

# Biodiversity Conservation Act 2016 No 63

[2016-63]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

None of the provisions displayed in this version of the legislation have commenced.

### Notes—

- **Does not include amendments by**  
[Crown Land Legislation Amendment Act 2017 No 17](#) (not commenced)
- **Note**  
Amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987 No 15](#) once the amendments have taken effect.

### Authorisation

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File last modified 24 August 2017

# Biodiversity Conservation Act 2016 No 63



New South Wales

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# Biodiversity Conservation Act 2016 No 63



New South Wales

An Act relating to the conservation of biodiversity; and to repeal the *Threatened Species Conservation Act 1995*, the *Nature Conservation Trust Act 2001* and the animal and plant provisions of the *National Parks and Wildlife Act 1974*.

## Part 1 Preliminary

### 1.1 Name of Act

This Act is the *Biodiversity Conservation Act 2016*.

### 1.2 Commencement

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

### 1.3 Purpose of Act

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

- (a) to conserve biodiversity at bioregional and State scales, and
- (b) to maintain the diversity and quality of ecosystems and enhance their capacity to adapt to change and provide for the needs of future generations, and
- (c) to improve, share and use knowledge, including local and traditional Aboriginal ecological knowledge, about biodiversity conservation, and
- (d) to support biodiversity conservation in the context of a changing climate, and
- (e) to support collating and sharing data, and monitoring and reporting on the status of biodiversity and the effectiveness of conservation actions, and
- (f) to assess the extinction risk of species and ecological communities, and identify key threatening processes, through an independent and rigorous scientific process, and
- (g) to regulate human interactions with wildlife by applying a risk-based approach, and

- (h) to support conservation and threat abatement action to slow the rate of biodiversity loss and conserve threatened species and ecological communities in nature, and
- (i) to support and guide prioritised and strategic investment in biodiversity conservation, and
- (j) to encourage and enable landholders to enter into voluntary agreements over land for the conservation of biodiversity, and
- (k) to establish a framework to avoid, minimise and offset the impacts of proposed development and land use change on biodiversity, and
- (l) to establish a scientific method for assessing the likely impacts on biodiversity values of proposed development and land use change, for calculating measures to offset those impacts and for assessing improvements in biodiversity values, and
- (m) to establish market-based conservation mechanisms through which the biodiversity impacts of development and land use change can be offset at landscape and site scales, and
- (n) to support public consultation and participation in biodiversity conservation and decision-making about biodiversity conservation, and
- (o) to make expert advice and knowledge available to assist the Minister in the administration of this Act.

#### **1.4 Application of Act to terrestrial environment**

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

**Note—**

The [Fisheries Management Act 1994](#) contains provisions in relation to fish and marine vegetation.

#### **1.5 Biodiversity and biodiversity values for purposes of Act**

- (1) For the purposes of this Act, **biodiversity** is the variety of living animal and plant life from all sources, and includes diversity within and between species and diversity of ecosystems.
- (2) For the purposes of this Act, **biodiversity values** are the following biodiversity values:
  - (a) vegetation integrity—being the degree to which the composition, structure and function of vegetation at a particular site and the surrounding landscape has been altered from a near natural state,
  - (b) habitat suitability—being the degree to which the habitat needs of threatened species are present at a particular site,

(c) biodiversity values, or biodiversity-related values, prescribed by the regulations.

## 1.6 Definitions

(1) In this Act:

**accredited person**, in relation to the preparation of biodiversity assessment reports, means a person accredited under section 6.10 to prepare those reports in accordance with the biodiversity assessment method.

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

(a) humans, or

(b) fish within the meaning of the *Fisheries Management Act 1994*.

### Note—

Some types of fish may be included in the definition of **animal** and some types of animals may be included in the definition of **fish**. See section 14.7.

**biodiversity** and **biodiversity values**—see section 1.5.

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

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

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

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

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

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

**biodiversity offsets scheme**—see section 6.2.

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

**Biodiversity Stewardship Payments Fund** means the Biodiversity Stewardship

Payments Fund established by Division 7 of Part 6.

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

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

**damage** habitat includes damage caused by:

- (a) removing or relocating any part of the habitat, and
- (b) activities that prevent the continued use of the habitat by animals.

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

**development** has the same meaning as in the [Environmental Planning and Assessment Act 1979](#).

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

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

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

**habitat** includes:

- (a) an area periodically or occasionally occupied by a species or ecological community, and
- (b) the biotic and abiotic components of an area.

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

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

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

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

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

**mining or petroleum authority** means an authority, claim, licence or title (however described) under the [Mining Act 1992](#) or the [Petroleum \(Onshore\) Act 1991](#).

**native vegetation** and **clearing** native vegetation have the same meanings as in Part 5A of the [Local Land Services Act 2013](#).

**Note—**

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

**native vegetation offence** means an offence against Part 5A of the [Local Land Services Act 2013](#) or the regulations under that Part.

**owner** of land includes:

- (a) every person who, either at law or in equity:
  - (i) is entitled to the land for any estate of freehold in possession, or
  - (ii) is a person to whom the Crown has lawfully contracted to sell the land under the [Crown Lands Act 1989](#) or any other Act relating to the alienation of lands of the Crown, or
  - (iii) is entitled to receive, or is in receipt of, or if the land were let to a tenant would be entitled to receive, the rents and profits in respect of the land, whether as beneficial owner, trustee, mortgagee in possession or otherwise, and
- (b) a person who leases land under the [Crown Lands Act 1989](#), the [Crown Lands \(Continued Tenures\) Act 1989](#) or the [Western Lands Act 1901](#), and
- (c) any other person who, under the regulations, is taken to be the owner of the land, but (unless the regulations otherwise provide) does not include a beneficiary of a trust relating to the land.

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

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

**Note—**

Some types of marine vegetation may be included in the definition of **plant** and some types of plants may be included in the definition of **marine vegetation**. See section 14.7.

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

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

**Note—**

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

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

**Note—**

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

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

**species** includes:

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

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

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

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

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

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

**Note—**

The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

- (2) In this Act, a reference to a person entitled to the benefit of a covenant includes, in the case of a covenant imposed under section 88D or 88E of the *Conveyancing Act 1919*, a reference to a prescribed authority (within the meaning of those sections) or a person entitled to exercise, on behalf of the Crown, the functions of a prescribed authority under those sections.
- (3) Notes included in this Act do not form part of this Act.

## Part 2 Protection of animals and plants

### Division 1 Offences

#### Notes—

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

#### 2.1 Harming animals

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

Maximum penalty (includes additional penalty for each animal):

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

#### 2.2 Picking plants

- (1) A person who picks:



- (a) a plant that is of a threatened species, or
  - (b) a plant that is part of a threatened ecological community, or
  - (c) a protected plant,
- is guilty of an offence.

Maximum penalty (includes additional penalty for each plant):

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

### **2.3 Damaging declared areas of outstanding biodiversity value**

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

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

### **2.4 Damaging habitat of threatened species or ecological community**

- (1) A person:
- (a) who damages any habitat of a threatened species or threatened ecological community, and
  - (b) who knows that it is the habitat of any such species or community,
- is guilty of an offence.

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

- (2) A person who damages habitat of a threatened species or threatened ecological community in the course of carrying out any unlawful activity is taken to know that it was habitat of that kind unless the person establishes that the person did not know that it was habitat of that kind.

### **2.5 Dealing in animals or plants**

- (1) A person who deals in or attempts to deal in:

- (a) an animal or plant that is of a threatened species, or
  - (b) an animal or plant that is part of a threatened ecological community, or
  - (c) a protected animal or protected plant,
- is guilty of an offence.

Maximum penalty (includes additional penalty for each animal or plant):

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

**possess** has the same meaning as in section 7 of the [Crimes Act 1900](#).

## 2.6 Liberating animals

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

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

Maximum penalty: Tier 3 monetary penalty.

## 2.7 Protection of marine mammals

- (1) In this section:

**marine mammal** means an animal of the order of Cetacea, Sirenia or Pinnipedia.

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

## Division 2 Defences

### 2.8 Acts authorised under other legislation etc

- (1) It is a defence to a prosecution for an offence under Division 1 if the person charged establishes any of the following in relation to the act that constitutes the offence:

- (a) **Planning approval etc**

The act was necessary for the carrying out of:

- (i) development in accordance with a development consent within the meaning of the *Environmental Planning and Assessment Act 1979*, or

(ii) development that is exempt development under that Act, or

**Note—**

Section 76 (3) of that Act provides that development carried out in a declared area of outstanding biodiversity value or in a wilderness area is not authorised exempt development.

(iii) an activity by a determining authority within the meaning of Part 5 of that Act that was carried out after compliance with that Part, or

(iv) an activity authorised by an approval granted by a determining authority within the meaning of Part 5 of that Act after compliance with that Part, or

(v) an approved transitional Part 3A project under Schedule 6A to that Act, or

(vi) State significant infrastructure approved under Part 5.1 of that Act.

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

The act was clearing native vegetation on category 1-exempt land (within the meaning of Part 5A of the *Local Land Services Act 2013*), other than any such clearing by a person:

(i) that harms an animal and that the person knew would be likely to harm the animal, or

(ii) that damages the habitat of an animal that is (or is part of) a threatened species or threatened ecological community and that the person knew would be likely to damage that habitat.

The act was clearing native vegetation on category 2-regulated land (within the meaning of Part 5A of the *Local Land Services Act 2013*):

(i) that was an allowable activity authorised under Division 4 of Part 5A of the *Local Land Services Act 2013*, or

(ii) that was authorised by a land management (native vegetation) code under Division 5 of that Part, or

(iii) that was authorised by an approval under Division 6 of that Part, or

(iv) that was authorised or required under Division 5 of that Part in relation to a set aside area under that Division.

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

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

**(d) Rural fires authorisation**

The act was:

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

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

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

**(f) State emergency authorisation**

The act was authorised by or under the [State Emergency and Rescue Management Act 1989](#) or the [State Emergency Service Act 1989](#) and was reasonably necessary in order to avoid a threat to life or property.

**(g) Plantation operations authorisation**

The act was the carrying out of a plantation operation on an authorised plantation in accordance with the [Plantations and Reafforestation Act 1999](#), the conditions of the authorisation and the provisions of the Plantations and Reafforestation Code applying to the plantation.

**(h) Forestry operations authorisation**

The act was:

- (i) the carrying out of a forestry operation in a State forest or other Crown-timber land to which an integrated forestry operations approval under Part 5B of the [Forestry Act 2012](#) applies, being a forestry operation that is carried out in accordance with the approval, or
- (ii) the carrying out of forestry operations that are authorised by Part 5C (Private native forestry) of the [Forestry Act 2012](#).

**Note—**

See also section 44 (7) and (8) of the [Forestry Act 2012](#), as inserted by Schedule 11 to this Act.

**(i) Private land conservation agreements**

The act was authorised by a private land conservation agreement (including a conservation agreement under the [National Parks and Wildlife Act 1974](#)).

**(j) Aboriginal land**

The act was picking or possessing protected plants on lands reserved or dedicated under Part 4A of the [National Parks and Wildlife Act 1974](#) by an Aboriginal owner on whose behalf the lands are vested in an Aboriginal Land Council under that Part or any other Aboriginal person who has the consent to do so of the relevant Aboriginal owner board members (within the meaning of that Act).

**(k) Domestic purposes of Aboriginal persons**

The act was:

- (i) harming, attempting to harm or possessing protected fauna, or
- (ii) picking or possessing protected plants (but only to the extent of gathering or harvesting fruit, flowers or other parts of the plants),

by an Aboriginal person (or any dependant of an Aboriginal person) for his or her own domestic purposes. Any such act is subject to any exemption or requirement provided by the regulations.

**(l) Non-commercial hobby activities**

The act was not done for commercial purposes and was picking plants that were cultivated by the person as a hobby or were cultivated by another person as a hobby.

**(m) Plants obtained from commercial plant growers**

The act was picking plants that were obtained from a person who was authorised to grow and sell them by a licence issued under this Act.

**(n) Joint management agreements**

The act was authorised by a joint management agreement entered into in accordance with regulations between the Minister and one or more public authorities for the management or control of any action that is jeopardising the survival of a threatened species or threatened ecological community.

**(o) Officials enforcing Act**

The act was done by a person engaged in the administration of this Act for the purposes only of determining whether this Act or the regulations have been contravened or of exercising any other official function of the person.

- (2) In the case of an act done in a declared area of outstanding biodiversity value the defences under subsection (1) (b), (c), (h), (k), (l) and (m) do not apply.

**Note—**

Other Acts authorise particular activities despite harm to animals or picking plants eg section 6A of the [Game and Feral Animal Control Act 2002](#) with respect to hunting game animals authorised by a game hunting licence,

or native game birds under a native game bird management licence.

### **2.9 Acts authorised by regulations (including codes of practice)**

- (1) The regulations may make provision for additional defences to a prosecution for an offence under Division 1, including by reference to acts done in accordance with codes of practice made or adopted under subsection (2).
- (2) The regulations may provide for the making and publication by the Minister of codes of practice relating to animals or plants or for the adoption of other codes of practice relating to animals or plants.

### **2.10 Acts authorised by biodiversity conservation licence**

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

## **Division 3 Biodiversity conservation licences**

### **2.11 Licences to do acts that would otherwise constitute offence**

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

### **2.12 Applications for licences**

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

#### **Note—**

See section 14.6 with respect to recovery, waiver or refund of fees.

- (3) The Environment Agency Head may require the applicant for a biodiversity conservation licence to provide such additional information as the Environment Agency Head may require to determine the application.

### **2.13 Grant or refusal and variation of licence**

- (1) If an application for a biodiversity conservation licence is duly made, the Environment Agency Head may:
  - (a) grant the licence, or
  - (b) refuse to grant the licence.
- (2) A biodiversity conservation licence may be granted for the period specified in the licence.
- (3) The Environment Agency Head may, by notice served on the holder of a biodiversity conservation licence, vary the licence. A licence may be varied on the application of the holder of the licence or on the initiative of the Environment Agency Head.
- (4) To avoid doubt, the Environment Agency Head is not a determining authority for the purposes of Part 5 of the *Environmental Planning and Assessment Act 1979* when granting or varying a biodiversity conservation licence.
- (5) The Environment Agency Head may refuse to grant a biodiversity conservation licence if the Agency Head considers that the application for the licence relates to a matter that should be dealt with by an application for an approval to clear native vegetation under Division 6 of Part 5A of the *Local Land Services Act 2013*.

