentine-Ironbark Forest (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Tableland Basalt Forest in the Sydney Basin and South Eastern Highlands Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Tablelands Snow Gum, Black Sallee, Candlebark and Ribbon Gum Grassy Woodland in the South Eastern Highlands, Sydney Basin, South East Corner and NSW South Western Slopes Bioregions (as described in the final determination of the Scientific Committee to list the ecological community)

The Shorebird community occurring on the relict tidal delta sands at Taren Point (as described in the final determination of the Scientific Committee to list the ecological community)

*Themeda* grassland on seacliffs and coastal headlands in the NSW North Coast, Sydney Basin and South East Corner Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Umina Coastal Sandplain Woodland in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Upland Wetlands of the Drainage Divide of the New England Tableland Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Warkworth Sands Woodland in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Western Sydney Dry Rainforest in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

\* White Box Yellow Box Blakely's Red Gum Woodland (as described in the determination of the Scientific Committee under Division 5 of Part 2)

White Gum Moist Forest in the NSW North Coast Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

## Part 4 Species presumed extinct

### Animals

#### Vertebrates

#### Reptiles

##### Elapidae

*Oxyuranus microlepidotus* (McCoy, 1879)

Fierce Snake

## Birds

### Rallidae

- \* *Porphyrio albus* (Shaw, 1790)

White Gallinule

### Columbidae

- \* *Columba vitiensis godmanae* (Mathews, 1915)

White-throated Pigeon (Lord Howe Is. subsp.)

### Psittacidae

- \* *Psephotus pulcherrimus* (Gould, 1845)

Paradise Parrot

- \* *Cyanoramphus novaezelandiae subflavescens* Salvadori, 1891

Red-crowned Parakeet (Lord Howe Is. subsp.)

- \* *Pezoporus occidentalis* (Gould, 1861)

Night Parrot

### Strigidae

- \* *Ninox novaeseelandiae albaria* Ramsay, 1888

Southern Boobook (Lord Howe Is. subsp.)

### Acanthizidae

- \* *Gerygone insularis* Ramsey, 1878

Lord Howe Gerygone

### Rhipiduridae

- \* *Rhipidura fuliginosa* (Sparrman, 1787)

New Zealand Fantail (Lord House Is. subsp.)

### Sturnidae

- \* *Aplonis fusca hulliana* Mathews, 1912

Tasman Starling (Lord Howe Is. subsp.)

### Timaliidae

- \* *Zosterops strenuus* Gould, 1855

Robust White-eye

### Turdidae

- \* *Turdus poliocephalus vinitinctus* (Gould, 1855)

Island Thrush (Lord Howe Is. subsp.)

### Estrildidae

- \* *Neochmia ruficauda* (Gould, 1837)

Star Finch

## Mammals



Dasyuridae

- \* *Dasyercus cristicauda* (Krefft, 1867) Mulgara
- \* *Dasyurus geoffroii* Gould, 1841 Western Quoll
- \* *Phascogale calura* Gould, 1844 Red-tailed Phascogale

Myrmecobiidae

- \* *Myrmecobius fasciatus* Waterhouse, 1836 Numbat

Peramelidae

- \* *Chaeropus ecaudatus* (Ogilby, 1838) Pig-footed Bandicoot
- \* *Isoodon auratus auratus* (Ramsay, 1887) Golden Bandicoot (mainland)
- \* *Perameles bougainville fasciata* Gray, 1841 Western Barred Bandicoot (mainland)
- \* *Macrotis lagotis* (Reid, 1837) Bilby

Vombatidae

- \* *Lasiorhinus krefftii* (Owen, 1872) Northern Hairy-nosed Wombat

Potoroidae

- \* *Bettongia gaimardi* (Desmarest, 1822) Tasmanian Bettong
- \* *Bettongia lesueur graii* (Gould, 1841) Boodie, Burrowing Bettong (mainland)
- \* *Bettongia penicillata penicillata* Gray, 1837 Brush-tailed Bettong (South-East Mainland)
- \* *Bettongia tropica* Wakefield, 1967 Northern Bettong

Macropodidae

- \* *Lagorchestes leporides* (Gould, 1841) Eastern Hare-wallaby
- \* *Onychogalea fraenata* (Gould, 1841) Bridled Nailtail Wallaby
- \* *Onychogalea lunata* (Gould, 1841) Crescent Nailtail Wallaby

Vespertilionidae

- \* *Nyctophilus howensis* McKean, 1973 Lord Howe Island Bat

Muridae

- \* *Conilurus albipes* (Lichtenstein, 1829) White-footed Tree-rat
- \* *Leporillus apicalis* (Gould, 1853) Lesser Stick-nest Rat
- \* *Leporillus conditor* (Sturt, 1848) Greater Stick-nest Rat

<i>Notomys cervinus</i> (Gould, 1853)	Fawn Hopping-mouse
* <i>Notomys longicaudatus</i> (Gould, 1844)	Long-tailed Hopping-mouse
<i>Notomys mitchellii</i> (Ogilby, 1838)	Mitchell's Hopping-mouse
* <i>Pseudomys australis</i> Gray, 1832	Plains Rat
* <i>Pseudomys gouldii</i> (Waterhouse, 1839)	Gould's Mouse

## **Invertebrates**

### **Arthropoda**

#### **Insecta**

##### **Coleoptera**

###### Curculionidae

<i>Hybomorphus melanosomus</i> (Saunders & Jekel, 1885)	Lord Howe Island ground weevil
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## **Plants**

### Acanthaceae

- \* *Rhaphidospora bonneyana* (F. Muell.) R. Barker

### Aizoaceae

*Glinus orygioides* F. Muell.

- \* *Trianthema cypseleoides* (Fenzl) Benth.

### Amaranthaceae

*Ptilotus extenuatus* Benl

### Asteraceae

- \* *Acanthocladium dockeri* F. Muell.

*Blumea lacera* (Burman f.) DC.

- \* *Olearia oliganthema* F. Muell. ex Benth.

- \* *Senecio behrianus* Sonder & F. Muell.

- \* *Senecio georgianus* DC.

- \* *Stemmacantha australis* (Gaudich.) Dittr.

### Brassicaceae

*Lepidium foliosum* Desv.

*Stenopetalum velutinum* F. Muell.

Chenopodiaceae

*Atriplex acutiloba* R. Anderson

*Maireana lanosa* (Lindley) Paul G. Wilson

*Osteocarpum pentapterum* (F. Muell. & Tate) Volkens

Dennstaedtiaceae

*Hypolepis elegans* Carruth.

Euphorbiaceae

\* *Amperea xiphoclada* var. *pedicellata* R.F.J. Hend.

Gyrostemonaceae

\* *Codonocarpus pyramidalis* (F. Muell.) F. Muell.

Haloragaceae

*Haloragis stricta* R. Br. ex Benth.

Orchidaceae

\* *Caladenia rosella* G.W. Carr

\* *Thelymitra epipactoides* F. Muell.

Polygalaceae

*Comesperma scoparium* Drummond

Proteaceae

*Grevillea nematophylla* F. Muell.

\* *Persoonia laxa* L. Johnson & P. Weston

Rhamnaceae

*Pomaderris oraria* F. Muell. ex Reisseck

Rosaceae

\* *Aphanes pentamera* Rothm.

Rubiaceae

*Knoxia sumatrensis* (Retz.) DC.

Rutaceae

*Micromelum minutum* (Forster f.) Wight & Arn.

*Philotheca angustifolia* (Paul G. Wilson) Paul G. Wilson subsp. *angustifolia*

Sapindaceae

*Dodonaea stenophylla* F. Muell.

Scrophulariaceae

\* *Euphrasia ruptura* W.R. Barker

Solanaceae

*Solanum bauerianum* Endl.