### **2.14 Conditions of licences**

- (1) A biodiversity conservation licence may be granted unconditionally or subject to such conditions as are specified or referred to in the licence or as are prescribed by the regulations.
- (2) The conditions that may be imposed on a biodiversity conservation licence include:
  - (a) minimum standards relating to the humane treatment of animals (including minimum standards relating to the accommodation, care, rescue, rehabilitation, release or killing of animals), or
  - (b) the places at which animals are to be kept, or
  - (c) the keeping of records, or
  - (d) conditions on any other matter that the Environment Agency Head considers appropriate in the circumstances.
- (3) The variation of a biodiversity conservation licence under section 2.13 includes the addition, removal or amendment of a condition of the licence (other than a condition prescribed by the regulations).
- (4) A person who contravenes a condition of a biodiversity conservation licence is guilty



of an offence.

Maximum penalty:

- (a) in the case of a contravention that relates to an animal or plant that is (or is part of) a threatened species or threatened ecological community (other than a vulnerable species or community)—Tier 1 monetary penalty or imprisonment for 2 years, or both, or
  - (b) in the case of a contravention that relates to an animal or plant that is (or is part of) a vulnerable species or vulnerable ecological community—Tier 3 monetary penalty, or
  - (c) in any other case—Tier 4 monetary penalty.
- (5) A defence to a prosecution for an offence under Division 1 extends to a prosecution for an offence under subsection (4).
- (6) A person cannot be convicted of both an offence under subsection (4) and an offence under Division 1 in respect of the same act or omission because the defence for an offence under Division 1 provided by the biodiversity conservation licence is not available as a result of the contravention of the condition of the licence.

### **2.15 Cancellation or suspension of licences**

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

### **2.16 Reasons for, and appeals against, licensing decisions**

(1) In this section:

***licensing decision*** means a decision of the Environment Agency Head:

- (a) to refuse an application for a biodiversity conservation licence, or
  - (b) to grant a biodiversity conservation licence subject to conditions, or
  - (c) to vary a biodiversity conservation licence, or
  - (d) to suspend or cancel a biodiversity conservation licence.
- (2) The Environment Agency Head is required to provide a written statement of reasons for a licensing decision if the applicant or holder of the licence makes a written request for the statement of reasons.
- (3) An applicant for, or the holder of, a biodiversity conservation licence may appeal to the Land and Environment Court against a licensing decision.

- (4) The appeal is to be made within the time prescribed by the regulations and in the manner prescribed by the rules of the Court.
- (5) The regulations may provide that a failure to determine an application for a biodiversity licence within the period provided by the regulations is taken to be a refusal of the application for the purposes of this section.
- (6) The lodging of an appeal does not, except to the extent the Court otherwise directs in relation to the appeal, operate to stay the decision appealed against.

### **2.17 Regulations relating to licences**

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

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

## **Division 4 Miscellaneous provisions**

### **2.18 Protected animals (unless excluded) to be property of the Crown**

(1) In this section:

***excluded protected animal*** means:

- (a) a protected animal that is, at the time of birth, in the lawful possession of any person other than the Crown, or
- (b) a protected animal imported into New South Wales, or
- (c) a protected animal that was, before the commencement of the [National Parks and Wildlife Act 1974](#) on 1 January 1975, lawfully taken or in the lawful possession of any person other than the Crown and that had not been liberated before 1 January 1975, or
- (d) a protected animal of a class prescribed by the regulations for the purposes of this definition.

**protected animal** includes an animal of (or part of) a threatened species or threatened ecological community.

- (2) A protected animal (other than an excluded protected animal) is, until lawfully captured or killed, deemed to be the property of the Crown.
- (3) A protected animal is, when liberated in New South Wales, deemed to be the property of the Crown.
- (4) A protected animal that is deemed by this section to be the property of the Crown does not cease to be the property of the Crown merely because a person other than the Crown:
  - (a) takes possession of it because it is incapable of fending for itself in its natural habitat, or
  - (b) takes or obtains it under and in accordance with a biodiversity conservation licence that declares that any animal so taken or obtained remains the property of the Crown.
- (5) The progeny of any protected animal that was born at a time when the protected animal was in the possession of a person in the circumstances referred to in subsection (4) is, at the time of birth, deemed to be in the lawful possession of the Crown instead of that person.

## **2.19 Regulations for the purposes of this Part**

- (1) The regulations may amend or substitute Schedule 5 (Protected animals) or Schedule 6 (Protected plants).
- (2) The regulations may make provision for or with respect to the regulation or welfare of protected animals and the regulation of protected plants. In particular, the regulations may:
  - (a) regulate the breeding of protected animals, and
  - (b) make provision for or with respect to the registration of persons who deal in protected animals or protected plants and of premises used by those persons, and
  - (c) require the keeping of records by persons who deal in protected animals or protected plants, and
  - (d) make provision for or with respect to the preparation of management plans in relation to any commercial activity that may adversely affect protected animals or protected plants (including provision with respect to tagging of animals or plants that are sold).
- (3) In this section, **protected animal** includes an animal of (or part of) a threatened

species or threatened ecological community, and **protected plant** includes a plant of (or part of) a threatened species or threatened ecological community.

### **Part 3 Areas of outstanding biodiversity value**

#### **3.1 Declaration of areas of outstanding biodiversity value**

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

#### **3.2 Areas eligible to be declared**

- (1) An area may be declared as an area of outstanding biodiversity value if the Minister is of the opinion that (in accordance with any criteria prescribed by the regulations):
  - (a) the area is important at a state, national or global scale, and
  - (b) the area makes a significant contribution to the persistence of at least one of the following:
    - (i) multiple species or at least one threatened species or ecological community,
    - (ii) irreplaceable biological distinctiveness,
    - (iii) ecological processes or ecological integrity,
    - (iv) outstanding ecological value for education or scientific research.
- (2) The declaration of an area may relate to, but is not limited to, protecting threatened species or ecological communities, connectivity, climate refuges and migratory species.

#### **3.3 Procedural requirements before areas declared**

- (1) Before an area is declared to be an area of outstanding biodiversity value:
  - (a) the Environment Agency Head must recommend the declaration of the area, and
  - (b) the Environment Agency Head must notify landholders whose land is within the proposed area, and any public authorities that appear to the Agency Head to exercise functions in relation to land within the proposed area, of the recommendation to declare the area, and
  - (c) the Environment Agency Head must give those landholders and public authorities a reasonable opportunity to make submissions with respect to the recommendation to declare the area, and

- (d) the public consultation required by Part 9 is to be undertaken in relation to the proposed declaration of the area, and
  - (e) the Environment Agency Head must seek and consider the advice of the Threatened Species Scientific Committee, the Biodiversity Conservation Trust and the Biodiversity Conservation Advisory Panel.
- (2) The Environment Agency Head may amend or not proceed with a recommendation following consideration of any such advice or any submissions from landholders, public authorities or others.
- (3) A declaration is not invalid because of any failure to fully comply with this section.

### **3.4 Requirements following declaration of area**

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

### **3.5 Amendment or revocation of declaration**

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

### **3.6 Regulations with respect to declared areas**

The regulations may make provision for or with respect to:

- (a) the declaration (or the amendment or revocation of a declaration) of an area of outstanding biodiversity value, or

- (b) the protection of declared areas of outstanding biodiversity value.

## **Part 4 Threatened species and threatened ecological communities**

### **Division 1 Preliminary**

#### **4.1 Definition of “listing” species, ecological communities or threatening processes**

In this Part:

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

### **Division 2 Listing of species and ecological communities**

#### **4.2 Lists of species and ecological communities**

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

#### **4.3 General eligibility for listing**

- (1) A species is eligible to be listed under this Part as a threatened species, or as part of a threatened ecological community, only if it is, in the opinion of the Scientific Committee:
  - (a) a species of animal that is native to New South Wales or that is known to periodically or occasionally migrate to New South Wales, or
  - (b) a species of plant that is native to New South Wales.

- (2) An animal or plant is native to New South Wales if it was established in Australia before European settlement and it occurs naturally in New South Wales.

**Note—**

The definition of **animal** in this Act excludes fish and the definition of **plant** excludes marine vegetation (subject to section 14.7). Listing and protection of threatened species of fish or marine vegetation is dealt with in Part 7A of the *Fisheries Management Act 1994*.

#### **4.4 Specific eligibility criteria for listing threatened species**

- (1) A species is eligible to be listed as a **critically endangered species** if, in the opinion of the Scientific Committee, it is facing an extremely high risk of extinction in Australia in the immediate future, as determined in accordance with criteria prescribed by the regulations.
- (2) A species is eligible to be listed as an **endangered species** if, in the opinion of the Scientific Committee:
- (a) it is facing a very high risk of extinction in Australia in the near future, as determined in accordance with criteria prescribed by the regulations, and
  - (b) it is not eligible to be listed as a critically endangered species.
- (3) A species is eligible to be listed as a **vulnerable species** if, in the opinion of the Scientific Committee:
- (a) it is facing a high risk of extinction in Australia in the medium-term future, as determined in accordance with criteria prescribed by the regulations, and
  - (b) it is not eligible to be listed as an endangered or critically endangered species.
- (4) If a species is not eligible to be listed in any category in accordance with this section on the basis of the risk of extinction in Australia, then it is eligible to be listed in accordance with this section on the basis of the risk of extinction in New South Wales.
- (5) The regulations may make provision in connection with the separate listing of threatened species and populations of those species.

#### **4.5 Specific eligibility criteria for listing threatened ecological communities**

- (1) An ecological community is eligible to be listed as a **critically endangered ecological community** if, in the opinion of the Scientific Committee, it is facing an extremely high risk of extinction in Australia 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 Australia 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 Australia in the medium-term future, as determined in accordance with criteria prescribed by the regulations, and
  - (b) it is not eligible to be listed as an endangered or critically endangered ecological community.
- (4) If an ecological community is not eligible to be listed in any category in accordance with this section on the basis of the risk of extinction in Australia, then it is eligible to be listed in accordance with this section on the basis of the risk of extinction in New South Wales.

#### **4.6 Specific eligibility criteria for listing extinct species, species extinct in the wild and collapsed ecological communities**

- (1) A species is eligible to be listed as an **extinct species** at a particular time if, in the opinion of the Scientific Committee, there is no reasonable doubt that the last member of the species in Australia has died.
- (2) A species is eligible to be listed as a **species extinct in the wild** at a particular time if, in the opinion of the Scientific Committee:
  - (a) it is known only to survive in Australia in cultivation, in captivity or as a naturalised population well outside its past range, or
  - (b) it has not been recorded in its known or expected habitat in Australia, despite targeted surveys, over a time frame appropriate, in the opinion of the Scientific Committee, to its life cycle and form.
- (3) If, in the opinion of the Scientific Committee, a species is extinct or extinct in the wild in New South Wales but not Australia, it is to note that fact in a listing of the species in Schedule 1.
- (4) An ecological community is eligible to be listed as a **collapsed ecological community** at a particular time if, in the opinion of the Scientific Committee, all occurrences of the ecological community have moved outside the natural range of spatial and temporal variability in terms of its composition, structure or function.

#### **4.7 Regulations prescribing eligibility criteria for listing**

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

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



- (b) the criteria for listing under a common assessment method agreed between the Commonwealth, States and Territories were given due consideration before the regulation was made.

### **Division 3 Procedure for listing (other than provisional listing)**

#### **4.8 Operation of Division**

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

#### **4.9 Scientific Committee responsible for listing**

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

#### **4.10 Who may initiate listing**

- (1) The Scientific Committee may determine the listing of species and ecological communities on its own initiative.
- (2) The Scientific Committee may also determine the listing of species and ecological communities:
  - (a) following a request by the Minister, or
  - (b) on a nomination under this Division of any other person, or
  - (c) following an assessment for listing by the Commonwealth or another State or Territory under a common assessment method agreed between the Commonwealth, States and Territories.

#### **4.11 Priority assessment of nominations or other proposals for listing**

- (1) The Scientific Committee is required to prioritise the assessment of the nominations and other proposals for listing species or ecological communities.
- (2) The regulations may make provision with respect to the prioritisation of assessments.
- (3) The priorities are to be reviewed by the Scientific Committee at least annually.
- (4) The priorities determined by the Scientific Committee are to be published on a government website maintained by the Environment Agency Head.

#### **4.12 Nominations for listing**

- (1) A nomination by any person for listing species or ecological communities must:

- (a) be made in writing to the Scientific Committee, and
  - (b) include any information required by the Scientific Committee.
- (2) The Scientific Committee may request the person making the nomination to provide additional information about the nomination before it deals with the nomination.
- (3) The Scientific Committee, with the concurrence of the Environment Agency Head, may provide guidance on the making of nominations, including on the themes for listing classes of animals or plants to fill gaps in current listings.
- (4) The Scientific Committee is to give notice of a duly made nomination to the Environment Agency Head within 14 days after the nomination is provided to members of the Scientific Committee.
- (5) The Scientific Committee may consider different nominations about the same subject together.
- (6) The Scientific Committee may reject a nomination if:
- (a) the subject of the nomination has already been dealt with, or
  - (b) the nomination is vexatious, or
  - (c) the information required to be included in the nomination, or which is requested by the Scientific Committee, is not included or provided or is not considered to be adequate.
- (7) If the Scientific Committee rejects a nomination, it is to notify the Environment Agency Head and the person who made the nomination and is to give reasons for the rejection.

**4.13 Scientific Committee's preliminary determination (except for proposals by other jurisdictions under common assessment method)**

- (1) The Scientific Committee is to make a preliminary determination as to whether a proposal to list a species or ecological community should be supported or not supported.
- (2) A preliminary determination is not required in the case of a proposed assessment for listing by the Commonwealth or another State or Territory under a common assessment method agreed between the Commonwealth, States and Territories.
- (3) As soon as possible after making a preliminary determination, the Scientific Committee must:
- (a) in a case involving a nomination, notify the person who made the nomination and the Environment Agency Head, and

- (b) in a case of a proposal raised on its own initiative or in response to a request from the Minister, notify the Minister and the Environment Agency Head, and
  - (c) publish notice of, and invite submissions on, its preliminary determination in accordance with any requirements of the regulations.
- (4) The Scientific Committee is to consider written submissions duly received by it in accordance with the published notice.

#### **4.14 Proposed assessments by jurisdictions under common assessment method**

- (1) The Scientific Committee is, when dealing with a proposal for listing a species or ecological community, to give due consideration to the assessment criteria and procedures under a common assessment method agreed between the Commonwealth, States and Territories.
- (2) The Scientific Committee may liaise with relevant agencies and officials of the Commonwealth and other States or Territories in connection with the assessment of proposals for listing under any such common assessment method.
- (3) The Scientific Committee is not required to re-assess a proposal for listing by the Commonwealth or another State or Territory if it is satisfied that the proposal has been duly assessed under any such common assessment method.

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

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

#### **4.16 Publication of final determination**

- (1) A final determination of the Scientific Committee is made on its publication on the NSW legislation website.

- (2) On making a final determination, the Scientific Committee must, as soon as practicable:
  - (a) in a case involving a nomination, notify the person who made the nomination of the final determination, and
  - (b) notify the Environment Agency Head of the final determination, and
  - (c) publish notice of, and reasons for, the final determination in accordance with any requirements of the regulations.
- (3) The validity of a final determination cannot be questioned in any legal proceedings except those commenced in a court by any person within 6 months after the publication of the final determination on the NSW legislation website.

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

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

#### **4.18 Lists to be kept under review**

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

#### **4.19 Minor amendments to Schedules**

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

#### **4.20 Restriction on releasing certain information relating to listing etc**

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

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

#### **4.21 Operation of Division**

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

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

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

#### **4.23 Eligibility for provisional listing**

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

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

#### **4.24 Who may initiate provisional listing**

- (1) The Scientific Committee may determine to provisionally list a species under this Division on its own initiative.
- (2) The Scientific Committee may also determine to provisionally list a species under this Division:
  - (a) following a request by the Minister, or
  - (b) on a nomination under this Division of any other person, or
  - (c) following an assessment for listing by the Commonwealth or another State or Territory under a common assessment method agreed between the Commonwealth, States and Territories.

#### **4.25 Making nomination for provisional listing**

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

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

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

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

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

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

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

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

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

#### **4.30 Termination of provisional listing**

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

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

### **Division 5 Key threatening processes**

#### **4.31 List of key threatening processes**

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

#### **4.32 Processes eligible for listing as key threatening processes**

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

#### **4.33 Procedure for listing key threatening processes**

The procedure in Division 3 with respect to the listing of species applies to the listing of

threatening processes.

#### **4.34 Referral of nomination to Fisheries Scientific Committee**

- (1) If, in the opinion of the Chairperson of the Scientific Committee, a nomination of a key threatening process relates to a threatening process that is likely to have an impact on both terrestrial and aquatic environments:
  - (a) the Chairperson may consult the Chairperson of the Fisheries Scientific Committee for the purpose of determining whether the nomination should also be considered by the Fisheries Scientific Committee under Part 7A of the *Fisheries Management Act 1994*, and
  - (b) if the Chairpersons agree that the nomination should also be so considered, the nomination is to be referred to the Fisheries Scientific Committee for consideration.
- (2) In that case:
  - (a) the nomination is then taken also to be a nomination for amendment of Schedule 6 to that Act, made to the Fisheries Scientific Committee in accordance with Part 7A of the *Fisheries Management Act 1994*, and
  - (b) Part 7A of that Act applies in relation to the nomination (in addition to this Division).
- (3) For the purposes of this section, a ***nomination of a key threatening process*** means:
  - (a) the nomination of any matter to be inserted in or omitted from Schedule 4, or
  - (b) the nomination of any matter in Schedule 4 for amendment.

**Note—**

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

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

#### **4.35 Establishment of Program**

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



- (b) to minimise the impacts of key threatening processes on biodiversity and ecological integrity.

#### **4.36 Content of Program**

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

**Note—**

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

#### **4.37 Review of Program**

- (1) The Environment Agency Head is to review the outcomes and effectiveness of the Biodiversity Conservation Program every 5 years after the establishment of the Program.
- (2) The Environment Agency Head is to prepare a report of the review and publish the report on a government website maintained by the Environment Agency Head.

### **Division 7 Threatened Species Scientific Committee**

#### **4.38 Establishment of Scientific Committee**

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

#### **4.39 Scientific Committee not subject to Ministerial control**

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

#### **4.40 Functions of Scientific Committee**

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

#### **4.41 Members of Scientific Committee**

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

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

**Note—**

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

## **Part 5 Investment Strategy and private land conservation agreements**

### **Division 1 Biodiversity Conservation Investment Strategy**

#### **5.1 Making of Strategy**

- (1) The Minister is to make a Biodiversity Conservation Investment Strategy (the **Strategy**) as soon as practicable after the commencement of this Act.

**Note—**

Part 9 requires public consultation in relation to the making of the Strategy.

- (2) The purpose of the Strategy is to guide investment in biodiversity conservation, and in particular to guide the Government and the Biodiversity Conservation Trust in prioritising investment in biodiversity conservation.
- (3) The Minister is to publish the Strategy on an appropriate government website.

#### **5.2 Mapping of existing public and private biodiversity protected areas**

- (1) As part of the Strategy, the Minister is to map all public and private land areas in the State whose biodiversity is protected by legislation or agreements and make the map publicly available.
- (2) The first Strategy may be made before those areas are fully mapped.
- (3) The regulations may designate, for the purposes of this section, areas whose biodiversity is protected by legislation or agreements.

#### **5.3 Content of Strategy**

- (1) The Strategy is to comprise:
  - (a) principles that guide the identification of priority investment areas for biodiversity conservation, and
  - (b) principles that guide investment in those priority investment areas, and
  - (c) a map of identified priority investment areas.
- (2) The Minister may include the map of identified priority investment areas with the map of existing public and private land areas whose biodiversity is protected.
- (3) The first Strategy may be made before priority investment areas are fully mapped.
- (4) In preparing the Strategy, the Minister is to consider the following:
  - (a) the purpose of this Act,
  - (b) the role of the Strategy in complementing:

- (i) established principles for establishing land conservation areas, including comprehensiveness, adequacy and representativeness, and
  - (ii) other government mechanisms for biodiversity conservation, including environmental planning instruments,
  - (c) the importance of having good samples of the least protected ecosystems,
  - (d) any other matter prescribed by the regulations.
- (5) Priority investment areas may include (without limitation):
- (a) core areas—being large remnant native vegetation areas whose management will contribute the greatest benefit to the conservation of biodiversity within a bioregion, and
  - (b) State and regional biodiversity corridors—being linear areas that link core areas and play a crucial role in maintaining connections between animal and plant populations that would otherwise be isolated and at greater risk of local extinction, and
  - (c) areas containing the least protected ecosystems of public or private land, and
  - (d) areas required to increase the comprehensiveness, adequacy and representativeness of biodiversity in protected areas of public or private land.

#### **5.4 Review and amendment of Strategy**

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

## **Division 2 Biodiversity stewardship agreements**

### **5.5 Minister and land owners may enter into biodiversity stewardship agreements**

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

### **5.6 Content of biodiversity stewardship agreements**

- (1) A biodiversity stewardship agreement may contain any of the following terms, binding on the owners from time to time of the land:

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

- (c) requiring the Minister to carry out specified activities or do specified things,
- (d) providing for any other matter relating to the biodiversity stewardship site.

- (3) If the biodiversity assessment method is amended or replaced after a biodiversity stewardship agreement is entered into, the biodiversity stewardship agreement prevails to the extent of any inconsistency between the agreement and the provisions of the biodiversity assessment method as amended or replaced.

#### **5.7 Land eligible to be designated as biodiversity stewardship site**

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

#### **5.8 Applications to enter into biodiversity stewardship agreements**

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

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

#### **Note—**

See section 14.6 with respect to recovery, waiver or refund of fees.

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

biodiversity assessment method, and

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

#### **5.9 Requirements relating to entering into biodiversity stewardship agreements**

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



Aboriginal Land Council has consented in writing to the agreement.

- (2) The Minister may enter into a biodiversity stewardship agreement relating to land that is Crown land or lands of the Crown:
  - (a) with a public authority (not being a Public Service agency) that owns or has the control and management of the land, or
  - (b) if the land is under the control and management of a Public Service agency, with the responsible Minister.
- (3) If a biodiversity stewardship agreement is entered into under subsection (2) by a public authority that, or responsible Minister who, is not the owner of the land concerned:
  - (a) the agreement is taken to have been entered into on behalf of the owner of the land, and
  - (b) a reference in this Division to the owner of the land (however expressed) includes, while a public authority has the control and management of the land, a reference to the public authority that has that control and management and, if the public authority is a Public Service agency, the responsible Minister.
- (4) The Minister must not enter into a biodiversity stewardship agreement relating to Crown-timber lands within the meaning of the *Forestry Act 2012* except with the consent of the Minister administering that Act.
- (5) The Minister must not enter into a biodiversity stewardship agreement for Crown land except with the consent of the Minister administering the *Crown Lands Act 1989*.

#### **5.10 Duration of biodiversity stewardship agreements**

- (1) A biodiversity stewardship agreement has effect from a day, or on the happening of an event, specified in the agreement.
- (2) A biodiversity stewardship agreement has effect in perpetuity, unless:
  - (a) it is terminated by consent of the Minister and all the owners (for the time being) of the biodiversity stewardship site concerned, or
  - (b) it is terminated by the Minister, without the consent of the owners, and that termination is authorised by this Act.
- (3) The Minister must not consent to the termination of a biodiversity stewardship agreement unless such measures as may be required by the Minister are taken by the owner of the biodiversity stewardship site to offset any negative impact of the termination on the biodiversity values protected by the agreement. This subsection does not apply if voluntary termination of the agreement is permitted under this

section.

- (4) For the purposes of subsection (3), the required measures may include one or more of the following:
  - (a) the cancellation of biodiversity credits created in relation to the biodiversity stewardship site,
  - (b) the retirement of biodiversity credits created in relation to another biodiversity stewardship site,
  - (c) entering into a biodiversity stewardship agreement for the purpose of establishing another biodiversity stewardship site.
- (5) The Minister must consent to the termination of a biodiversity stewardship agreement on the request of the owner of the biodiversity stewardship site if voluntary termination of the agreement is permitted under this section.
- (6) For the purposes of this section, voluntary termination of a biodiversity stewardship agreement is permitted only if the owner of the biodiversity stewardship site requests the termination of the agreement within 3 months after it is entered into, or after the expiry of 5 years after the agreement has been entered into, and at the time of termination:
  - (a) no biodiversity credits have been created in respect of the biodiversity stewardship site, or
  - (b) in a case where biodiversity credits have been created (and whether or not transferred)—none of the credits created have been retired and all the credits are cancelled by the Environment Agency Head with the consent of the holder of the credits.
- (7) A request for the consent of the Minister to the termination of a biodiversity stewardship agreement is to be made by application of the owner of the site:
  - (a) in the form approved by the Minister and accompanied by the information required by that form, and
  - (b) accompanied by a fee prescribed by the regulations.

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

**Note—**

See section 14.6 with respect to recovery, waiver or refund of fees.

### 5.11 Variation of biodiversity stewardship agreements

- (1) A biodiversity stewardship agreement may be varied:
  - (a) by a subsequent agreement between the Minister and the owners (for the time being) of the biodiversity stewardship site concerned, or
  - (b) by the Minister, without the consent of the owners, where that variation is authorised by this Act.

The area of the biodiversity stewardship site may be increased or reduced by any such variation of the agreement.

- (2) The Minister must not agree to any variation of a biodiversity stewardship agreement with the owners of the biodiversity stewardship site unless the persons who would have been required to consent or be consulted at the time of the variation if it were a new agreement have consented to, or been consulted about, the variation.
- (3) The Minister must not agree to any variation of a biodiversity stewardship agreement unless satisfied that the variation does not have a negative impact on the biodiversity values protected by the agreement or that other measures required by the Minister have been taken by the owner of the biodiversity stewardship site to offset any such negative impact.
- (4) For the purposes of subsection (3), the required measures may include one or more of the following:
  - (a) the cancellation of biodiversity credits created in relation to the biodiversity stewardship site,
  - (b) the retirement of biodiversity credits created in relation to another biodiversity stewardship site,
  - (c) payments into the Biodiversity Stewardship Payments Fund.

**Note—**

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

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

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

Minister may require to determine the application.

**Note—**

See section 14.6 with respect to recovery, waiver or refund of fees.

- (6) If the variation of a biodiversity stewardship agreement requires the preparation of a plan of survey relating to an alteration in the area of the biodiversity stewardship site, the applicant is to provide or pay for the provision of the plan of survey.
- (7) Unless the Minister otherwise determines in accordance with the regulations, an application to vary a biodiversity stewardship agreement is to be accompanied by a biodiversity stewardship site assessment report prepared by an accredited person:
  - (a) that assesses the biodiversity values of the proposed site (as proposed to be varied) in accordance with the biodiversity assessment method, and
  - (b) that sets out any proposed variation in the management actions carried out on the proposed site, and
  - (c) that specifies in accordance with the biodiversity assessment method any additional number and class of biodiversity credits that may be created in respect of those management actions.
- (8) The regulations may authorise the Minister and the owners of the biodiversity stewardship site concerned to make minor variations to the biodiversity stewardship agreement without any consent or consultation required by this section.

**5.12 Registration of biodiversity stewardship agreements**

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

- (2) A biodiversity stewardship agreement relating to land under the [Real Property Act 1900](#) about which an entry is made in a folio and that is in force is an interest recorded in the folio for the purposes of section 42 of that Act.

### **5.13 Agreements to run with land and re-issue etc of agreements in certain cases**

- (1) A biodiversity stewardship agreement that has been registered by the Registrar-General and that is in force is binding on, and enforceable by and against, the successors in title to the owners who entered into the agreement and those successors in title are taken to have notice of the agreement.
- (2) This section extends to successors in title of part only of the land to which a biodiversity stewardship agreement applies.
- (3) If there are different successors in title to different parts of the land, the regulations may make provision with respect to obligations and entitlement under this Act of the successors in title in relation to the biodiversity stewardship agreement, including with respect to the variation of:
  - (a) biodiversity credits created in relation to the land, and
  - (b) obligations to carry out management actions on the land, and
  - (c) payments with respect to those management actions.
- (4) In this section:

**part** of land includes a different interest in the land.

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

### **5.14 Application of Planning Act**

- (1) Management actions under a biodiversity stewardship agreement for which biodiversity credits may be created (including on declared areas of outstanding biodiversity value) are taken to be exempt development for the purposes of the [Environmental Planning and Assessment Act 1979](#). The regulations may exclude any management actions from the operation of this subsection.
- (2) For the purposes of section 76 (3) of that Act, a reference to the environmental planning instrument in respect of any such exempt development is taken to be a reference to the biodiversity stewardship agreement.
- (3) A biodiversity stewardship agreement is not a regulatory instrument for the purposes of section 28 of that Act.