Tremandraceae

*Tetratheca pilosa* Labill. subsp. *pilosa*

## Schedule 1A Critically endangered species and ecological communities

(Section 6)

### Part 1 Critically endangered species

#### Animals

##### Vertebrates

##### Amphibians

##### Hylidae

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

##### Myobatrachidae

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

#### Birds

Accipitridae

\* *Erythrotriorchis radiatus* (Latham, 1801) Red Goshawk

Turnicidae

\* *Turnix melanogaster* (Gould, 1837) Black-breasted Button-quail

Burhinidae

*Esacus magnirostris* Vieillot, 1818 Beach Stone-curlew

Charadriidae

*Thinornis rubricollis* (Gmelin, 1789) Hooded Plover

Cacatuidae

\* *Calyptorhynchus banksii banksii* (Latham, 1790) Red-tailed Black-Cockatoo (coastal subspecies)

Psittacidae

\* *Cyclopsitta diophthalma coxeni* Gould, 1867 Coxen's Fig-Parrot

\* *Neophema chrysogaster* (Latham, 1790) Orange-bellied Parrot

Maluridae

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

Meliphagidae

\* *Anthochaera phrygia* (Shaw, 1794) Regent Honeyeater

\* *Manorina melanotis* (Wilson, 1911) Black-eared Miner

Pachycephalidae

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

**Mammals**

Muridae

*Pseudomys desertor* Troughton, 1932 Desert Mouse

\* *Pseudomys fumeus* Brazenor, 1934 Smoky Mouse

**Invertebrates**

**Lepidoptera**

Lycaenidae

*Jalmenus eubulus* Miskin, 1876

**Plants**

Areaceae

*Lepidorrhachis mooreana* (F. Muell.) O.F. Cook

Little Mountain Palm

Dilleniaceae

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

Euphorbiaceae

\* *Fontainea oraria* Jessup & Guymer

Fabaceae

*Bossiaea fragrans* K.L. McDougall

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

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

Gentianaceae

\* *Gentiana bredboensis* L.G. Adams

\* *Gentiana wingecarribiensis* L. Adams

Wingecaribee Gentian

Haloragaceae

*Myriophyllum implicatum* Orchard

Lamiaceae

\* *Prostanthera marifolia* R. Br.

Myrtaceae

\* *Eucalyptus imlayensis* Crisp & Brooker

\* *Eucalyptus recurva* Crisp

Orchidaceae

*Diuris flavescens* D.L. Jones

*Genoplesium littorale* D.L. Jones

Tuncurry Midge Orchid

\* *Genoplesium plumosum* (Rupp) D.L. Jones & M.A. Clem.

*Prasophyllum canaliculatum* D.L. Jones

- \* *Prasophyllum fuscum* R. Br. *sensu stricto*

*Prasophyllum innubum* D.L. Jones

*Prasophyllum keltonii* D.L. Jones

*Prasophyllum* sp. Majors Creek (Jones 11084)

*Prasophyllum* sp. Moama (D.L. Jones 19276)

- \* *Prasophyllum uroglossum* Rupp
- \* *Pterostylis despectans* (Nicholls) M.A. Clem & D.L. Jones

*Pterostylis oreophila* Clemesha

*Pterostylis ventricosa* (D.L. Jones) G.N. Backh.

- \* *Pterostylis vernalis* (D.L. Jones) G.N. Backh.

*Thelymitra* sp. *adorata* (B. Branwhite JAJ1030) J. Jeanes ined. Wyong Sun Orchid

*Thelymitra* sp. Kangaloon (D.L. Jones 18108)

*Thelymitra atronitida* Jeanes

#### Poaceae

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

#### Proteaceae

*Banksia conferta* A.S. George subsp. *conferta*

- \* *Grevillea iaspicula* McGill.

*Grevillea ilicifolia* (R.Br.) R.Br. subsp. *ilicifolia*

- \* *Persoonia pauciflora* P.H. Weston North Rothbury Persoonia

#### Rhamnaceae

*Pomaderris delicata* N.G. Walsh & F. Coates

*Pomaderris reperta* N.G. Walsh & F. Coates

*Pomaderris walshii* J.C. Millott & K.L. McDougall

#### Rutaceae

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

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

Sapindaceae

*Dodonaea stenozyga* F. Muell.

Scrophulariaceae

- \* *Euphrasia arguta* R. Br.

Sterculiaceae

*Lasiopetalum behrii* F. Muell.

## Part 2 Critically endangered ecological communities

- \* Blue Gum High Forest in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)
- \* Cumberland Plain Woodland in the Sydney Basin Bioregion (as described in the final determination of the Scientific Committee to list the ecological community)
  - Gnarled Mossy Cloud Forest on Lord Howe Island (as described in the final determination of the Scientific Committee to list the ecological community)
  - Kincumber Scribbly Gum Forest in the Sydney Basin Bioregion (as described in the final determination of the Scientific Committee to list the ecological community)
  - Lagunaria* Swamp Forest on Lord Howe Island (as described in the final determination of the Scientific Community to list the ecological community)
  - Mallee and Mallee-Broombush dominated woodland and shrubland, lacking *Triodia*, in the NSW South Western Slopes Bioregion (as described in the final determination of the Scientific Committee to list the ecological community)
  - Marsh Club-rush Sedgeland in the Darling Riverine Plains Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)
  - Porcupine Grass - Red Mallee - Gum Coolabah hummock grassland/low sparse woodland in the Broken Hill Complex Bioregion (as described in the final determination of the Scientific Committee to list the ecological community)
  - Sun Valley Cabbage Gum Forest in the Sydney Basin Bioregion (as described in the final determination of the Scientific Committee to list the ecological community)

## Schedule 2 Vulnerable species and ecological communities

(Section 7)

### Part 1 Vulnerable species

#### Animals

#### Vertebrates



## Amphibians

### Hylidae

<i>Litoria brevipalmata</i> Tyler, Martin & Watson, 1972	Green-thighed Frog
<i>Litoria daviesae</i> Mahony, Knowles, Foster & Donnellan, 2001	
* <i>Litoria littlejohni</i> A.M. White, Whitford and Mahoney, 1994	Littlejohn's Tree Frog
* <i>Litoria olongburensis</i> Liem & Ingram, 1977	Olongburra Frog
<i>Litoria subglandulosa</i> Tyler & Anstis, 1983	Glandular Frog

### Myobatrachidae

<i>Assa darlingtoni</i> (Loveridge, 1933)	Pouched Frog
<i>Crinia sloanei</i> Littlejohn, 1958	Sloane's Froglet
<i>Crinia tinnula</i> Straughan & Main, 1966	Wallum Froglet
* <i>Heleioporus australiacus</i> (Shaw & Nodder, 1795)	Giant Burrowing Frog
<i>Phyllorhina sphagnicolus</i> (Moore, 1958)	Sphagnum Frog
<i>Pseudophryne australis</i> (Gray, 1835)	Red-crowned Toadlet

## Reptiles

### Cheloniidae

* <i>Chelonia mydas</i> (Linnaeus, 1758)	Green Turtle
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### Chelidae

* <i>Elseya belli</i> (Gray, 1844)	Bell's Turtle
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### Gekkonidae

* <i>Christinus guentheri</i> (Boulenger, 1885)	Lord Howe Island Southern Gecko
<i>Lucasium stenodactylum</i> (Boulenger, 1896)	Crowned Gecko
<i>Strophurus elderi</i> (Stirling & Zietz, 1893)	Jewelled Gecko
* <i>Underwoodisaurus sphyrurus</i> (Ogilby, 1892)	Border Thick-tailed Gecko

### Pygopodidae

* <i>Aprasia parapulchella</i> Kluge, 1974	Pink-tailed Legless Lizard
* <i>Delma impar</i> Fischer, 1882	Striped Legless Lizard

Varanidae

*Varanus rosenbergi* Mertens, 1957

Rosenberg's Goanna

Scincidae

\* *Coeranoscincus reticulatus* (Günther, 1873)

Three-toed Snake-tooth Skink

*Ctenotus brooksi* (Loveridge, 1933)

Wedgesnout Ctenotus

*Lerista xanthura* Storr, 1976

Yellow-tailed Plain Slider

\* *Oligosoma lichenigera* (O'Shaughnessy, 1874)

Lord Howe Island Skink

*Tiliqua multifasciata* Sternfeld, 1919

Centralian Blue-tongued Lizard

*Tiliqua occipitalis* (Peters, 1863)

Western Blue-tongued Lizard

Boidae

*Antaresia stimsoni* (Smith, 1985)

Stimson's Python

*Aspidites ramsayi* (Macleay, 1882)

Woma

Elapidae

*Cacophis harriettae* Krefft, 1869

White-crowned Snake

*Demansia torquata* (Günther, 1862)

Collared Whip Snake

*Hoplocephalus bitorquatus* (Jan, 1859)

Pale-headed Snake

*Hoplocephalus stephensii* Krefft, 1869

Stephens' Banded Snake

*Simoselaps fasciolatus* (Gunther, 1872)

Narrow-banded Snake

*Suta flagellum* (McCoy, 1878)