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

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

### **5.16 Proposals by public authorities affecting biodiversity stewardship sites**

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

**Note—**

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

- (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) Section 6.28 applies in respect of any such arrangement as if it were a deferred credit retirement arrangement under that section.
- (6) The Minister may, by notification in the public register of private land conservation agreements under Part 9, vary or terminate the biodiversity stewardship agreement relating to a biodiversity stewardship site without the consent of the owner of the site if consent to development is granted under this section and the variation or termination is necessary to enable the public authority to carry out the development.
- (7) If a biodiversity stewardship agreement is varied under this section without the approval of the owner of the biodiversity stewardship site, the owner may terminate the agreement by notice in writing to the Minister, but only if:
  - (a) no biodiversity credits have been created in respect of the biodiversity stewardship site, or
  - (b) in a case where biodiversity credits have been created (and whether or not transferred)—none of the credits created have been retired and all the credits are cancelled by the Environment Agency Head with the consent of the holder of the credits.
- (8) The owner of a biodiversity stewardship site is not entitled to any compensation as a result of the variation or termination of an agreement under this section.
- (9) Subsection (8) 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.
- (10) The consent of the Minister under this section is not an approval for the purposes of Part 5 of the *Environmental Planning and Assessment Act 1979*.
- (11) This section does not apply:
  - (a) to any part of a biodiversity stewardship site that is a wilderness area within the meaning of the *Wilderness Act 1987*, or
  - (b) in respect of development proposed to be carried out by a public authority on a biodiversity stewardship site if the public authority is the owner of the site and the proposed development is not inconsistent with the terms of the biodiversity stewardship agreement, or
  - (c) in respect of development that comprises emergency or routine work by a public authority of a kind that the authority and the Minister have agreed to exclude from the application of this section.

### **5.17 Resolution of certain disputes**

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

### **5.18 Prospecting and mining on biodiversity stewardship sites**

- (1) The Minister may, by notification in the public register of private land conservation agreements under Part 9, vary or terminate a biodiversity stewardship agreement without the consent of the owner of the biodiversity stewardship site if a mining or petroleum authority is or has been granted in respect of the site and the Minister is of the opinion that the activity authorised by the mining or petroleum authority:
  - (a) will adversely affect any management actions that may be carried out on the land under the biodiversity stewardship agreement, or
  - (b) will adversely affect the biodiversity values protected by the biodiversity stewardship agreement.
- (2) If the Minister varies or terminates the biodiversity stewardship agreement under this section, the Minister may, by order in writing to the holder of the mining or petroleum authority, direct the holder to retire biodiversity credits of a number and class (if any) specified by the Minister within a time specified in the order.

**Note—**

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



- (3) A direction may be given to a person under subsection (2) only if biodiversity credits have already been created in respect of management actions that were carried out or proposed to be carried out on the biodiversity stewardship site and have been transferred to any person or retired.
- (4) The maximum number of biodiversity credits that the holder of the mining or petroleum authority may be required to retire under the direction is the number of biodiversity credits that have been created in respect of the biodiversity stewardship site.
- (5) An obligation to retire credits under this section does not affect any obligation to retire credits in connection with any approval to carry out development in connection with the mining or petroleum authority.
- (6) A person must not, without reasonable excuse, fail to comply with a direction under subsection (2).

Maximum penalty: Tier 1 monetary penalty.

- (7) 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.
- (8) A court that finds a person guilty of an offence under subsection (6) may, in addition to or in substitution for any monetary penalty for the offence, by order direct the person to retire, in accordance with this Act, biodiversity credits of a specified number and class (if applicable) within a time specified in the order.
- (9) If a biodiversity stewardship agreement is varied under this section without the approval of the owner of the biodiversity stewardship site, the owner may terminate the agreement by notice in writing to the Minister, but only if:
  - (a) no biodiversity credits have been created in respect of the biodiversity stewardship site, or
  - (b) in a case where biodiversity credits have been created (and whether or not transferred)—none of the credits created have been retired and all the credits are cancelled by the Environment Agency Head with the consent of the holder of the credits.
- (10) The owner of a biodiversity stewardship site is not entitled to any compensation from the Minister as a result of the variation or termination of an agreement under this section.
- (11) The regulations may make provision for or with respect to the reimbursement of the owner of the biodiversity stewardship site or the Minister by the holder of the mining or petroleum authority for the costs incurred by the owner or Minister in establishing

the site.

- (12) Subsection (10) does not affect any right to compensation the owner may have under the *Mining Act 1992*, the *Petroleum (Onshore) Act 1991* or any other legislation in respect of the grant of the mining or petroleum authority or to activities carried out under the authority.

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

Nothing in this Division:

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

#### **Note—**

For provisions relating to the enforcement of biodiversity stewardship agreements:

- (a) see section 13.15 for civil enforcement by any person to remedy or restrain breach, and
- (b) see section 11.26 for order of Minister to rectify breach, and
- (c) see section 11.25 for direction to retire biodiversity credits.

## **Division 3 Conservation agreements**

### **5.20 Biodiversity Conservation Trust may enter into conservation agreements**

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

### **5.21 General provisions relating to conservation agreements**

- (1) The Biodiversity Conservation Trust is not to enter into a conservation agreement relating to land unless:

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

## 5.22 Content of conservation agreements

- (1) A conservation agreement may contain any of the following terms, binding on the owner from time to time of the land to which it applies:

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

### **5.23 Duration and variation of conservation agreements**

- (1) A conservation agreement has effect from a day, or on the happening of an event, specified in the agreement.
- (2) A conservation agreement may be varied by a subsequent agreement between the Biodiversity Conservation Trust and all the owners of the land at the time of the variation. The area to which the conservation agreement applies may be increased or reduced by any such variation of the agreement.
- (3) A conservation agreement has effect in perpetuity or for the period set out in the agreement unless it is terminated:
- (a) by a subsequent agreement between the Biodiversity Conservation Trust and all the owners of the land at the time of the termination, or
  - (b) in any such other manner or in such circumstances as may be set out in the agreement.

- (4) A conservation agreement may be varied or terminated by the Biodiversity Conservation Trust, by notification in the public register of private land conservation agreements under Part 9, without the consent of the owners of the land, if the Trust is of the opinion that the land is no longer needed for, or is no longer capable of being used to achieve, any purpose for which the agreement was entered into.
- (5) The Biodiversity Conservation Trust is not to vary or terminate a conservation agreement under subsection (4) without the consent of the owners of the land unless:
  - (a) written notice of the Trust's intention to vary or terminate the agreement has been given to the owners of the land stating that the owners may make submissions to the Trust within the period specified in the notice (being a period of not less than 28 days), and
  - (b) the Trust has considered any submissions made by the owners of the land within that specified period.
- (6) If a conservation agreement is varied by the Biodiversity Conservation Trust under subsection (4) without the consent of the owners of the land at the time of the variation, the owners may, by written notice given to the Trust, terminate the agreement.
- (7) The Minister may direct the Biodiversity Conservation Trust to vary or terminate a conservation agreement if a mining or petroleum authority is or has been granted in respect of the land and the Minister is of the opinion that the activity authorised by the mining or petroleum authority:
  - (a) will adversely affect any management actions that are required or authorised to be carried out on the land under the agreement, or
  - (b) will adversely affect biodiversity protected by the agreement.The Trust is required to comply with the Minister's direction.
- (8) Before giving any such direction, the Minister is to give the owners of the relevant land and the Biodiversity Conservation Trust an opportunity to make submissions on the proposed direction and is to take any submission made into account.
- (9) The owner of land subject to a conservation agreement is not entitled to any compensation from the Minister or the Biodiversity Conservation Trust as a result of any variation or termination of the agreement by the Biodiversity Conservation Trust without the consent of the owner.
- (10) The regulations may make provision for or with respect to the reimbursement of the owner of the land or the Biodiversity Conservation Trust by the holder of the mining or petroleum authority for the costs incurred by the owner or Trust in establishing the agreement (including the making of payments to the Minister for the purposes of any

such reimbursement). The regulations may also make provision for the reimbursement of the Trust by the owner of the land for money paid to the owner under the agreement.

- (11) Subsection (9) does not affect any right to compensation the owner may have under the *Mining Act 1992*, the *Petroleum (Onshore) Act 1991* or any other legislation in respect of the grant of the mining or petroleum authority or to activities carried out under the authority.
- (12) The regulations may authorise the Biodiversity Conservation Trust and the owners of the land concerned to make minor variations to a conservation agreement without any consent or consultation required by this section.

#### **5.24 Conservation agreements may be registered and run with land**

Sections 5.12 and 5.13 apply to conservation agreements in the same way as they apply to biodiversity stewardship agreements. Those sections apply as if references to the Minister were references to the Biodiversity Conservation Trust.

#### **5.25 Proposals by public authorities affecting land subject to conservation agreements**

- (1) A public authority must not carry out development on land subject to a conservation agreement unless:
- (a) it has given written notice of the proposed development to the Minister and the owner of the land, 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 development will neither adversely affect any management actions that may be carried out on the land under the conservation agreement nor adversely affect biodiversity protected by the agreement, or
  - (b) there is no practical alternative to the carrying out of the development, or
  - (c) the development is required for an essential public purpose or for a purpose of special significance to the State.
- (3) The Biodiversity Conservation Trust, if directed to do so by the Minister, is to vary or terminate the conservation agreement, by notification in the public register of private land conservation agreements under Part 9, without the consent of the owners of the land if consent to development is granted under this section and the Minister considers that the variation or termination is necessary to enable the public authority to carry out the development.

- (4) If a conservation agreement is varied under this section without the approval of the owner of the land subject to the agreement, the owner may terminate the agreement by notice in writing to the Biodiversity Conservation Trust.
- (5) The owner of land subject to a conservation agreement is not entitled to any compensation as a result of the variation or termination of the agreement under this section.
- (6) Subsection (5) 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.
- (7) The consent of the Minister under this section is not an approval for the purposes of Part 5 of the *Environmental Planning and Assessment Act 1979*.
- (8) Section 5.17 (Resolution of certain disputes) applies to disputes under this section in the same way as it applies to disputes referred to in that section.
- (9) This section does not apply:
  - (a) to any part of land that is a wilderness area within the meaning of the *Wilderness Act 1987*, or
  - (b) in respect of development proposed to be carried out by a public authority on land if the public authority is the owner of the land and the proposed development is not inconsistent with the terms of the conservation agreement, or
  - (c) in respect of development that comprises emergency or routine work by a public authority of a kind that the authority and the Minister have agreed to exclude from the application of this section.

#### **5.26 Activities authorised by mining or petroleum authorities not affected by conservation agreement**

Nothing in this Division:

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

### **Division 4 Wildlife refuge agreements**

#### **5.27 Biodiversity Conservation Trust may enter into wildlife refuge agreements**

- (1) The Biodiversity Conservation Trust may enter into an agreement relating to land with

the owner of the land for the purpose of conserving or studying the biodiversity of the land (a **wildlife refuge agreement**).

- (2) Land may be subject to a single wildlife refuge agreement even if the land consists of separate parcels of land and whether or not the parcels are adjacent (but only if the land is owned by the same person or persons at the time the agreement is entered into).
- (3) Land that comprises only part of one or more parcels of land may be subject to a wildlife refuge agreement.

**Note—**

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

### **5.28 General provisions relating to wildlife refuge agreements**

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



land, and

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

### **5.29 Content of wildlife refuge agreements**

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

land.

### **5.30 Duration and variation of wildlife refuge agreements**

- (1) A wildlife refuge agreement has effect from a day, or on the happening of an event, specified in the agreement.
- (2) A wildlife refuge agreement may be varied by a subsequent agreement between the Biodiversity Conservation Trust and all the owners of the land at the time of the variation. The area to which the wildlife refuge agreement applies may be increased or reduced by any such variation of the agreement.
- (3) A wildlife refuge agreement has effect until it is terminated:
  - (a) by a subsequent agreement between the Biodiversity Conservation Trust and all the owners of the land at the time of the termination, or
  - (b) subject to the terms of the agreement, by the Trust, by notification in the public register of private land conservation agreements under Part 9, without the consent of the owners of the land, or by any of those owners by notice in writing served on the Trust.
- (4) The Minister may direct the Biodiversity Conservation Trust to vary or terminate a wildlife refuge agreement if a mining or petroleum authority is or has been granted in respect of the land and the Minister is of the opinion that the activity authorised by the mining or petroleum authority:
  - (a) will adversely affect any management actions that may be carried out on the land under the agreement, or
  - (b) will adversely affect biodiversity protected by the agreement.The Trust is required to comply with the Minister's direction.
- (5) The owner of land subject to a wildlife refuge agreement is not entitled to any compensation from the Minister or the Biodiversity Conservation Trust as a result of the variation or termination of the agreement.
- (6) Subsection (5) does not affect any right to compensation the owner may have under the *Mining Act 1992*, the *Petroleum (Onshore) Act 1991* or any other legislation in respect of the grant of the mining or petroleum authority or to activities carried out under the authority.
- (7) The regulations may authorise the Biodiversity Conservation Trust and the owners of the land concerned to make minor variations to a wildlife refuge agreement without any consent or consultation required by this section.

### **5.31 Wildlife refuge agreements may be registered and run with land**

Sections 5.12 and 5.13 apply to wildlife refuge agreements in the same way as they apply to biodiversity stewardship agreements. Those sections apply as if references to the Minister were references to the Biodiversity Conservation Trust.

### **5.32 Proposals by public authorities affecting land subject to wildlife refuge agreements**

- (1) A public authority must not carry out development on land subject to a wildlife refuge agreement unless:
  - (a) it has given written notice of the proposed development to the Minister and the owner of the land, 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 development will neither adversely affect any management actions that may be carried out on the land under the wildlife refuge agreement nor adversely affect biodiversity protected by the agreement, or
  - (b) there is no practical alternative to the carrying out of the development, or
  - (c) the development is required for an essential public purpose or for a purpose of special significance to the State.
- (3) The Biodiversity Conservation Trust, if directed to do so by the Minister, is to vary or terminate the wildlife refuge agreement, by notification in the public register of private land conservation agreements under Part 9, without the consent of the owners of the land if consent to development is granted under this section and the Minister considers that the variation or termination is necessary to enable the public authority to carry out the development.
- (4) If a wildlife refuge agreement is varied under this section without the approval of the owner of the land subject to the agreement, the owner may terminate the agreement by notice in writing to the Biodiversity Conservation Trust.
- (5) The owner of land subject to a wildlife refuge agreement is not entitled to any compensation as a result of the variation or termination of the agreement under this section.
- (6) Subsection (5) 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.
- (7) The consent of the Minister under this section is not an approval for the purposes of Part 5 of the *Environmental Planning and Assessment Act 1979*.

- (8) Section 5.17 (Resolution of certain disputes) applies to disputes under this section in the same way as it applies to disputes referred to in that section.
- (9) This section does not apply:
- (a) to any part of land that is a wilderness area within the meaning of the *Wilderness Act 1987*, or
  - (b) in respect of development proposed to be carried out by a public authority on land if the public authority is the owner of the land and the proposed development is not inconsistent with the terms of the wildlife refuge agreement, or
  - (c) in respect of development that comprises emergency or routine work by a public authority of a kind that the authority and the Minister have agreed to exclude from the application of this section.

### **5.33 Activities authorised by mining or petroleum authorities not affected by wildlife refuge agreement**

Nothing in this Division:

- (a) prevents the grant of a mining or petroleum authority in respect of land subject to a wildlife refuge agreement in accordance with the *Mining Act 1992* or the *Petroleum (Onshore) Act 1991*, or
- (b) prevents the carrying out, on or in respect of land subject to a wildlife refuge agreement, of any activity authorised by a mining or petroleum authority in accordance with the *Mining Act 1992* or the *Petroleum (Onshore) Act 1991*.

## **Part 6 Biodiversity offsets scheme**

### **Division 1 General scheme provisions**

#### **6.1 Definitions: Part 6**

In this Part:

**deferred credit retirement arrangement**—see section 6.28.

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

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

**planning approval** means:

- (a) a development consent under Part 4 of the *Environmental Planning and Assessment*

[Act 1979](#) (other than a complying development certificate), or

- (b) a State significant infrastructure approval under Part 5.1 of that Act, or
- (c) a decision of a determining authority to carry out an activity, or approve the carrying out of an activity, under Part 5 of that Act if the proponent of the activity elects to obtain a biodiversity development assessment report in connection with environmental impact assessment under that Part.

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

**vegetation clearing approval** means an approval under Division 6 (Approval for clearing native vegetation not otherwise authorised) of Part 5A of the [Local Land Services Act 2013](#) for the clearing of native vegetation on regulated rural areas of the State, and includes any such approval for the clearing of native vegetation on other areas of the State that require such an approval under a State environmental planning policy made under the [Environmental Planning and Assessment Act 1979](#).

## 6.2 Biodiversity offsets scheme

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

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

(including the retirement of biodiversity credits) proposed to offset the residual impact on biodiversity values after action that is required to be taken to avoid or minimise that impact. Those biodiversity assessment reports are to be taken into consideration in the determination under relevant legislation of the grant of (and biodiversity conservations actions required under) planning approvals for the proposed development or vegetation clearing approvals for the proposed clearing.

- (e) In relation to environmental impact assessment of proposed activities under Part 5 of the *Environmental Planning and Assessment Act 1979*—the option for proponents of those activities to use those biodiversity assessment reports and offsetting measures to comply with their obligations under that Part.
- (f) In relation to future development in an area—biodiversity assessment and reports by accredited persons about the area and biodiversity certification of that part of the area where future development may be carried out without further biodiversity impact assessment. The impact on biodiversity values of the clearing of native vegetation and the loss of habitat in the area of future development is to be offset by the retirement of biodiversity credits or other conservation measures in connection with the remainder of the area or other areas (or both).
- (g) As an alternative to any requirement under the scheme to retire biodiversity credits—the payment into the Biodiversity Conservation Fund of an amount equivalent to the cost of acquiring those credits determined in accordance with an offsets payment calculator. The Biodiversity Conservation Trust will be under an obligation to later secure biodiversity offsets from the money paid into the Fund.
- (h) The establishment of a biodiversity assessment method for use by accredited persons in biodiversity assessment and reports under the scheme.
- (i) The determination in accordance with principles prescribed by the regulations under this Act of serious and irreversible impacts on biodiversity values. The determination of such an impact by the relevant decision-maker will prevent the grant of planning approval for proposed development, but the determination will only be required to be taken into consideration in the case of State significant development or infrastructure, in the case of environmental impact assessment of certain proposed activities or in the case of proposals for the biodiversity certification of land.

### **6.3 Impacts on biodiversity values to which biodiversity offsets scheme applies**

The impacts of actions on biodiversity values that are subject to assessment and offset under the biodiversity offsets scheme are as follows:

- (a) the impacts of the clearing of native vegetation and the loss of habitat,
- (b) the impacts of action that are prescribed by the regulations.

**Note—**

See section 1.5 for a definition of the values that are biodiversity values.

#### **6.4 Biodiversity conservation offsets under scheme**

- (1) For the purposes of the biodiversity offsets scheme, the biodiversity conservation measures to offset or compensate for impacts on biodiversity values after any steps taken to avoid or minimise those impacts are as follows:
  - (a) the retirement of biodiversity credits,
  - (b) other actions that benefit the biodiversity values of the impacted land or other biodiversity values.
- (2) The regulations may make provision with respect to the following (**offset rules**):
  - (a) the class of biodiversity credits to be retired,
  - (b) the other actions that qualify or do not qualify as biodiversity conservation measures,
  - (c) the circumstances in which biodiversity conservation measures may include a combination of the retirement of biodiversity credits and other actions.

Any such regulation may apply, adopt or incorporate a publication of the Environment Agency Head as in force from time to time.

- (3) The other actions that benefit biodiversity values include:
  - (a) actions to conserve or enhance biodiversity (including threatened species and ecological communities), and
  - (b) actions for the purposes of research or education in relation to biodiversity, and
  - (c) actions under the Biodiversity Conservation Program under Part 4 or other government programs or policies for the conservation or enhancement of biodiversity.
- (4) The regulations may set out the circumstances in which the ordinary rules for the determination of the number and class of biodiversity credits required as biodiversity offsets may be varied.

#### **6.5 Serious and irreversible impacts on biodiversity values**

- (1) The determination of serious and irreversible impacts on biodiversity values for the purposes of the biodiversity offsets scheme is to be made in accordance with principles prescribed by the regulations.
- (2) The Environment Agency Head may provide guidance on the determination of any such serious and irreversible impacts, and for that purpose may publish, from time to time, criteria to assist in the application of those principles and lists of potential

serious and irreversible impacts.

**Note—**

For proposed development—see section 7.16; for proposed clearing only—see section 60ZF of the *Local Land Services Act 2013*; for proposed biodiversity certification—see section 8.8.

## **6.6 Miscellaneous provisions relating to biodiversity offsets scheme**

- (1) The Minister, the Environment Agency Head, the Biodiversity Conservation Trust and other public authorities may participate in the biodiversity offsets scheme, including by purchasing, holding, transferring and retiring biodiversity credits.
- (2) The regulations may make further provision for or with respect to the biodiversity offsets scheme, including making provision:
  - (a) for the retirement of biodiversity credits, and
  - (b) for arrangements between participants in the biodiversity offsets scheme or between those participants and other persons in connection with the scheme, and
  - (c) for the resolution of disputes arising in connection with the operation of the scheme, and
  - (d) for the provision of information by authorities or other persons involved in the administration or operation of the scheme.
- (3) The regulations may make provision for or with respect to conservation brokers, being persons who provide or offer to provide any of the following services (whether or not for fee or reward):
  - (a) the identification of potential biodiversity stewardship sites or management actions,
  - (b) the negotiation of a biodiversity stewardship agreement on behalf of a land owner,
  - (c) assistance with buying or selling biodiversity credits,
  - (d) any other related service in connection with the biodiversity offsets scheme.

## **Division 2 Biodiversity assessment method**

### **6.7 Minister may establish biodiversity assessment method**

- (1) The Minister is to establish a biodiversity assessment method in connection with the biodiversity offsets scheme.
- (2) The biodiversity assessment method is also established for the purpose of assessing the impact of actions on threatened species and threatened ecological communities, and their habitats, and the impact on biodiversity values of other actions prescribed



by the regulations (whether or not the biodiversity offsets scheme applies to the impact of those actions on biodiversity values).

**Note—**

See Part 7 of this Act and Division 6 of Part 5A of the *Local Land Services Act 2013*.

- (3) When establishing the biodiversity assessment method, the Minister is to:
- (a) have regard to the purpose of this Act, and
  - (b) adopt a standard that, in the opinion of the Minister, will result in no net loss of biodiversity in New South Wales.

This subsection does not affect the validity of a biodiversity assessment method established by the Minister.

- (4) The biodiversity assessment method is to be established by order of the Minister published on the NSW legislation website.
- (5) The biodiversity assessment method may be amended or replaced by further order of the Minister published on the NSW legislation website.
- (6) The Environment Agency Head is to make the biodiversity assessment method available on a government website maintained by the Agency Head.

**Note—**

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

### **6.8 Matters to be dealt with by the biodiversity assessment method**

- (1) The biodiversity assessment method is to set out rules and guidelines with respect to the matters for which biodiversity assessment reports may be prepared under this Act.

**Note—**

Section 6.4 enables regulations to be made with respect to offset rules (including circumstances in which the ordinary rules for determining the number and class of biodiversity credits required as biodiversity offsets may be varied).

- (2) The biodiversity assessment method may include provision for:
- (a) the adoption of datasets, maps and other information published from time to time by a specified person or body (or otherwise approved in a particular case), and
  - (b) the submission of expert reports, and
  - (c) the use of specified computer programs and databases for the carrying out of assessments under the method, and
  - (d) the assessment of the biodiversity values of land by reference to features of

surrounding land.

- (3) The biodiversity assessment method is to exclude the assessment of the impacts of any clearing of native vegetation and loss of habitat on category 1-exempt land (within the meaning of Part 5A of the *Local Land Services Act 2013*), other than any impacts prescribed by the regulations under section 6.3.

#### **6.9 Review of biodiversity assessment method**

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

#### **6.10 Scheme for accreditation of persons who apply method**

- (1) The Environment Agency Head is to prepare a draft scheme, in accordance with this section, for the accreditation by the Agency Head of persons for the purposes of the application of the biodiversity assessment method.
- (2) The Minister may, by order published on the NSW legislation website, adopt the scheme with or without any modifications the Minister considers appropriate.
- (3) The Minister may, from time to time by similar order, amend or replace the scheme.

**Note—**

Part 9 requires public consultation in relation to the preparation of the scheme.

- (4) A scheme for the accreditation of persons under this section may (without limitation) include the following:
  - (a) the qualifications or experience required for persons to be accredited to apply the biodiversity assessment method,

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

## **Division 3 Biodiversity assessment reports**

### **6.11 Biodiversity stewardship site assessment report**

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

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

### 6.12 Biodiversity development assessment report

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

- (a) assesses in accordance with the biodiversity assessment method the biodiversity values of the land subject to the proposed development, activity or clearing, and
- (b) assesses in accordance with that method the impact of proposed development, activity or clearing on the biodiversity values of that land, and
- (c) sets out the measures that the proponent of the proposed development, activity or clearing proposes to take to avoid or minimise the impact of the proposed development, activity or clearing, and
- (d) specifies in accordance with that method the number and class of biodiversity credits that are required to be retired to offset the residual impacts on biodiversity values of the actions to which the biodiversity offsets scheme applies.

**Note—**

A biodiversity development assessment report is also used for the assessment of impacts on threatened species and threatened ecological communities, and their habitats, and other impacts under Part 7 (Biodiversity assessment and approvals under Planning Act) even though the impacts may not relate to actions to which the biodiversity offsets scheme applies.

### 6.13 Biodiversity certification assessment report

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

- (a) assesses in accordance with the biodiversity assessment method the biodiversity values of the land proposed for biodiversity certification, and
- (b) assesses in accordance with that method the impacts on biodiversity values of the actions to which the biodiversity offsets scheme applies on the land proposed for biodiversity certification, and specifies the number and class of biodiversity credits to be retired to offset those impacts as determined in accordance with that method, and
- (c) that specifies other proposed conservation measures on or in respect of other land to offset those impacts on biodiversity values and their value (in terms of biodiversity credits) determined in accordance with that method.

### 6.14 Modification or withdrawal of biodiversity assessment report

- (1) A biodiversity assessment report may be modified by the accredited person who

prepared the report:

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

#### **6.15 Currency of biodiversity assessment report**

- (1) A biodiversity assessment report cannot be submitted in connection with a relevant application unless the accredited person certifies in the report that the report has been prepared on the basis of the requirements of (and information provided under) the biodiversity assessment method as at a specified date and that date is within 14 days of the date the report is so submitted.
- (2) A relevant application is an application for planning approval, for vegetation clearing approval, for biodiversity certification or in respect of a biodiversity stewardship agreement.

#### **6.16 Miscellaneous provisions applying to biodiversity assessment reports**

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

## **Division 4 Creation, transfer etc of biodiversity credits**

### **6.17 Creation of biodiversity credits**

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

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

- (3) The Environment Agency Head may make such changes to the number and class of biodiversity credits that have been created and not retired as are authorised by, and in accordance with, the regulations.

### **6.18 Duration of biodiversity credit**

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

**Note—**

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

### **6.19 Transfers of biodiversity credits**

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

### **6.20 Registration of transfer of biodiversity credit**

- (1) The transfer of a biodiversity credit does not have effect until the transfer is registered by the Environment Agency Head in the register of biodiversity credits

under Part 9.

- (2) An application for registration of a transfer of a biodiversity credit may be made to the Environment Agency Head by the parties to the transfer.
- (3) The application must:
  - (a) be made in a form approved by the Environment Agency Head and contain the information required by that form, and
  - (b) be accompanied by an application fee prescribed by the regulations.

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

- (4) If an application for the transfer of a biodiversity credit is duly made, the Environment Agency Head must register the transfer unless authorised or required to refuse to register the transfer by or under this Act.
- (5) The Environment Agency Head must refuse to register a transfer of a biodiversity credit in respect of which an amount is required to be paid to the Biodiversity Stewardship Payments Fund unless satisfied that the amount required to be paid to that Fund has been so paid.
- (6) If the Environment Agency Head refuses to register a transfer of a biodiversity credit in respect of which an amount has been paid to the Biodiversity Stewardship Payments Fund, the Environment Agency Head may direct the Fund Manager to repay that amount to the person who paid it, and the Fund Manager is authorised and required to comply with that direction.

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

- (1) An amount, calculated as provided by this Act, is to be paid into the Biodiversity Stewardship Payments Fund before a first transfer of a biodiversity credit is registered.
- (2) If an application for registration of a first transfer is made in respect of all the biodiversity credits created in respect of a biodiversity stewardship site, the amount payable into the Fund before that transfer is registered is the total Fund deposit for the site.
- (3) If an application for registration of a first transfer is made in respect of a number of biodiversity credits that is less than the number of biodiversity credits created in respect of the biodiversity stewardship site, the amount payable into the Fund before that transfer is registered is (subject to this section) the relevant proportion of the total Fund deposit for the biodiversity stewardship site, or the proceeds of sale of the biodiversity credits, whichever amount is the greater.