Little Whip Snake

**Birds**

Anseranatidae

*Anseranas semipalmata* (Latham, 1798)

Magpie Goose

Anatidae

*Oxyura australis* Gould, 1837

Blue-billed Duck

*Stictonetta naevosa* (Gould, 1841)

Freckled Duck

Procellariidae

*Ardenna carneipes* (Gould, 1844)

Flesh-footed Shearwater

\* *Macronectes halli* Mathews, 1912

Northern Giant-petrel

* <i>Pterodroma leucoptera leucoptera</i> (Gould, 1844)	Gould's Petrel
* <i>Pterodroma neglecta neglecta</i> (Schlegel, 1863)	Kermadec Petrel (west Pacific subspecies)
<i>Pterodroma nigripennis</i> (Rothschild, 1893)	Black-winged Petrel
<i>Pterodroma solandri</i> (Gould, 1844)	Providence Petrel
<i>Puffinus assimilis</i> Gould, 1838	Little Shearwater
Oceanitidae	
* <i>Fregetta grallaria</i> (Vieillot, 1818)	White-bellied Storm-Petrel
Diomedeidae	
* <i>Diomedea antipodensis</i> Robertson & Warham, 1992	Antipodean Albatross
* <i>Diomedea gibsoni</i> Robertson & Warham, 1992	Gibson's Albatross
* <i>Phoebastria fusca</i> (Hilsenberg, 1822)	Sooty Albatross
* <i>Thalassarche cauta</i> (Gould, 1841)	Shy Albatross
* <i>Thalassarche melanophris</i> (Temminck, 1828)	Black-browed Albatross
Phaethontidae	
<i>Phaethon rubricauda</i> Boddaert, 1783	Red-tailed Tropicbird
Sulidae	
<i>Sula dactylatra</i> Lesson, 1831	Masked Booby
Ardeidae	
<i>Ixobrychus flavicollis</i> (Latham, 1790)	Black Bittern
Accipitridae	
<i>Circus assimilis</i> Jardine & Selby, 1828	Spotted Harrier
<i>Hamirostra melanosternon</i> (Gould, 1841)	Black-breasted Buzzard
<i>Hieraaetus morphnoides</i> (Gould, 1841)	Little Eagle
<i>Lophoictinia isura</i> (Gould, 1838)	Square-tailed Kite
<i>Pandion cristatus</i> (Vieillot, 1816)	Eastern Osprey
Gruidae	
<i>Grus rubicunda</i> (Perry, 1810)	Brolga

Rallidae

*Amaurornis moluccana* (Wallace, 1865)

Pale-vented Bush-hen

Turnicidae

*Turnix maculosus* (Temminck, 1815)

Red-backed Button-quail

Scolopacidae

*Calidris alba* (Pallas, 1764)

Sanderling

*Calidris tenuirostris* (Horsfield, 1821)

Great Knot

*Limicola falcinellus* (Pontoppidan, 1763)

Broad-billed Sandpiper

*Limosa limosa* (Linnaeus, 1758)

Black-tailed Godwit

*Xenus cinereus* (Güldenstädt, 1775)

Terek Sandpiper

Jacanidae

*Irediparra gallinacea* (Temminck, 1828)

Comb-crested Jacana

Haematopodidae

*Haematopus fuliginosus* Gould, 1845

Sooty Oystercatcher

Charadriidae

*Charadrius leschenaultii* Lesson, 1826

Greater Sand-plover

*Charadrius mongolus* Pallas, 1776

Lesser Sand-plover

Laridae

*Gygis alba* (Sparrman, 1786)

White Tern

*Onychoprion fuscata* (Linnaeus, 1766)

Sooty Tern

*Procelsterna cerulea* (Bennett, 1840)

Grey Ternlet

Columbidae

*Ptilinopus magnificus* (Temminck, 1821)

Wompoo Fruit-dove

*Ptilinopus regina* Swainson, 1825

Rose-crowned Fruit-dove

*Ptilinopus superbus* (Temminck, 1809)

Superb Fruit-dove

Cacatuidae

*Callocephalon fimbriatum* (Grant, 1803)

Gang-gang Cockatoo

*Calyptorhynchus banksii samueli* Mathews, 1917

Red-tailed Black-Cockatoo (inland subspecies)

<i>Calyptorhynchus lathamii</i> (Temminck, 1807)	Glossy Black-Cockatoo
<i>Lophochroa leadbeateri</i> (Vigors, 1831)	Major Mitchell's Cockatoo
Psittacidae	
<i>Glossopsitta porphyrocephala</i> (Dietrichsen, 1837)	Purple-crowned Lorikeet
<i>Glossopsitta pusilla</i> (Shaw, 1790)	Little Lorikeet
<i>Neophema pulchella</i> (Shaw, 1792)	Turquoise Parrot
<i>Neophema splendida</i> (Gould, 1841)	Scarlet-chested Parrot
<i>Pezoporus wallicus wallicus</i> (Kerr, 1792)	Eastern Ground Parrot
* <i>Polytelis swainsonii</i> (Desmarest, 1826)	Superb Parrot
Strigidae	
<i>Ninox connivens</i> (Latham, 1801)	Barking Owl
<i>Ninox strenua</i> (Gould, 1838)	Powerful Owl
Tytonidae	
<i>Tyto longimembris</i> (Jerdon, 1839)	Eastern Grass Owl
<i>Tyto novaehollandiae</i> (Stephens, 1826)	Masked Owl
<i>Tyto tenebricosa</i> (Gould, 1845)	Sooty Owl
Podargidae	
<i>Podargus ocellatus</i> Quoy & Gaimard, 1830	Marbled Frogmouth
Halcyonidae	
<i>Todiramphus chloris</i> (Boddaert, 1783)	Collared Kingfisher
Menuridae	
<i>Menura alberti</i> Bonaparte, 1850	Albert's Lyrebird
Atrichornithidae	
<i>Atrichornis rufescens</i> (Ramsay, 1867)	Rufous Scrub-bird
Climacteridae	
<i>Climacteris picumnus victoriae</i> Mathews, 1912	Brown Treecreeper (eastern subspecies)
Maluridae	
<i>Amytornis striatus</i> (Gould, 1840)	Striated Grasswren

Acanthizidae

<i>Calamanthus campestris</i> (Gould, 1841)	Rufous Fieldwren
<i>Chthonicola sagittata</i> (Latham, 1801)	Speckled Warbler
<i>Hylacola cautus</i> Gould, 1843	Shy Heathwren
<i>Pyrrholaemus brunneus</i> Gould, 1841	Redthroat

Meliphagidae

<i>Certhionyx variegatus</i> Lesson, 1830	Pied Honeyeater
<i>Epthianura albifrons</i> (Jardine & Selby, 1823)	White-fronted Chat
<i>Grantiella picta</i> (Gould, 1838)	Painted Honeyeater
<i>Lichenostomus cratitius</i> (Gould, 1841)	Purple-gaped Honeyeater
<i>Lichenostomus fasciogularis</i> (Gould, 1854)	Mangrove Honeyeater
<i>Melithreptus gularis gularis</i> (Gould, 1837)	Black-chinned Honeyeater (eastern subspecies)

Petroicidae

<i>Drymodes brunneopygia</i> Gould, 1841	Southern Scrub-robin
<i>Melanodryas cucullata cucullata</i> (Latham, 1801)	Hooded Robin (south-eastern form)
<i>Petroica boodang</i> (Lesson, 1838)	Scarlet Robin
<i>Petroica phoenicea</i> Gould, 1837	Flame Robin
<i>Petroica rodinogaster</i> (Drapiez, 1819)	Pink Robin

Pomatostomidae

<i>Pomatostomus halli</i> Cowles, 1964	Hall's Babbler
<i>Pomatostomus temporalis temporalis</i> (Vigors & Horsfield, 1827)	Grey-crowned Babbler (eastern subspecies)

Psophodidae

<i>Cinclosoma castanotum</i> Gould, 1840	Chestnut Quail-thrush
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Neosittidae

<i>Daphoenositta chrysoptera</i> (Latham, 1801)	Varied Sittella
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Pachycephalidae

<i>Pachycephala inornata</i> Gould, 1841	Gilbert's Whistler
<i>Pachycephala olivacea</i> Vigors & Horsfield, 1827	Olive Whistler