- (4) Despite anything to the contrary in this Part, the payment of an amount into the Fund in respect of a first transfer of biodiversity credits is not to result in the total amount paid into the Fund in respect of all the biodiversity credits created in respect of the biodiversity stewardship site exceeding the total Fund deposit for the site.
- (5) If a biodiversity credit is proposed to be retired without having been transferred by the owner of the biodiversity stewardship site, the amount that would have been payable under this section if the biodiversity credit had instead been transferred is to be paid into the Fund before the credit is retired.
- (6) The regulations may amend this section to vary the operation of this section (including to vary the calculation of the amount to be paid into the Fund under this section or to provide for the deferral of the payment of the amount until a subsequent transfer of the biodiversity credit).
- (7) In this section:

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

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

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

## **6.22 Other transactions relating to biodiversity credits**

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

## **6.23 Grounds for cancellation of biodiversity credit**

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

**Note—**

However, the Minister may require a wrongdoer to retire a specified number or class of credits under section 11.25.

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

**6.24 General provisions relating to cancellation of biodiversity credits**

- (1) The Environment Agency Head cancels a biodiversity credit by making a recording in the register of biodiversity credits under Part 9, in relation to the biodiversity credit concerned, that indicates that the credit is cancelled.
- (2) The Environment Agency Head must give the holder of the credit notice in writing of the cancellation.
- (3) No compensation is payable for the cancellation of a biodiversity credit.

- (4) However, if a biodiversity credit is cancelled because of activities authorised by a mining or petroleum authority granted in respect of a biodiversity stewardship site, the reasonable costs incurred by the biodiversity stewardship site owner in carrying out, before the cancellation, the management actions in respect of which the biodiversity credits were created are taken, for the purposes of the *Mining Act 1992* or the *Petroleum (Onshore) Act 1991*, to be a loss caused by deprivation of the possession or of the use of the surface of the land concerned as a result of the exercise of the rights conferred by the mining or petroleum authority.
- (5) If a biodiversity credit is cancelled, the Minister may vary or terminate the relevant biodiversity stewardship agreement (with or without the consent of the owner of the biodiversity stewardship site) to make it clear that any obligation to carry out a management action that arises only because of the creation of that credit ceases to have effect.
- (6) If the variation or termination of the agreement is made without the consent of the owner, the variation or termination is to be made by the Minister by notification in the public register of private land conservation agreements under Part 9.
- (7) The cancellation of a biodiversity credit does not prevent the Minister seeking an award of damages against the owner of a biodiversity stewardship site for a breach of the biodiversity stewardship agreement or taking civil enforcement action in respect of the breach under Division 2 of Part 13.

#### **6.25 Suspension of biodiversity credit**

- (1) If the Environment Agency Head considers that there may be reasons for cancelling a biodiversity credit, the Environment Agency Head may suspend the biodiversity credit for a period of up to 6 months pending an investigation into the matter. If further investigation into the matter is required, the Environment Agency Head may extend the suspension for a further period of up to 6 months.
- (2) The Environment Agency Head suspends a biodiversity credit by making a recording in the register of biodiversity credits under Part 9, in relation to the biodiversity credit concerned, that indicates that the credit is suspended.
- (3) The Environment Agency Head must give the holder of the credit notice in writing of the suspension.
- (4) No compensation is payable for the suspension of a biodiversity credit.

#### **6.26 Appeals to Land and Environment Court**

- (1) The holder of a biodiversity credit who is dissatisfied with a decision of the Environment Agency Head to cancel the biodiversity credit may, within 3 months after being notified of the decision by the Agency Head, appeal to the Land and Environment Court against the decision.

- (2) A person who applies for the registration of a transfer of a biodiversity credit and who is dissatisfied with a decision of the Environment Agency Head to refuse to register the transfer may, within 3 months after being notified of the decision by the Agency Head, appeal to the Land and Environment Court against the decision, but only in the circumstances (if any) authorised by the regulations.
- (3) A person who applies for the transfer to the person of a biodiversity credit held by the Environment Agency Head pursuant to a deferred credit retirement arrangement and who is dissatisfied with a decision of the Agency Head in respect of the application (including the refusal of concurrence to the transfer by the Agency Head) may, within 3 months after being notified of the decision by the Agency Head, appeal to the Land and Environment Court against the decision. An appeal under this subsection does not extend to a decision made in accordance with the biodiversity assessment method.
- (4) A person who held biodiversity credits immediately before they were transferred to the Environment Agency Head pursuant to a deferred credit retirement arrangement and who is dissatisfied with a decision of the Environment Agency Head to retire those credits (other than a decision made as a result of an application referred to in subsection (3)) may, within 3 months after being notified of the decision by the Agency Head, appeal to the Land and Environment Court against the decision.

## **Division 5 Retirement of biodiversity credits**

### **6.27 Retirement of biodiversity credits**

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

- (3) An application to retire a biodiversity credit must:
- (a) be made in the form approved by the Environment Agency Head and contain the information required by that form, and
  - (b) be accompanied by the fee prescribed by the regulations.

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

- (4) The Environment Agency Head may refuse an application to retire a biodiversity credit if:
- (a) the application has not been duly made, or
  - (b) the Environment Agency Head is satisfied that an obligation to undertake management actions under the biodiversity stewardship agreement that enabled the creation of the credit has not been complied with (but only if the credit is sought to be retired without being first transferred), or
  - (c) any payment required to be made to the Biodiversity Stewardship Payments Fund under section 6.21 (Payment to Fund on first transfer of biodiversity credit or on retirement without first transfer) in relation to the biodiversity credit has not been made, or
  - (d) any payment required to be made to the Minister under this Part in relation to the biodiversity credit for costs relating to the biodiversity offsets scheme has not been made, or
  - (e) the regulations authorise the Environment Agency Head to refuse the application.
- (5) The Environment Agency Head retires a biodiversity credit by making a recording in the register of biodiversity credits under Part 9, in relation to the biodiversity credit concerned, that indicates that the credit has been retired.
- (6) The retirement of a biodiversity credit does not affect any requirement imposed on the owner of a biodiversity stewardship site under a biodiversity stewardship agreement. In particular, it does not affect any requirement that the owner carry out management actions in respect of the land in relation to which the credit was created.
- (7) A biodiversity credit that has been suspended by the Environment Agency Head may not be retired during any period in which the suspension has effect.

### **6.28 Deferred credit retirement arrangements**

- (1) With the approval of the Environment Agency Head, a requirement to retire biodiversity credits under this or any other Act (including under an instrument,

approval or agreement) in relation to proposed development, activity or clearing may be subject to an arrangement (a **deferred credit retirement arrangement**) under which:

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

- (b) may retire any remaining biodiversity credits held by the Agency Head under the deferred credit retirement arrangement after giving at least 28 days notice of the proposed retirement to the former holder of the biodiversity credits.

The Environment Agency Head is not to transfer a biodiversity credit back to the former holder of the credit without the concurrence of the person or body that imposed the requirement for the retirement of the credit.

- (7) If a deferred credit retirement arrangement provides for a period at the end of which the retirement arrangement ceases to have effect, the Environment Agency Head may, at the end of that period, retire any biodiversity credits transferred to and held by the Agency Head under the arrangement after giving at least 28 days notice of the proposed retirement to the former holder of the biodiversity credits.
- (8) In this section:

**former holder** of a biodiversity credit means:

- (a) the person who held the biodiversity credit immediately before the biodiversity credit was transferred to the Environment Agency Head under a deferred credit retirement arrangement, or
- (b) a person who acquires the rights of that person to apply for a transfer under this section in respect of the biodiversity credit.

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

- (1) The Minister may, by order in writing to a person, direct the person to retire biodiversity credits of a specified number and class (if applicable) within a time specified in the order if:
  - (a) the person is subject to a requirement to retire biodiversity credits under this or any other Act (including under an instrument, approval or agreement), and
  - (b) the biodiversity credits have not been retired in accordance with that requirement.
- (2) A person must not, without reasonable excuse, fail to comply with a direction under this section.

Maximum penalty: Tier 1 monetary penalty.

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

**Note—**

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

offsets payment calculator.

- (4) A court that finds a person guilty of an offence under this section may order the person to comply with the direction under this section, in addition to or in substitution for any penalty for the offence.
- (5) This section does not affect the liability of a person:
  - (a) under the *Environmental Planning and Assessment Act 1979* for a contravention of a condition of a planning approval relating to the retirement of biodiversity credits, or
  - (b) under Division 6 of Part 5A of the *Local Land Services Act 2013* for a contravention of a condition of a vegetation clearing approval relating to the retirement of biodiversity credits.

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

### **6.30 Payment as alternative to retirement of biodiversity credits**

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

### **6.31 Corresponding obligation to secure required biodiversity offsets**

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

### **6.32 Calculation of amount payable as alternative to retiring credits**

- (1) The Minister is to establish an offsets payment calculator for the purpose of determining the amount that may be paid into the Biodiversity Conservation Fund under this Division.

- (2) The calculator is to be established by order published on the NSW legislation website and may be varied or replaced from time to time by similar order.
- (3) The calculator may include provision for:
  - (a) the adoption of datasets and other information or rules published from time to time by the Biodiversity Conservation Trust or other specified person or body, and
  - (b) the use of specified computer programs and databases for determining the amount to be paid by the application of the calculator, and
  - (c) cost recovery by the Biodiversity Conservation Trust in connection with securing biodiversity offsets (including risk management costs).
- (4) The regulations may make provision for or with respect to the updating of datasets and other information adopted by the calculator (including with respect to the scheduling of updates).

### **6.33 Trust may verify payment**

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

## **Division 7 Biodiversity Stewardship Payments Fund**

### **6.34 Biodiversity Stewardship Payments Fund**

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



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

### **6.35 Fund Manager**

- (1) The Biodiversity Conservation Trust is (subject to this section) the Fund Manager in respect of the Biodiversity Stewardship Payments Fund.
- (2) The Minister may appoint a public authority, or other person or body, as the Fund Manager instead of the Trust. The appointment takes effect on the date notified by the

Minister in the Gazette and may be revoked by the Minister by notice in the Gazette.

- (3) The Fund Manager (unless it is a public authority so appointed) is not, and does not represent, the Crown.

### **6.36 Management and control of Fund**

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

### **6.37 Reporting and other obligations of Fund Manager**

- (1) As soon as practicable after 30 June in each year, the Fund Manager is to prepare and deliver to the Minister an annual report on its management of the Biodiversity Stewardship Payments Fund during the financial year ending on that date.
- (2) The annual report must include copies of the financial statements and accounts of the Fund Manager for the financial year to which the report relates and an auditor's report on those statements and accounts prepared by an auditor approved by the Minister.
- (3) If the regulations so require, the Fund Manager is, as soon as practicable after 31 March, 30 June, 30 September and 31 December in each year, to prepare and deliver to the Minister a quarterly report that summarises the financial position of the Fund and the performance of investments of money vested in the Fund during the immediately preceding 3 month period.
- (4) The Minister is to cause a copy of each annual and quarterly report to be published on a government website maintained by the Environment Agency Head as soon as practicable after it is delivered to the Minister. The Minister is to cause a copy of each

annual report to be tabled in each House of Parliament.

- (5) The Fund Manager must take out and maintain a policy of indemnity insurance, in respect of the exercise of its functions as Fund Manager, that complies with any requirements specified by the Minister by notice in writing to the Fund Manager.
- (6) The regulations may vary the reporting obligations of the Fund Manager under this section (including in connection with any reporting obligations of the Biodiversity Conservation Trust under Part 10), and for that purpose consequentially amend this section.

## **Division 8 Biodiversity offsets scheme administration costs**

### **6.38 Scheme administration cost recovery**

- (1) In this section:

***participant*** in the biodiversity offsets scheme means any of the following persons:

- (a) the owner of a biodiversity stewardship site,
  - (b) the holder of a biodiversity credit,
  - (c) any other person to whom the scheme applies or who is associated with the scheme, being a person of a kind prescribed by the regulations as a participant in the scheme.
- (2) A participant in the biodiversity offsets scheme is required to pay to the Minister a contribution towards the following:
    - (a) the costs of management and administration of the scheme,
    - (b) the costs of ensuring compliance with the scheme,
    - (c) any other costs relating to the scheme.
  - (3) The contribution of an owner of a biodiversity stewardship site is an annual or other contribution of such amount as is prescribed by the regulations. The contribution is payable in accordance with an invoice issued to the owner by the Environment Agency Head.
  - (4) The contribution of the holder of a biodiversity credit is such amount as is prescribed by the regulations. The contribution is payable when an application is made to the Environment Agency Head to retire the biodiversity credit.
  - (5) The contribution of any other participant of the scheme is the amount prescribed by and payable in accordance with the regulations.
  - (6) A contribution is recoverable by the Minister as a debt in a court of competent

jurisdiction.

- (7) The Minister is authorised to waive payment, or to extend the time for payment, of a contribution or part of a contribution payable under this section.
- (8) For the purposes of this section, the Minister or Environment Agency Head is not considered to be a participant in the biodiversity offsets scheme in respect of any thing done on behalf of the Crown.
- (9) The regulations may make provision with respect to contributions payable to the biodiversity offsets scheme under this section, including (without limitation):
  - (a) any matter concerning the payment of a contribution (including circumstances in which payment may be waived), and
  - (b) exemptions from payment of a contribution, and
  - (c) the payment of contributions by instalments.

### **6.39 Biodiversity Stewardship Operations Account**

- (1) There is to be established in the Special Deposits Account an account called the Biodiversity Stewardship Operations Account.
- (2) Money in the account is under the control of the Minister.
- (3) There is to be paid into the account:
  - (a) all contributions paid by participants in the biodiversity offsets scheme under this Division, and
  - (b) all fees payable by accredited persons for accreditation under the scheme established under section 6.10, and
  - (c) all costs or damages recovered in connection with enforcement action taken against an owner of a biodiversity stewardship site in respect of a failure to comply with a biodiversity stewardship agreement or a provision of or made under this Division, other than any amount that is payable to the Biodiversity Stewardship Payments Fund, and
  - (d) the proceeds of investment of money in the account, and
  - (e) any money received by the Minister for the disposal of property related to the biodiversity offsets scheme that the regulations require to be paid into the account, and
  - (f) any other money appropriated by Parliament for the purposes of the account or required by this or any other Act or law to be paid into the account.

- (4) There may be paid out of the account:
- (a) the costs of the management and administration of the biodiversity offsets scheme, and
  - (b) the costs of the accreditation of persons under the scheme established under section 6.10, and
  - (c) the costs of ensuring compliance with the biodiversity offsets scheme, and
  - (d) such costs as the Minister directs to be paid from the account to an owner of a biodiversity stewardship site, and
  - (e) such costs as the Minister directs to be paid from the account in payment of the remuneration of the Fund Manager of the Biodiversity Stewardship Payments Fund, and
  - (f) such other costs relating to the biodiversity offsets 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 required to be paid out of the account.

## **Part 7 Biodiversity assessment and approvals under Planning Act**

### **Division 1 Preliminary**

#### **7.1 Definitions: Part 7**

In this Part:

**activity** means an activity within the meaning of Part 5 of the *Environmental Planning and Assessment Act 1979*.

**biodiversity development assessment report** means a biodiversity development assessment report prepared by an accredited person, but does not include a report that is no longer eligible to be submitted because of section 6.15 (Currency of biodiversity assessment report) or that is withdrawn under section 6.14.

**biodiversity offsets scheme threshold**—see section 7.4.

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

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

**threatened ecological communities** do not include vulnerable ecological communities

(except so much of any such community as comprises a threatened species).

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

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

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

(2) To avoid doubt, subsection (1) (b) does not apply to development that is an activity subject to environmental impact assessment under Part 5 of the *Environmental Planning and Assessment Act 1979*.

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

(1) The following is to be taken into account for the purposes of determining whether a proposed development or activity is likely to significantly affect threatened species or ecological communities, or their habitats:

- (a) in the case of a threatened species, whether the proposed development or activity is likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction,
- (b) in the case of an endangered ecological community or critically endangered ecological community, whether the proposed development or activity:
  - (i) is likely to have an adverse effect on the extent of the ecological community such that its local occurrence is likely to be placed at risk of extinction, or
  - (ii) is likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction,
- (c) in relation to the habitat of a threatened species or ecological community:
  - (i) the extent to which habitat is likely to be removed or modified as a result of the proposed development or activity, and
  - (ii) whether an area of habitat is likely to become fragmented or isolated from other areas of habitat as a result of the proposed development or activity, and

- (iii) the importance of the habitat to be removed, modified, fragmented or isolated to the long-term survival of the species or ecological community in the locality,
  - (d) whether the proposed development or activity is likely to have an adverse effect on any declared area of outstanding biodiversity value (either directly or indirectly),
  - (e) whether the proposed development or activity is or is part of a key threatening process or is likely to increase the impact of a key threatening process.
- (2) The Minister may, by order published in the Gazette with the concurrence of the Minister for Planning, issue guidelines relating to the determination of whether a proposed development or activity is likely to significantly affect threatened species or ecological communities, or their habitats. Any such guidelines may include consideration of the implementation of strategies under the Biodiversity Conservation Program.

#### **7.4 Exceeding biodiversity offsets scheme threshold**

- (1) Proposed development exceeds the biodiversity offsets scheme threshold for the purposes of this Part if it is development of an extent or kind that the regulations declare to be development that exceeds the threshold.
- (2) In determining whether proposed development exceeds the biodiversity offsets threshold for the purposes of this Part, any part of the proposed development that involves the clearing of native vegetation on category 1-exempt land (within the meaning of Part 5A of the *Local Land Services Act 2013*) is to be disregarded.

**Note—**

See section 6.8 (3)—any part of proposed development that involves such clearing of native vegetation is not required to be assessed under the biodiversity assessment method.

- (3) A regulation under this section may apply, adopt or incorporate a map published by the Environment Agency Head from time to time.

#### **7.5 Relationship with Planning Act**

- (1) This Part prevails to the extent of any inconsistency between this Part and the *Environmental Planning and Assessment Act 1979* (or any instrument under that Act).
- (2) A reference in the *Environmental Planning and Assessment Act 1979* or any other Act or in any statutory instrument or document to the *Environmental Planning and Assessment Act 1979* (whether an express or implied reference) is a reference to that Act as applying in accordance with this Part.

## **7.6 Part does not apply to biodiversity certified land**

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

## **Division 2 Biodiversity assessment requirements**

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

- (1) This section applies to an application for development consent under Part 4 of the *Environmental Planning and Assessment Act 1979*, except:
  - (a) an application for development consent for State significant development, or
  - (b) an application for a complying development certificate.
- (2) If the proposed development is likely to significantly affect threatened species, the application for development consent is to be accompanied by a biodiversity development assessment report.

### **7.8 Biodiversity assessment for Part 5 activity**

- (1) This section applies to environmental assessment under Part 5 of the *Environmental Planning and Assessment Act 1979*.
- (2) For the purposes of Part 5 of the *Environmental Planning and Assessment Act 1979*, an activity is to be regarded as an activity likely to significantly affect the environment if it is likely to significantly affect threatened species.
- (3) In that case, the environmental impact statement under Part 5 of the *Environmental Planning and Assessment Act 1979* is to include or be accompanied by:
  - (a) a species impact statement, or
  - (b) if the proponent so elects—a biodiversity development assessment report.
- (4) If the likely significant effect on threatened species is the only likely significant effect on the environment, an environmental impact statement may be dispensed with and Part 5 of the *Environmental Planning and Assessment Act 1979* applies as if references to an environmental impact statement were references to a species impact statement or biodiversity development assessment report.

### **7.9 Biodiversity assessment for State significant development or infrastructure**

- (1) This section applies to:
  - (a) an application for development consent under Part 4 of the *Environmental Planning and Assessment Act 1979* for State significant development, and



(b) an application for approval under Part 5.1 of the *Environmental Planning and Assessment Act 1979* to carry out State significant infrastructure.

- (2) Any such application is to be accompanied by a biodiversity development assessment report unless the Planning Agency Head and the Environment Agency Head determine that the proposed development is not likely to have any significant impact on biodiversity values.
- (3) The environmental impact statement that accompanies any such application is to include the biodiversity assessment required by the environmental assessment requirements of the Planning Agency Head under the *Environmental Planning and Assessment Act 1979*.

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

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

### **Division 3 Consultation and concurrence**

#### **7.11 Consultation with Minister administering this Act if a Minister is consent authority under Part 4 or determining authority under Part 5**

- (1) This section applies to the following:
- (a) development (not being State significant development or complying development) that requires development consent under Part 4 of the *Environmental Planning and Assessment Act 1979* when a Minister is the consent authority,
  - (b) an activity that requires environmental impact assessment under Part 5 of the *Environmental Planning and Assessment Act 1979* when a Minister is the determining authority.
- (2) For the purposes of determining the application for any such development consent, the Minister concerned is to consult the Minister administering this Act if the development is likely to significantly affect threatened species. However, consultation is not required if the application is accompanied by a biodiversity development assessment report in accordance with Division 2 and the conditions of the consent require the applicant to retire biodiversity credits to offset the residual impact on biodiversity values of at least the number and class specified in the report.
- (3) For the purposes of any such environmental impact assessment, the Minister concerned is to consult the Minister administering this Act if the activity is likely to significantly affect threatened species. However, consultation is not required if the proponent has obtained a biodiversity development assessment report in accordance

with Division 2.

- (4) In consulting under this section, the Minister administering this Act is to provide the Minister who is the consent authority or the determining authority with any recommendations made by the Environment Agency Head.
- (5) The Minister who is the consent authority or the determining authority is to give public notice of any such recommendation that the Minister has not accepted.

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

- (1) This section applies to the following:
  - (a) development (not being State significant development or complying development) that requires development consent under Part 4 of the *Environmental Planning and Assessment Act 1979* when a Minister is not the consent authority,
  - (b) an activity that requires environmental impact assessment under Part 5 of the *Environmental Planning and Assessment Act 1979* when a Minister is not the determining authority.
- (2) The consent authority is not to grant development consent if the development is likely to significantly affect threatened species, unless the consent authority has obtained the concurrence of the Environment Agency Head. However, concurrence is not required if:
  - (a) the application for development consent is accompanied by a biodiversity development assessment report in accordance with Division 2, and
  - (b) in a case in which the biodiversity offsets scheme applies to the impacts of the development—the conditions of the consent require the applicant to retire biodiversity credits to offset the residual impact on biodiversity values of at least the number and class specified in the report.
- (3) The determining authority is not to carry out the activity, or grant an approval to carry out the activity, if the activity is likely to significantly affect threatened species, unless the determining authority has obtained the concurrence of the Environment Agency Head. However, concurrence is not required if the proponent has obtained a biodiversity development assessment report in accordance with Division 2.
- (4) If the Minister administering this Act considers that it is appropriate, the Minister may elect to act in the place of the Environment Agency Head for the purposes of giving concurrence under this section. The Minister is required, in giving any concurrence, to consult the Environment Agency Head, to provide the consent authority or the determining authority with any recommendations made by that Agency Head and to give public notice of any such recommendation that the Minister has not accepted.

- (5) In determining whether to give a concurrence under this section, the Environment Agency Head or Minister (as the case requires) is to have regard to the following:
  - (a) any species impact statement prepared for the development or activity and submissions made in response to it,
  - (b) any biodiversity development assessment report prepared for the development or activity and the impacts of the development or activity on biodiversity values that will not be offset because biodiversity credits are not being retired as specified in the report,
  - (c) whether the development or activity is likely to reduce the long-term viability of the threatened species or ecological communities in the bioregion (unless a biodiversity development assessment report has been prepared for the development or activity),
  - (d) any further assessment report prepared by or on behalf of the proponent,
  - (e) the facilitation of ecologically sustainable development.
- (6) A concurrence under this section may be conditional on the taking of action that the Environment Agency Head or Minister (as the case requires) considers will significantly benefit threatened species or ecological communities and to which the person required to take the action has agreed. Any such action may (without limitation) include the provision of biodiversity offsets (including the retirement of biodiversity credits in accordance with this Act).
- (7) The terms of a concurrence under this section may be varied by the person who gave the concurrence at any time before the consent authority or the determining authority acts on the concurrence.
- (8) A consent authority that grants consent, or a determining authority that grants approval, to the carrying out of development or an activity for which a concurrence under this section has been granted must grant the consent or approval subject to any conditions of the concurrence. This does not affect the right of the consent authority or determining authority to impose other conditions not inconsistent with the conditions of the concurrence or to refuse consent or approval.
- (9) A provision under the [Environmental Planning and Assessment Act 1979](#) that deems consent to have been refused because concurrence has not been granted or refused within a specified period extends to a concurrence under this section.

## **Division 4 Biodiversity assessment and offsets**

### **7.13 Development other than State significant development or infrastructure**

- (1) This section applies to an application for development consent under Part 4 of the

*Environmental Planning and Assessment Act 1979* that is required under Division 2 to be accompanied by a biodiversity development assessment report, except:

- (a) an application for development consent for State significant development, or
  - (b) an application for a complying development certificate.
- (2) The consent authority, when determining in accordance with the *Environmental Planning and Assessment Act 1979* any such application, is to take into consideration under that Act the likely impact of the proposed development on biodiversity values as assessed in the biodiversity development assessment report that relates to the application. The consent authority may (but is not required to) further consider under that Act the likely impact of the proposed development on biodiversity values.
- (3) If the consent authority decides to grant consent and the biodiversity offsets scheme applies to the proposed development, the conditions of the consent must require the applicant to retire biodiversity credits to offset the residual impact on biodiversity values of the number and class specified in the report (subject to subsection (4)). The residual impact is the impact after the measures that are required to be carried out by the terms or conditions of the consent to avoid or minimise the impact on biodiversity values of the proposed development (being measures on which the report was based).

**Note—**

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

- (4) The consent authority may reduce or increase the number of biodiversity credits that would otherwise be required to be retired if the consent authority determines that the reduction or increase is justified having regard to the environmental, social and economic impacts of the proposed development. The consent authority must give reasons for a decision to reduce or increase the number of biodiversity credits.
- (5) A condition to retire biodiversity credits is required to be complied with before any development is carried out that would impact on biodiversity values. However, a consent to a concept development application may provide for a corresponding staged retirement of biodiversity credits before each stage of development is carried out and without the need for a further biodiversity development assessment report in connection with development applications for the subsequent stages of the development.
- (6) This section does not operate to limit the matters that a consent authority may take into consideration:
- (a) in relation to the impact of proposed development on biodiversity values, the measures that a consent authority may require to avoid or minimise those impacts or the power of a consent authority to refuse to grant consent because of those

impacts, or

(b) in deciding whether to reduce or increase the number of biodiversity credits to be retired.

(7) If a consent authority fails to include a condition relating to the retirement of biodiversity credits required by this section (or fails to give reasons for a decision to reduce or increase the number of biodiversity credits), the Environment Agency Head may impose or vary that condition in accordance with this section in the same manner used by the consent authority in granting the development consent.

#### **7.14 State significant development or infrastructure**

- (1) This section applies to an application for development consent for State significant development under Part 4 of the *Environmental Planning and Assessment Act 1979*, or an application for approval for State significant infrastructure under Part 5.1 of the *Environmental Planning and Assessment Act 1979*, that is required under Division 2 to be accompanied by a biodiversity development assessment report.
- (2) The Minister for Planning, when determining in accordance with the *Environmental Planning and Assessment Act 1979* any such application, is to take into consideration under that Act the likely impact of the proposed development on biodiversity values as assessed in the biodiversity development assessment report. The Minister for Planning may (but is not required to) further consider under that Act the likely impact of the proposed development on biodiversity values.
- (3) If the Minister for Planning decides to grant consent or approval and the biodiversity offsets scheme applies to the proposed development, the conditions of the consent or approval may require the applicant to retire biodiversity credits to offset the residual impact on biodiversity values (whether of the number and class specified in the report or other number and class). The residual impact is the impact after the measures that are required to be carried out by the terms or conditions of the consent or approval to avoid or minimise the impact on biodiversity values of the proposed development.
- (4) A condition to retire biodiversity credits is required to be complied with before any development is carried out that would impact on biodiversity values. If the retirement of particular biodiversity credits applies to a stage of the development, compliance with the condition for their retirement is postponed until it is proposed to carry out that stage of the development.
- (5) This section does not operate to limit the matters that the Minister for Planning may take into consideration in relation to the impact of proposed development on biodiversity values, the measures that the Minister may require to avoid or minimise those impacts or the power of the Minister to refuse to grant consent or approval because of those impacts.

### 7.15 Part 5 activity

- (1) This section applies to an environmental impact assessment under Part 5 of the [Environmental Planning and Assessment Act 1979](#) in respect of which the proponent has elected under Division 2 to obtain a biodiversity development assessment report.
- (2) The determining authority is to take into consideration under that Act the likely impact of the proposed activity on biodiversity values as assessed in the biodiversity development assessment report.
- (3) If the determining authority decides to carry out the activity or approve the carrying out of the activity and the biodiversity offsets scheme applies to the proposed activity, the conditions on which the activity is carried out or of the approval to carry out the activity may require the proponent to retire biodiversity credits to offset the residual impact on biodiversity values (whether of the number and class specified in the report or other number and class). The residual impact is the impact after the measures that are required to be carried out to avoid or minimise the impact on biodiversity values of the proposed activity.
- (4) If the number of biodiversity credits required to be retired is less than that specified in the biodiversity development assessment report, the determining authority is to give reasons for the decision to reduce the number of biodiversity credits.
- (5) A condition to retire biodiversity credits is required to be complied with before any activity is carried out that would impact on biodiversity values. If the retirement of particular biodiversity credits applies to a stage of the activity, compliance with the condition for their retirement is postponed until the carrying out of that stage of the activity.
- (6) This section does not operate to limit the matters that the determining authority may take into consideration in relation to the impact of any proposed activity on biodiversity values, the measures that the determining authority may require to avoid or minimise those impacts or the power of the determining authority to refuse to proceed with the activity or to grant approval for the activity because of those impacts.