<i>Pachycephala pectoralis contempta</i> Hartert, 1898	Golden Whistler (Lord Howe Is. subsp.)
Monarchidae	
<i>Carterornis leucotis</i> (Gould, 1850)	White-eared Monarch
Campephagidae	
<i>Coracina lineata</i> (Swainson, 1825)	Barred Cuckoo-shrike
Artamidae	
* <i>Strepera graculina crissalis</i> Sharpe, 1877	Pied Currawong (Lord Howe Is. subsp.)
Timaliidae	
<i>Zosterops lateralis tephroleurus</i> Gould, 1855	Silvereye (Lord Howe Is. subsp.)
Estrildidae	
<i>Stagonopleura guttata</i> (Shaw, 1796)	Diamond Firetail
<b>Mammals</b>	
Burramyidae	
<i>Cercartetus nanus</i> (Desmarest, 1818)	Eastern Pygmy-possum
Dasyuridae	
* <i>Dasyurus maculatus</i> (Kerr, 1792)	Spotted-tailed Quoll
<i>Ningau i yvonneae</i> Kitchener, Stoddart & Henry, 1983	Southern Ningau i
<i>Phascogale tapoatafa</i> (Meyer, 1793)	Brush-tailed Phascogale
<i>Planigale maculata</i> (Gould, 1851)	Common Planigale
<i>Sminthopsis leucopus</i> (Gray, 1842)	White-footed Dunnart
<i>Sminthopsis macroura</i> (Gould, 1845)	Stripe-faced Dunnart
Phascolarctidae	
<i>Phascolarctos cinereus</i> (Goldfuss, 1817)	Koala
Petauridae	
<i>Petaurus australis</i> Shaw, 1791	Yellow-bellied Glider
<i>Petaurus norfolcensis</i> (Kerr, 1792)	Squirrel Glider

Potoroidae

*Aepyprymnus rufescens* (Gray, 1837)

Rufous Bettong

\* *Potorous tridactylus* (Kerr, 1792)

Long-nosed Potoroo

Macropodidae

*Macropus parma* Waterhouse, 1845

Parma Wallaby

*Thylogale stigmatica* (Gould, 1860)

Red-legged Pademelon

Pteropodidae

*Nyctimene robinsoni* Thomas, 1904

Eastern Tube-nosed Bat

\* *Pteropus poliocephalus* Temminck, 1825

Grey-headed Flying-fox

*Syconycteris australis* (Peters, 1867)

Common Blossom-bat

Emballonuridae

*Saccolaimus flaviventris* (Peters, 1867)

Yellow-bellied Sheathtail-bat

Molossidae

*Mormopterus beccarii* Peters, 1881

Beccari's Freetail-bat

*Mormopterus norfolkensis* (Gray, 1839)

Eastern Freetail-bat

Vespertilionidae

\* *Chalinolobus dwyeri* Ryan, 1966

Large-eared Pied Bat

*Chalinolobus nigrogriseus* (Gould, 1856)

Hoary Wattled Bat

*Chalinolobus picatus* (Gould, 1852)

Little Pied Bat

*Falsistrellus tasmaniensis* (Gould, 1858)

Eastern False Pipistrelle

*Kerivoula papuensis* Dobson, 1878

Golden-tipped Bat

*Miniopterus australis* (Tomes, 1858)

Little Bentwing-bat

*Miniopterus schreibersii oceanensis* Maeda, 1982

Eastern Bentwing-bat

*Myotis macropus* (Gould, 1855)

Southern Myotis

*Nyctophilus bifax* Thomas, 1915

Eastern Long-eared Bat

\* *Nyctophilus corbeni* Parnaby, 2009

Corben's Long-eared Bat

*Scoteanax rueppellii* (Peters, 1866)

Greater Broad-nosed Bat

*Vespadelus baverstocki* (Kitchener, Jones & Caputi, 1987)

Inland Forest Bat

*Vespadelus troughtoni* (Kitchener, Jones & Caputi, 1987)

Eastern Cave Bat



## Muridae

*Leggadina forresti* (Thomas, 1906)

Forrest's Mouse

*Mastacomys fuscus* Thomas, 1882

Broad-toothed Rat

*Pseudomys gracilicaudatus* (Gould, 1845)

Eastern Chestnut Mouse

*Pseudomys hermannsburgensis* (Waite, 1896)

Sandy Inland Mouse

\* *Pseudomys pilligaensis* Fox & Briscoe, 1980

Pilliga Mouse

*Rattus villosissimus* (Waite, 1898)

Long-haired Rat

## Marine mammals

### Otariidae

*Arctocephalus forsteri* (Lesson, 1828)

New Zealand Fur-seal

*Arctocephalus pusillus doriferus* (Jones, 1925)

Australian Fur-seal

### Physeteridae

*Physeter macrocephalus* Linnaeus, 1758

Sperm Whale

### Balaenopteridae

\* *Megaptera novaeangliae* (Borowski, 1781)

Humpback Whale

### Balaenidae

\* *Eubalaena australis* (Desmoulins, 1822)

Southern Right Whale

## Fungi

### Basidiomycota

#### Hygrophoraceae

*Hygrocybe anomala* var. *ianthinomarginata* A.M. Young

*Hygrocybe aurantipes* A.M. Young

*Hygrocybe reesiae* A.M. Young

*Hygrocybe rubronivea* A.M. Young

## Plants

### Apiaceae

*Xanthosia scopulicola* J.M. Hart & Henwood

Apocynaceae

- \* *Parsonsia dorrigoensis* J.B. Williams ms
- \* *Tylophora linearis* P.I. Forst.

Araliaceae

- \* *Astrotricha crassifolia* Blakely

Asteliaceae

- \* *Neoastelia spectabilis* J.B. Williams

Asteraceae

- \* *Ammobium craspedioides* Benth.
- \* *Brachyscome muelleroides* G. L. R. Davis
- \* *Brachyscome papillosa* G. L. R. Davis
- \* *Calotis glandulosa* F. Muell.
- \* *Euchiton nitidulus* (Hook. f.) A. Anderb.
- \* *Olearia cordata* Lander
- \* *Ozothamnus tessellatus* (Maiden & R. Baker) Anderberg
- \* *Picris evae* Lack
- \* *Rutidosia heterogama* Philipson
- \* *Rutidosia leiolepis* F. Muell.
- \* *Senecio garlandii* F. Muell. ex Belcher

Brassicaceae

- \* *Lepidium aschersonii* Thell.

Callitrichaceae

- \* *Callitriche cyclocarpa* Hegelm.

Casuarinaceae

- \* *Allocasuarina simulans* L. Johnson

Chenopodiaceae

- \* *Atriplex infrequens* Paul G. Wilson
- \* *Maireana cheelii* (R. Anderson) Paul G. Wilson

Convolvulaceae

*Wilsonia backhousei* Hook. f.

Corokiaceae

\* *Corokia whiteana* L.S. Smith

Corynocarpaceae

\* *Corynocarpus rupestris* Guymmer subsp. *rupestris*

Cunoniaceae

\* *Acrophyllum australe* (Cunn.) Hoogl.

Cupressaceae

\* *Callitris oblonga* A. Rich. & Rich.

Cyperaceae

*Cyperus rupicola* S.T. Blake

\* *Eleocharis obicis* L.A.S. Johnson & O.D. Evans

*Lepidosperma evansianum* K.L. Wilson

Dilleniaceae

\* *Hibbertia marginata* Conn

Doryanthaceae

*Doryanthes palmeri* W. Hill ex Benth.

Epacridaceae

\* *Budawangia gnidioides* (Summerh.) Telford

*Epacris purpurascens* var. *purpurascens* R. Br.

\* *Epacris sparsa* R. Br.

\* *Leucopogon exolasius* (F. Muell.) F. Muell. ex Benth.

\* *Styphelia perileuca* J. Powell

Ericaceae

*Dracophyllum macranthum* E.A.Br. & N. Streiber

*Gaultheria viridicarpa* subsp. *merinoensis* J.B. Williams ms

\* *Gaultheria viridicarpa* J.B. Williams ms subsp. *viridicarpa*

Euphorbiaceae

- \* *Baloghia marmorata* C. White
- \* *Bertya opponens* (F. Muell. ex Benth) Guymer
- \* *Fontainea australis* Jessup & Guymer

Fabaceae

*Acacia ausfeldii* Regel.

*Acacia bakeri* Maiden

*Acacia baueri* subsp. *aspera* (Maiden & E. Betche) Pedley

- \* *Acacia carneorum* Maiden

*Acacia clunies-rossiae* Maiden

- \* *Acacia constablei* Tind.

- \* *Acacia courtii* Tind. & Herscovitch

- \* *Acacia curranii* Maiden

- \* *Acacia flocktoniae* Maiden

- \* *Acacia georgensis* Tind.

*Acacia macnuttiana* Maiden & Blakely

- \* *Acacia phasmoides* J.H. Willis

- \* *Acacia pubescens* (Vent.) R. Br.

- \* *Acacia pycnostachya* F. Muell.

*Archidendron hendersonii* (F. Muell.) Nielsen

*Bossiaea bombayensis* K.L. McDougall

- \* *Bossiaea oligosperma* A. Lee

- \* *Desmodium acanthocladum* F. Muell.

- \* *Dillwynia tenuifolia* Sieber ex DC.

- \* *Kennedia retrorsa* Hemsley

- \* *Phyllota humifusa* Benth.

- \* *Pultenaea aristata* Sieber ex DC.

- \* *Pultenaea baeuerlenii* F. Muell.

- \* *Pultenaea glabra* Benth.

*Pultenaea humilis* Benth. ex Hook. F.

*Pultenaea maritima* de Kok

- \* *Pultenaea parrisiae* J.D. Briggs & Crisp

*Rhynchosia acuminatissima* Miq.

- \* *Sophora fraseri* Benth.

- \* *Swainsona murrayana* Wawra

- \* *Swainsona plagiotropis* F. Muell.

- \* *Swainsona pyrophila* J. Thompson

*Swainsona sericea* (A. Lee) J. Black ex H. Eichler

*Tephrosia filipes* Benth.

#### Gentianaceae

- \* *Gentiana wissmannii* J. Williams

#### Goodeniaceae

- \* *Velleia perfoliata* R. Br.

#### Haloragaceae

- \* *Haloragis exalata* F. Muell. subsp. *exalata*

- \* *Haloragis exalata* subsp. *velutina* Orch.

#### Juncaginaceae

*Maundia triglochinooides* F. Muell.

#### Lamiaceae

- \* *Prostanthera cineolifera* R. Baker & H.G. Smith

- \* *Prostanthera cryptandroides* Cunn. ex Benth. subsp. *cryptandroides*

- \* *Prostanthera densa* A.A. Ham.

- \* *Prostanthera discolor* R. Baker

- \* *Prostanthera palustris* B.J. Conn

*Prostanthera spinosa* F. Muell.

- \* *Prostanthera stricta* R. Baker

- \* *Westringia davidii* Conn

#### Lauraceae

\* *Cryptocarya foetida* R. Baker

\* *Endiandra hayesii* Kosterm.

Meliaceae

\* *Owenia cepiodora* F. Muell.

Menispermaceae

\* *Tinospora tinosporoides* (F. Muell.) Forman

Myrtaceae

\* *Angophora inopina* K.D. Hill

\* *Angophora robur* L. Johnson & K. Hill

*Callistemon linearifolius* (Link) DC.

\* *Darwinia biflora* (Cheel) B. Briggs

*Darwinia glaucophylla* B.G. Briggs

*Darwinia peduncularis* B. Briggs

*Eucalyptus aggregata* Deane & Maiden

Black Gum

\* *Eucalyptus alligatrix* subsp. *miscella* Brooker, Slee & J.D. Briggs  
ms

*Eucalyptus approximans* Maiden

\* *Eucalyptus aquatica* (Blakely) L. Johnson & K. Hill

\* *Eucalyptus benthamii* Maiden & Cabbage

*Eucalyptus boliviana* J.B. Williams & K.D. Hill

\* *Eucalyptus caleyi* subsp. *ovendenii* L. Johnson & K. Hill

\* *Eucalyptus camfieldii* Maiden

\* *Eucalyptus cannonii* R. Baker

\* *Eucalyptus canobolensis* (L.A.S. Johnson & K.D. Hill) J.T. Hunter

*Eucalyptus corticosa* L.A.S. Johnson

*Eucalyptus dissita* K.D. Hill

*Eucalyptus fracta* K.D. Hill

\* *Eucalyptus glaucina* Blakely

\* *Eucalyptus kartzoffiana* L. Johnson & Blaxell

\* *Eucalyptus langleyi* L. Johnson & Blaxell

- Eucalyptus leucoxylon* F. Muell. subsp. *pruinosa* (F. Muell. Ex. Miq.) Boland Yellow Gum
- Eucalyptus macarthurii* Deane & Maiden
- \* *Eucalyptus mckieana* Blakely
- \* *Eucalyptus nicholii* Maiden & Blakely
- Eucalyptus oresbia* Hunter and Bruhl
- \* *Eucalyptus parramattensis* subsp. *decadens* L. Johnson & Blaxell
- \* *Eucalyptus pulverulenta* Sims
- \* *Eucalyptus pumila* Cabbage
- \* *Eucalyptus robertsonii* subsp. *hemisphaerica* L. Johnson & K. Hill
- \* *Eucalyptus rubida* subsp. *barbigerorum* L. Johnson & K. Hill
- Eucalyptus sturgissiana* L. Johnson & Blaxell
- \* *Eucalyptus tetrapleura* L. Johnson
- \* *Homoranthus darwinioides* (Maiden & E. Bettle) Cheel
- \* *Homoranthus lunatus* Craven & S.R. Jones
- \* *Homoranthus prolixus* Craven & S.R. Jones
- \* *Kardomia granitica* (A.R. Bean) Peter G. Wilson
- \* *Kunzea cambagei* Maiden & E. Bettle
- \* *Kunzea rupestris* Blakely
- \* *Leptospermum deanei* J. Thompson
- \* *Leptospermum thompsonii* J. Thompson
- \* *Melaleuca biconvexa* Byrnes
- Melaleuca deanei* F. Muell.
- Melaleuca groveana* Cheel & C. White
- Melaleuca megalongensis* Craven & S.M. Douglas Megalong Valley Bottlebrush
- \* *Micromyrtus blakelyi* J. Green
- \* *Syzygium hodgkinsoniae* (F. Muell.) L. Johnson
- \* *Syzygium moorei* (F. Muell.) L. Johnson
- Olacaceae
- \* *Olax angulata* A.S. George

Orchidaceae

- \* *Bulbophyllum globuliforme* Nicholls
- Chiloglottis platyptera* D.L. Jones
- \* *Cryptostylis hunteriana* Nicholls
- \* *Diuris praecox* D.L. Jones
- \* *Diuris tricolor* Fitzg.
- \* *Diuris venosa* Rupp
- Genoplesium baueri* R. Br.
- \* *Genoplesium vernale* D.L. Jones
- Oberonia titania* Lindl.
- Peristeranthus hillii* (F. Muell.) T.E. Hunt.
- Prasophyllum pallens* D.L. Jones
- \* *Prasophyllum retroflexum* D.L. Jones
- \* *Pterostylis cobarensis* M.A. Clem.
- \* *Pterostylis cucullata* R. Br.
- Pterostylis elegans* D.L. Jones
- Pterostylis nigricans* L. Jones & M.A. Clem.
- \* *Pterostylis pulchella* Messmer
- Rhizanthella slateri* (Rupp) M.A. Clem. and P.J. Cribb
- \* *Sarcochilus fitzgeraldii* F. Muell.
- \* *Sarcochilus hartmannii* F. Muell.
- \* *Sarcochilus weinthalii* (F.M. Bailey) Dockrill

Poaceae

- \* *Amphibromus fluitans* Kirk
- Ancistrachne maidenii* (A.A. Ham.) Vickery
- \* *Arthraxon hispidus* (Thunb.) Makino
- \* *Austrostipa metatoris* (J. Everett & S.W.L. Jacobs) S.W.L. Jacobs & J. Everett
- \* *Dichanthium setosum* S.T. Blake
- Paspalidium grandispiculatum* B.K Simon



- \* *Rytidosperma pumilum* (Kirk) Linder

Polygonaceae

*Muehlenbeckia costata* K.L. Wilson and Makinson ms

- \* *Persicaria elatior* (R. Br.) Sojak

Proteaceae

- \* *Floydia praealta* (F. Muell.) L. Johnson & B. Briggs

- \* *Grevillea banyabba* P. Olde & N. Marriott

- \* *Grevillea evansiana* McKee

*Grevillea juniperina* R. Br. subsp. *juniperina*

- \* *Grevillea kennedyana* F. Muell.

- \* *Grevillea molyneuxii* D.J. McGillivray

- \* *Grevillea parviflora* R. Br. subsp. *parviflora*

- \* *Grevillea quadricauda* P. Olde & N. Marriott

- \* *Grevillea rhizomatosa* P. Olde & N. Marriott

- \* *Grevillea scortechinii* subsp. *sarmentosa* (Blakely & McKie) McGillivray

- \* *Grevillea shiressii* Blakely

- \* *Hakea archaeoides* W.R. Barker

- \* *Hakea fraseri* R. Br.

- \* *Hicksbeachia pinnatifolia* F. Muell.

- \* *Isopogon fletcheri* F. Muell.

- \* *Macadamia tetraphylla* L. Johnson

- \* *Persoonia acerosa* Sieber ex Schultes & Schultes f.

- \* *Persoonia marginata* Cunn. ex R. Br.

Ranunculaceae

- \* *Clematis fawcettii* F. Muell.

- \* *Ranunculus anemoneus* F. Muell.

Restionaceae

- \* *Baloskion longipes* (L.A.S. Johnson & O.D. Evans) B.G. Briggs & L.A.S. Johnson

Rhamnaceae

*Discaria nitida* Tortosa

*Pomaderris bodalla* N.G. Walsh & F. Coates

\* *Pomaderris brunnea* Wakef.

\* *Pomaderris gilmourii* var. *cana* N. Walsh

*Pomaderris notata* S.T. Blake

\* *Pomaderris pallida* Wakef.

\* *Pomaderris parrisiae* N. Walsh

Rubiaceae

\* *Asperula asthenes* Airy Shaw & Turrill

Rutaceae

\* *Boronia deanei* Maiden & E. Betcher

\* *Boronia granitica* Maiden & E. Betcher

\* *Boronia umbellata* P. Weston

\* *Bosistoa transversa* J. F. Bailey & C. T. White *sensu lato*

\* *Correa baeuerlenii* F. Muell.

\* *Leonema ralstonii* (F. Muell.) Paul G. Wilson

\* *Leonema sympetalum* (Paul G. Wilson) Paul G. Wilson

\* *Nematolepis rhytidophylla* (Alb. & N.G. Walsh) Paul G. Wilson

\* *Zieria murphyi* Blakely

\* *Zieria tuberculata* J.A. Armstrong

Santalaceae

\* *Thesium australe* R. Br.

Sapindaceae

\* *Dodonaea procumbens* F. Muell.

*Lepiderema pulchella* Radlk.

Sapotaceae

*Niemeyera whitei* (Aubrev.) Jessup

Scrophulariaceae

*Derwentia blakelyi* B. Briggs & Ehrend

\* *Euphrasia bella* S. T. Blake

\* *Euphrasia bowdeniae* W.R. Barker

*Euphrasia ciliolata* W.R. Barker

Solonaceae

\* *Solanum karsense* Symon

Sterculiaceae

*Lasiopetalum joyceae* Blakely

\* *Lasiopetalum longistamineum* Maiden & Betche

\* *Rulingia procumbens* Maiden & Betche

Surianaceae

\* *Cadellia pentastylis* F. Muell.

Symplocaceae

\* *Symplocos baeuerlenii* R. Baker

Thymelaeaceae

\* *Pimelea curviflora* R. Br. var. *curviflora*

Tremandraceae

\* *Tetradthea glandulosa* Smith

\* *Tetradthea juncea* Smith

Winteraceae

\* *Tasmania glaucifolia* J. Williams

\* *Tasmania purpurascens* (Vick.) A.C. Smith

## Part 2 Vulnerable ecological communities

Blue Mountains Swamps in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Castlereagh Scribbly Gum Woodland in the Sydney Basin Bioregion (as described in the final determination of the Scientific Committee to list the ecological community)

Hunter Valley Footslopes Slaty Gum Woodland in the Sydney Basin Bioregion (as described in the final determination of the Scientific Committee to list the ecological community)

Lower Hunter Valley Dry Rainforest in the Sydney Basin and NSW North Coast Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

### **Schedule 3 Key threatening processes**

(Section 8)

Alteration of habitat following subsidence due to longwall mining

Alteration to the natural flow regimes of rivers and streams and their floodplains and wetlands (as described in the final determination of the Scientific Committee to list the threatening process)

Anthropogenic Climate Change

Bushrock removal (as described in the final determination of the Scientific Committee to list the threatening process)

Clearing of native vegetation (as defined and described in the final determination of the Scientific Committee to list the key threatening process)

Competition and grazing by the feral European Rabbit, *Oryctolagus cuniculus* (L.)

Competition and habitat degradation by Feral Goats, *Capra hircus* Linnaeus 1758

Competition from feral honey bees, *Apis mellifera* L.

Death or injury to marine species following capture in shark control programs on ocean beaches (as described in the final determination of the Scientific Committee to list the key threatening process)

Entanglement in or ingestion of anthropogenic debris in marine and estuarine environments (as described in the final determination of the Scientific Committee to list the key threatening process)

Forest eucalypt dieback associated with over-abundant psyllids and Bell Miners

Herbivory and environmental degradation caused by feral deer

High frequency fire resulting in the disruption of life cycle processes in plants and animals and loss of vegetation structure and composition

Importation of Red Imported Fire Ants *Solenopsis invicta* Buren 1972

Infection by Psittacine Circoviral (beak and feather) Disease affecting endangered psittacine species and populations

Infection of frogs by amphibian chytrid causing the disease chytridiomycosis

Infection of native plants by *Phytophthora cinnamomi*

Introduction and establishment of Exotic Rust Fungi of the order Pucciniales pathogenic on plants of the family Myrtaceae

Introduction of the Large Earth Bumblebee *Bombus terrestris* (L.)

Invasion and establishment of exotic vines and scramblers

Invasion and establishment of Scotch Broom (*Cytisus scoparius*)

Invasion and establishment of the Cane Toad (*Bufo marinus*)

Invasion, establishment and spread of Lantana (*Lantana camara* L. sens. lat)

Invasion of native plant communities by African Olive *Olea europaea* L. subsp. *cuspidata* (Wall ex G. Don Cirferri)

Invasion of native plant communities by *Chrysanthemoides monilifera*

Invasion of native plant communities by exotic perennial grasses

Invasion of the Yellow Crazy Ant, *Anoplolepis gracilipes* (Fr. Smith) into NSW

Loss and degradation of native plant and animal habitat by invasion of escaped garden plants, including aquatic plants

Loss of hollow-bearing trees

Loss or degradation (or both) of sites used for hill-topping by butterflies

Predation and hybridisation by Feral Dogs, *Canis lupus familiaris*

Predation by *Gambusia holbrooki* Girard, 1859 (Plague Minnow or Mosquito Fish) (as described in the final determination of the Scientific Committee to list the threatening process)

Predation by the European Red Fox *Vulpes vulpes* (Linnaeus, 1758)

Predation by the Feral Cat *Felis catus* (Linnaeus, 1758)

Predation by the Ship Rat *Rattus rattus* on Lord Howe Island

Predation, habitat degradation, competition and disease transmission by Feral Pigs, *Sus scrofa* Linnaeus 1758

Removal of dead wood and dead trees

## **Schedules 4-6 (Repealed)**

## **Schedule 7 Savings, transitional and other provisions**

(Section 156)

### **Part 1 Savings and transitional regulations**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of:

this Act

*Threatened Species Conservation Amendment Act 2002*

*Threatened Species Legislation Amendment Act 2004*, to the extent that it amends this Act

*Threatened Species Conservation Amendment (Biodiversity Banking) Act 2006*

*Threatened Species Conservation Amendment (Special Provisions) Act 2008*, to the extent that it amends this Act

*National Parks and Wildlife Amendment Act 2010*, to the extent that it amends this Act

*Threatened Species Conservation Amendment (Biodiversity Certification) Act 2010*

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done before the date of its publication.

## **Part 2 Amendments consequent on *Threatened Species Conservation Act 1995***

### **2 Dissolution of Scientific Committee**

- (1) The Scientific Committee established under section 92A of the *National Parks and Wildlife Act 1974*, as inserted by the *Endangered Fauna (Interim Protection) Act 1991*, is dissolved.
- (2) A person who, immediately before the dissolution of the Scientific Committee referred to in this clause, held office as a member of that Scientific Committee:
  - (a) ceases to hold that office, and
  - (b) is eligible (if otherwise qualified) to be appointed as a member of the Scientific Committee established under this Act.
- (3) A person who so ceases to hold office as a member of the Scientific Committee is not entitled to any remuneration or compensation because of the loss of that office.

### **3 Extension of certain licences under section 120 of the [National Parks and Wildlife Act 1974](#)**

- (1) This clause applies to a licence to which section 4 of the [Endangered Fauna \(Interim Protection\) Amendment Act 1992](#) applied immediately before the repeal or expiry of that section.
- (2) A licence to which this clause applies continues in force, despite any expiry date specified in the licence, as if no such date had been so specified.
- (3) A licence to which this clause applies may be varied under section 133 of the [National Parks and Wildlife Act 1974](#).

### **4 Certain licences taken to be licences under Part 6**

- (1) A licence to which clause 3 refers is taken to be a licence under Part 6 of this Act and is as efficacious, in relation to the action that it authorises, as a licence granted under that Part.
- (2) In particular, a licence to which clause 3 refers is, in relation to the action that it authorises, taken to authorise the harming or picking of threatened species, populations or ecological communities, or the damaging of their habitats (including habitats that are critical habitats).

### **5 Savings in respect of planning matters**

- (1) The amendments made by this Act to the [Environmental Planning and Assessment Act 1979](#) do not affect:
  - (a) any development consent granted before the commencement of this clause or any development carried out in accordance with such a consent, or
  - (b) any activity to which Part 5 of that Act applies (or any approval for the carrying out of any such activity) if the provisions of that Part were complied with for that activity before the commencement of this clause.
- (2) If an application for development consent has not been finally determined on the commencement of this clause, the amendments made by this Act to the [Environmental Planning and Assessment Act 1979](#) do not apply to the determination of the application or to any development carried out in accordance with a development consent granted on the determination of the application. However, the Minister for Planning may, by notice served on the consent authority, direct that all or any specified amendments apply to the determination of the application.
- (3) If, in respect of any activity to which Part 5 of that Act applies (or any approval for carrying out any such activity):
  - (a) an environmental impact statement was duly obtained before the commencement

of this clause, but the provisions of that Part had not been fully complied with before that commencement, or

- (b) the Director-General of the Department of Planning had duly notified the person preparing an environmental impact statement before the commencement of this clause of requirements with respect to the form and contents of the statement, but the statement had not been obtained before that commencement,

the statement (so long as it is obtained in accordance with the provisions of that Act as in force immediately before that commencement) is taken to have been obtained in accordance with that Act, as amended by this Act.

- (4) Subclause (3) does not apply to an activity that has not been carried out before the commencement of this clause if the Minister for Planning (by notice served on the person obtaining the statement concerned) so directs.

## **6 Savings in respect of stop work orders**

A stop work order made under section 92E of the *National Parks and Wildlife Act 1974* is, if it has any force or effect immediately before the repeal of that section, taken to be a stop work order under Part 6A of that Act, as inserted by this Act.

## **Part 3 Provisions consequent on Fisheries Management Amendment Act 1997**

### **7 Saving of definition of regions**

The amendments made to section 4 of this Act by the *Fisheries Management Amendment Act 1997* do not affect any order made under that section before the commencement of those amendments with respect to regions under this Act.

## **Part 4 Provisions consequent on Threatened Species Conservation Amendment Act 2002**

### **8 Licences under Part 6**

Section 91, as substituted by the *Threatened Species Conservation Amendment Act 2002*, does not apply in respect of a licence issued under Part 6 before that substitution.

### **9 Accreditation arrangements**

The Director-General is to ensure that the arrangements referred to in section 113 (1), as amended by the *Threatened Species Conservation Amendment Act 2002*, and the survey standards referred to in section 113 (3A), as inserted by that Act, are instituted or approved within 18 months after the date of assent to that Act.



## **10 Re-appointment of members of Scientific Committee**

Section 130 (1A), as inserted by the *Threatened Species Conservation Amendment Act 2002*, does not apply in respect of 2 consecutive periods of office served by a member of the Scientific Committee if any part of the 2 consecutive periods was served by the member before that subsection commenced.

## **Part 5 Provisions consequent on Threatened Species Legislation Amendment Act 2004**

### **11 Definition**

In this Part:

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

### **12 Referral of proposed final determinations to Minister**

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.

### **13 Threatened Species Priorities Action Statements**

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.

### **14 Biological Diversity Advisory Council**

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).

## **Part 6 Provisions consequent on enactment of Threatened Species Conservation Amendment (Biodiversity Banking) Act 2006**

### **15 Renumbering of provisions**

Anything done or omitted to be done under a provision of this Act renumbered by the *Threatened Species Conservation Amendment (Biodiversity Banking) Act 2006* is taken to have been done or omitted to be done under the corresponding provision of this Act as so renumbered.

### **16 Accreditation**

(1) Any person accredited under section 1260 to undertake and prepare surveys and assessments as referred to in section 1260 (1) (a) or (b), as in force immediately

before its repeal by the *Threatened Species Conservation Amendment (Biodiversity Banking) Act 2006*, is taken to have been accredited to undertake and prepare surveys and assessments as referred to in section 142B (1) (a) or (b) (as the case requires).

- (2) Any standards approved by the Director-General under section 1260 by order published in the Gazette and in force immediately before the repeal of that section are taken to have been approved under section 142B.

## **Part 7 Biodiversity certification of State Environmental Planning Policy (Sydney Region Growth Centres) 2006**

### **17 Definitions**

- (1) In this Part:

**Growth Centres SEPP** means the *State Environmental Planning Policy (Sydney Region Growth Centres) 2006*, as in force from time to time.

**relevant biodiversity measures** means (subject to subclause (2)) the provisions set out as conditions of biodiversity certification in relation to the Growth Centres SEPP in the order under this Act published in the Gazette on 14 December 2007 (pages 9651–9662).

**subject land** means (subject to subclause (3)) the land shown edged heavy black as certified land on the maps marked “*South West Growth Centre—Biodiversity Certification*” and “*North West Growth Centre—Biodiversity Certification*” deposited in the head office of the Department.

- (2) The Minister may by order published in the Gazette amend the relevant biodiversity measures for the purposes of this Part following a review under clause 18 (4) of biodiversity certification conferred by this Part.
- (3) The Minister may by order published in the Gazette replace a map referred to in the definition of **subject land** in subclause (1) with a map referred to in the order that shows certified land that is within a growth centre within the meaning of the Growth Centres SEPP.

### **18 Biodiversity certification of Growth Centres SEPP**

- (1) Biodiversity certification is conferred, by the enactment of this Part, on the Growth Centres SEPP.
- (2) The biodiversity certification conferred by this Part applies:
  - (a) only to the subject land, and
  - (b) to all development and activities that may be carried out under the Growth Centres SEPP (including development and activities that may be carried out under

another EPI that applies to the subject land), and

(c) to all threatened species, populations and ecological communities.

- (3) The biodiversity certification conferred by this Part is not subject to any conditions.
- (4) The Minister is to undertake periodic reviews of the biodiversity certification conferred by this Part to determine whether it should be maintained or modified.

#### **19 Effect of biodiversity certification**

- (1) Development on the subject land is taken, for the purposes of Part 4 of the *Environmental Planning and Assessment Act 1979*, to be development that is not likely to significantly affect any threatened species, population or ecological community, or its habitat.
- (2) An activity to which Part 5 of the *Environmental Planning and Assessment Act 1979* applies which is carried out or proposed to be carried out on the subject land is taken, for the purposes of that Part, to be an activity that is not likely to significantly affect any threatened species, population or ecological community, or its habitat.

#### **20 Period of biodiversity certification**

- (1) The biodiversity certification conferred by this Part remains in force (subject to this Part) until 30 June 2025.
- (2) Prior to the expiration of the biodiversity certification conferred by this Part, the Minister may, by order published in the Gazette, extend by a period of up to 10 years the period for which that certification remains in force, but only if the Minister has reviewed the Growth Centres SEPP to take account of any new listing of a species, population or ecological community or the discovery of a species, population or ecological community not previously known in an area.
- (3) The Minister must not extend the period of biodiversity certification of the Growth Centres SEPP unless, prior to granting the extension, the Minister:
  - (a) by notice published in a newspaper circulating generally throughout the State, invites persons to make written submissions to the Minister on the proposed extension, and
  - (b) considers any written submissions received before the closing date specified in the notice for the making of submissions (being a date that is not less than 30 days after the date the notice is first published under this subclause).
- (4) This clause does not prevent biodiversity certification of any of the subject land under Part 7AA of this Act with effect on or after the biodiversity certification conferred by this Part ceases to be in force.

## **21 Suspension or revocation of biodiversity certification**

- (1) The Minister may, by order published in the Gazette, suspend or revoke the biodiversity certification conferred by this Part if the Minister is of the opinion that:
  - (a) any relevant biodiversity measure has not been complied with, or
  - (b) the Growth Centres SEPP, and any other relevant biodiversity measures, fail or will fail, as a result of any proposed amendment of the Growth Centres SEPP, to make appropriate provision for the conservation of threatened species, populations and ecological communities, or
  - (c) the consent authority under the Growth Centres SEPP has failed to adequately comply with a direction by the Minister to review the Growth Centres SEPP in response to any new listing of a species, population or ecological community or the discovery of a species, population or ecological community not previously known in an area.
- (2) The suspension or revocation of the biodiversity certification conferred by this Part does not affect the validity of any development consent granted under Part 4 of the *Environmental Planning and Assessment Act 1979*, or any approval of an activity granted in accordance with Part 5 of that Act, before the suspension or revocation.
- (3) If the Minister suspends or revokes the biodiversity certification under this clause, the Minister may, in the order, determine the application of the suspension or revocation to anything pending under the *Environmental Planning and Assessment Act 1979* at the time of the suspension or revocation.

### **21A Notification of extension, suspension or revocation**

- (1) Notice of the extension, suspension or revocation of the biodiversity certification conferred by this Part is to be given within 21 days:
  - (a) on the website of the Department, and
  - (b) to the Director-General of the Department of Planning, and
  - (c) to each local council that is the council of an area of which the subject land forms part.
- (2) The Minister is to keep a register containing copies of the notice of any extension, suspension or revocation of the biodiversity certification conferred by this Part.
- (3) The register is to be open for public inspection, without charge, during ordinary business hours, and copies of or extracts from the register are to be made available to the public on request, on payment of the fee fixed by the Minister.

## 22 Part has effect from 14 December 2007

- (1) The biodiversity certification conferred by this Part is taken to have had effect on and from 14 December 2007.
- (2) Anything done or omitted to be done on or after 14 December 2007, including under the *Environmental Planning and Assessment Act 1979*, that would have been validly done or omitted had the biodiversity certification conferred by this Part been in force at the time it was done or omitted, is taken to be validly done or omitted.

## Part 8 Provisions consequent on changed arrangements for biodiversity certification

### 23 Definitions

- (1) In this Part:

**biodiversity certified EPI** means:

- (a) an EPI on which biodiversity certification was conferred by the Minister under the former biodiversity certification arrangements before the repeal of those arrangements, or
- (b) an EPI on which biodiversity certification is conferred by the Minister under the former biodiversity certification arrangements, after the repeal of those arrangements, in accordance with this Part.

**established EPI** means an EPI that is in force at the time a proposal is made for its biodiversity certification.

**former biodiversity certification arrangements** means the provisions of Division 5 of Part 7 of this Act, as in force immediately before their repeal by the *Threatened Species Conservation Amendment (Biodiversity Certification) Act 2010*.

**new biodiversity certification arrangements** means the provisions of Part 7AA of this Act, as inserted by the *Threatened Species Conservation Amendment (Biodiversity Certification) Act 2010*.

**relevant measures** means any relevant measures, as referred to in section 126G of the former biodiversity certification arrangements, on the basis of which biodiversity certification is conferred on an EPI.

- (2) In this Part, a reference to biodiversity certification conferred under the former biodiversity certification arrangements includes a reference to biodiversity certification conferred after the repeal of those arrangements in accordance with this Part.

## **24 Continuation of existing biodiversity certification**

Any biodiversity certification conferred on an EPI (including an established EPI) by the Minister under the former biodiversity certification arrangements, before the repeal of those arrangements, continues to have effect, subject to this Part.

## **25 Continuation of power to confer biodiversity certification on an EPI in limited cases**

- (1) Sections 126G, 126H and 126N, as in force under the former biodiversity certifications arrangements, continue to apply in respect of an existing biodiversity certification proposal.
- (2) Accordingly, the Minister may confer biodiversity certification on an EPI (including an established EPI) which is the subject of an existing biodiversity certification proposal under the former biodiversity certification arrangements as if those arrangements had not been repealed.
- (3) The order conferring biodiversity certification is to specify the relevant measures to be taken and any conditions of the certification.
- (4) An **existing biodiversity certification proposal** is a proposal to confer biodiversity certification on an EPI of which notice was given, or which was subject to public exhibition, under section 126G before the repeal of the former biodiversity certification arrangements.
- (5) This clause does not prevent the Minister from conferring biodiversity certification on land to which an existing biodiversity certification proposal relates under the new biodiversity certification arrangements.

## **26 Effect of biodiversity certification**

- (1) Any development for which development consent is required under the provisions of a biodiversity certified EPI is, for the purposes of Part 4 of the *Environmental Planning and Assessment Act 1979*, taken to be development that is not likely to significantly affect any threatened species, population or ecological community, or its habitat.
- (2) An activity to which Part 5 of the *Environmental Planning and Assessment Act 1979* applies that a biodiversity certified EPI provides can be carried out without the need for development consent is, for the purposes of that Part, taken to be an activity that is not likely to significantly affect any threatened species, population or ecological community, or its habitat.
- (3) This clause applies subject to the conditions of the biodiversity certification.

## **27 Period of certification and extension**

- (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.

- (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.
- (3) The Minister must not extend the period of biodiversity certification of an EPI unless, prior to granting the extension, the Minister:
  - (a) by notice published in a newspaper circulating generally throughout the State, invites persons to make written submissions to the Minister on the proposed extension, and
  - (b) considers any written submissions received before the closing date specified in the notice for the making of submissions (being a date that is not less than 30 days after the date the notice is first published under this subclause).
- (4) This clause does not prevent further biodiversity certification of the land to which an EPI applies under the new biodiversity certification arrangements with effect on or after the biodiversity certification conferred under the former biodiversity certification arrangements ceases to be in force.

## **28 Failure to comply with certification**

Failure to take any relevant measures or to comply with a condition of biodiversity certification of an EPI does not affect the validity of the certification, but is a ground for suspension or revocation of the biodiversity certification.

## **29 Suspension and revocation of certification**

- (1) The Minister may, by order published in the Gazette, suspend or revoke the biodiversity certification of an EPI if the Minister is of the opinion that:
  - (a) any relevant measures have not been taken or conditions of the biodiversity certification have not been complied with, or
  - (b) the EPI, and any other relevant measures, fail or will fail, as a result of any proposed amendment of the EPI, to make appropriate provision for the conservation of threatened species, populations and ecological communities, or
  - (c) the consent authority under the EPI has failed to adequately comply with a direction by the Minister to review the EPI in response to any new listing of a species, population or ecological community or the discovery of a species, population or ecological community not previously known in an area.

- (2) The suspension or revocation of biodiversity certification does not affect:
  - (a) any development consent granted under Part 4 of the *Environmental Planning and Assessment Act 1979* before the suspension or revocation, or
  - (b) any activity for which approval was granted, or which a determining authority started to carry out, in accordance with Part 5 of that Act before the suspension or revocation.
- (3) If the Minister suspends or revokes biodiversity certification under this clause, the Minister may, in the order, specify the application of the suspension or revocation to anything pending under the *Environmental Planning and Assessment Act 1979* at the time of the suspension or revocation.

### **30 Notification of certification, extension, suspension or revocation**

- (1) Notice of the conferral of biodiversity certification under the former biodiversity certification arrangements or of the extension, suspension or revocation of that certification is to be given within 21 days:
  - (a) on the website of the Department, and
  - (b) to the Director-General of the Department of Planning, and
  - (c) to each local council that is the council of an area of which land to which the EPI applies forms part.
- (2) The Minister is to keep a register containing copies of any order conferring biodiversity certification under the former biodiversity certification arrangements or extending, suspending or revoking certification.
- (3) The register is to be open for public inspection, without charge, during ordinary business hours, and copies of or extracts from the register are to be made available to the public on request, on payment of the fee fixed by the Minister.

### **31 Review of biodiversity certification**

The Minister is to undertake periodic reviews of any biodiversity certification conferred by the Minister under the former biodiversity certification arrangements.

### **32 Continuation of accreditation arrangements**

Any arrangements made under section 142B before the repeal of the former biodiversity certification arrangements, in relation to the biodiversity certification of EPIs, continue to have effect to the extent necessary to give effect to this Part.