### 7.16 Proposed development or activity that has serious and irreversible impacts on biodiversity values

- (1) In this section, ***serious and irreversible impacts on biodiversity values*** of proposed development or activity means serious and irreversible impacts on biodiversity values as determined under section 6.5 that would remain after the measures proposed to be taken to avoid or minimise the impact on biodiversity values of the proposed development or activity.
- (2) The consent authority must refuse to grant consent under Part 4 of the [Environmental](#)

*Planning and Assessment Act 1979*, in the case of an application for development consent to which this Division applies (other than for State significant development), if it is of the opinion that the proposed development is likely to have serious and irreversible impacts on biodiversity values.

- (3) If the Minister for Planning is of the opinion that proposed State significant development or State significant infrastructure that is the subject of an application to which this Division applies is likely to have serious and irreversible impacts on biodiversity values, the Minister:
  - (a) is required to take those impacts into consideration, and
  - (b) is required to determine whether there are any additional and appropriate measures that will minimise those impacts if consent or approval is to be granted.
- (4) If the determining authority is of the opinion that the proposed activity to which this Division applies is likely to have serious and irreversible impacts on biodiversity values, the determining authority:
  - (a) is required to take those impacts into consideration, and
  - (b) is required to determine whether there are any additional and appropriate measures that will minimise those impacts if the activity is to be carried out or approved.

#### **7.17 Modifications of planning approvals or activities**

- (1) Subsection (2) applies to an application for the modification of a development consent, or State significant infrastructure approval, that was granted after the commencement of this Division.
- (2) The provisions of this Division relating to applications for development consent or State significant infrastructure approvals apply to any such application for modification as follows:
  - (a) the provisions apply in relation to the original development as proposed to be modified,
  - (b) a biodiversity development assessment report is required to be submitted and taken into consideration if this Division applies to the original development as proposed to be modified even if a biodiversity development assessment report was submitted in connection with the application for the original development or even if this Division did not apply to the original development (for example, because the modification results in the development exceeding the biodiversity offsets scheme threshold),
  - (c) however a further biodiversity development assessment report is not required to be submitted if the authority or person determining the application for



modification (or determining the environmental assessment requirements for the application) is satisfied that the modification will not increase the impact on biodiversity values,

(d) the biodiversity development assessment report submitted with the application for modification is to take into account any measures already taken to avoid, minimise or offset the impact on biodiversity values in connection with the consent or approval before the proposed modification,

(e) if an application for the original development as proposed to be modified would have been required to be refused because of serious and irreversible impacts on biodiversity values, the application for modification is required to be refused.

(3) The regulations may make further provision with respect to any such applications for modification (including exemptions to the application of this section).

(4) The regulations may make provision with respect to the application of this Division in relation to any modification of an activity for which the proponent elected to obtain a biodiversity development assessment report for the original activity.

#### **7.18 Planning agreements—biodiversity offsets**

(1) A planning agreement under section 93F of the *Environmental Planning and Assessment Act 1979* may make provision with respect to the offset of the impact on biodiversity values of proposed development (including by the retirement of biodiversity credits in accordance with this Act).

(2) Any such provision for the retirement of biodiversity credits may provide for a deferred credit retirement arrangement under section 6.28.

#### **7.19 Other environmental contributions not affected**

This Part does not affect any other environmental contribution under:

(a) a development consent under Part 4 of the *Environmental Planning and Assessment Act 1979*, or

(b) a State significant infrastructure approval under Part 5.1 of that Act, or

(c) the approval of an activity by a determining authority referred to in Part 5 of that Act, or

(d) a planning agreement under section 93F of that Act,

including any contribution for the conservation or enhancement of the natural environment by a monetary contribution or levy or by the dedication of land or other material benefit.



## **Division 5 Preparation of species impact statements**

### **7.20 Form and content of species impact statement**

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

### **7.21 Environment Agency Head's requirements for species impact statements**

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

development assessment report submitted with the species impact statement, or

- (c) dispense with the requirement for a species impact statement in a particular case if the Agency Head is satisfied that the impact of the action concerned will be trivial or negligible.

## **Part 8 Biodiversity certification of land**

### **Division 1 Preliminary**

#### **8.1 Definitions: Part 8**

In this Part:

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

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

**biodiversity certification assessment report** means a biodiversity certification assessment report prepared by an accredited person, but does not include a report that is no longer eligible to be submitted because of section 6.15 (Currency of biodiversity assessment report) or that is withdrawn under section 6.14.

**equivalent conservation measures**—see section 8.14.

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

**planning authority** means:

- (a) the Minister for Planning, or
- (b) the Greater Sydney Commission, or
- (c) a local council, or
- (d) a determining authority (within the meaning of Part 5 of the *Environmental Planning and Assessment Act 1979*), or
- (e) the Secretary of the Department of Planning and Environment, or
- (f) Local Land Services constituted under the *Local Land Services Act 2013*, or
- (g) any other person or body declared by the regulations to be a planning authority for the purposes of this definition.

## Division 2 Conferral of biodiversity certification of land

### 8.2 Biodiversity certification

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

### 8.3 Approved conservation measures under biodiversity certification

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

**Note—**

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

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

### 8.4 Effect of biodiversity certification

- (1) **State significant infrastructure under Part 5.1 of the Planning Act** The environmental

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

- (2) **Development (including State significant development) under Part 4 of the Planning Act**  
An assessment of the likely impact on biodiversity of development on biodiversity certified land is not required for the purposes of Part 4 of the *Environmental Planning and Assessment Act 1979*.
- (3) A consent authority, when determining a development application in relation to development on biodiversity certified land under Part 4 of the *Environmental Planning and Assessment Act 1979*, is not required to take into consideration the likely impact on biodiversity of the development carried out on that land.
- (4) **Activities under Part 5 of the Planning Act** An activity to which Part 5 of the *Environmental Planning and Assessment Act 1979* applies which is carried out or proposed to be carried out on biodiversity certified land is taken, for the purposes of Part 5 of that Act, to be an activity that is not likely to significantly affect any threatened species or ecological community under this Act, or its habitat, in relation to that land.
- (5) A determining authority under Part 5 of the *Environmental Planning and Assessment Act 1979* is not required under that Part to consider the effect on biodiversity of an activity to the extent that it is carried out on biodiversity certified land.
- (6) **This section prevails** This section has effect despite anything to the contrary in the *Environmental Planning and Assessment Act 1979* or Part 7 of this Act.

**Note—**

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

## **8.5 Application for biodiversity certification**

- (1) An application for biodiversity certification may be made to the Minister:
  - (a) by any planning authority, or
  - (b) by all the owners of the land proposed for biodiversity certification (or by any other person with the approval in writing of all those owners).

An application may also be made jointly by 2 or more planning authorities, owners or approved persons.

- (2) If an application for biodiversity certification is made or proposed to be made by a planning authority, the Minister may declare that it is a strategic application for

biodiversity certification:

- (a) on the Minister's own initiative, or
- (b) at the request of the Minister administering the *Environmental Planning and Assessment Act 1979*, or
- (c) at the request of the applicant or proposed applicant.

The Minister is to take into account the criteria prescribed by the regulations when making such a declaration.

**Note—**

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

(3) An application for biodiversity certification:

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

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

- (4) The application for biodiversity certification is to be accompanied by a biodiversity certification assessment report.
- (5) The Minister may decline to deal with an application for biodiversity certification or to confer biodiversity certification:
  - (a) if the application for certification has not been duly made, or
  - (b) if the Minister considers that insufficient information has been provided to enable the conferral of biodiversity certification, or
  - (c) for any other reason the Minister considers sufficient.
- (6) A planning authority may enter into an agreement with any person in connection with an application for biodiversity certification, including for the payment of any costs and expenses incurred by the authority in undertaking studies and other matters required

in relation to the application. Those costs and expenses may also be payable:

- (a) under a planning agreement referred to in section 93F of the *Environmental Planning and Assessment Act 1979*, or
- (b) under a special infrastructure condition under section 94EF of that Act for the provision of infrastructure.

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

- (1) An applicant for biodiversity certification who is not a planning authority (or who is Local Land Services) is to consult the local council of the area to which the application relates before undertaking public consultation on the application.
- (2) The Minister is to consult the Minister for Planning before determining an application for biodiversity certification.
- (3) The Minister is not to confer biodiversity certification unless:
  - (a) the applicant for biodiversity certification publishes notice of the application in a newspaper circulating generally throughout the State and on a website approved by the Minister (and specifies in the notice where the application will be exhibited), and
  - (b) the notice invites the public to make submissions relating to the application before a closing date for submissions specified in the notice (being a date that is not less than 30 days after the date the notice is first published in a newspaper under this section), and
  - (c) the applicant causes copies of the application to be exhibited on its website and such other places that the Minister requires (until the closing date for submissions), and
  - (d) the applicant provides a report to the Minister that indicates the applicant's response to any submissions relating to the application that were received by the applicant before the closing date.
- (4) An applicant may vary its application for biodiversity certification as a consequence of any submission received following public notification of the application or for any other reason.
- (5) Further public notification of the application, as varied, is not required unless the Minister otherwise directs.
- (6) Public notification under this section may be undertaken in conjunction with community consultation on a planning proposal under Part 3 of the *Environmental Planning and Assessment Act 1979*.

### **8.7 Minister may confer biodiversity certification**

- (1) The Minister may confer biodiversity certification only if the Minister is satisfied that (having regard to the biodiversity certification assessment report) the approved conservation measures under the biodiversity certification adequately address the likely impacts on biodiversity values of the biodiversity certification of the land.
- (2) For the purposes of determining the approved conservation measures (including the number of credits that may be required to be retired), the Minister is to have regard to the biodiversity certification assessment report but is not bound by that report.
- (3) This section applies to the extension or modification of biodiversity certification under this Part in the same way as it applies to the conferral of biodiversity certification.

### **8.8 Biodiversity certification where serious and irreversible impacts**

- (1) In this section, ***serious and irreversible impacts on biodiversity values*** means serious and irreversible impacts on biodiversity values as determined under section 6.5.
- (2) If the Minister is of the opinion that the clearing of native vegetation and loss of habitat on land proposed for biodiversity certification is likely to have serious and irreversible impacts on biodiversity values, the Minister:
  - (a) is required to take those impacts into consideration in determining the application for biodiversity certification, and
  - (b) is required to determine whether there are any additional and appropriate measures that will minimise those impacts.
- (3) This section applies to the extension or modification of biodiversity certification under this Part in the same way as it applies to the conferral of biodiversity certification.

### **8.9 Parties to biodiversity certification**

- (1) The Minister may, in an order conferring biodiversity certification, identify the party or parties to the biodiversity certification.
- (2) The following persons or body may be identified as parties to a biodiversity certification:
  - (a) an applicant for the biodiversity certification,
  - (b) any person or body proposed by the applicant as a party to the biodiversity certification who consents to being made a party to the biodiversity certification.
- (3) After biodiversity certification is conferred, the Minister may, by further order published in the Gazette, identify a person or body as a party to the biodiversity certification (in addition to, or in substitution for, any person or body previously

identified as a party), but only if the person or body to be identified as a party consents to being made a party to the biodiversity certification.

- (4) Subject to the regulations, this section applies to an order extending or modifying biodiversity certification in the same way as it applies to an order conferring biodiversity certification.
- (5) Consent to being made a party to a biodiversity certification cannot be withdrawn by a person or body after the person or body has been made a party to the biodiversity certification.

### **Division 3 Duration, extension and review of biodiversity certification**

#### **8.10 Duration of biodiversity certification**

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

#### **8.11 Extension of biodiversity certification**

- (1) The Minister may, by order published in the Gazette at any time before it expires, extend the period for which any biodiversity certification remains in force.
- (2) A biodiversity certification may be extended in conjunction with a modification of the certification in accordance with this Part.
- (3) An assessment for the purposes of extending a biodiversity certification may take account of the impact of conservation measures that have already been implemented in connection with the biodiversity certification.

#### **8.12 Review of biodiversity certification**

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

### **Division 4 Enforcement of approved conservation and other measures**

#### **8.13 Compliance with approved conservation and other 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 conservation or other 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 a 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.

#### **8.14 Equivalent conservation measures**

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

#### **8.15 Appeals**

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

## Division 5 Biodiversity certification agreements

### 8.16 Biodiversity certification agreements

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

### 8.17 Registered agreements run with land

- (1) A biodiversity certification agreement that is registered by the Registrar-General

under this section is binding on, and is enforceable against, the owner of the land from time to time as if each owner for the time being had entered into the agreement.

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

#### **8.18 Minister may order party to rectify contravention of agreement**

- (1) The Minister 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.

### **8.19 Court cannot extinguish obligations**

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

### **8.20 Regulations—biodiversity certification agreements**

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

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

## **Division 6 Suspension, revocation and modification of certification**

### **8.21 Suspension and revocation of certification**

- (1) The Minister may, by order published in the Gazette, suspend or revoke any biodiversity certification.
- (2) Biodiversity certification may be suspended or revoked:
  - (a) if the approved conservation or other 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) in any other circumstances prescribed by the regulations.
- (3) The regulations may make further provision for or with respect to the suspension or revocation of biodiversity certification.

### **8.22 Modification of certification**

- (1) The Minister may, by order published in the Gazette, modify any biodiversity certification by:
  - (a) modifying the description of land that is biodiversity certified (to extend or limit biodiversity certification), or

(b) modifying the approved conservation or other measures under the biodiversity certification.

(2) Biodiversity certification may be modified:

(a) on application (in the form approved by the Minister) by a party to the biodiversity certification or a party to a biodiversity certification agreement entered into in connection with the biodiversity certification, or

(b) on the Minister's own initiative (following at least 28 days notice to the parties to the biodiversity certification of the proposed modifications).

(3) Despite section 8.7, a biodiversity certification assessment report is not required in respect of a proposed modification that substitutes equivalent conservation measures for any of the approved conservation measures under a biodiversity certification. Unless a biodiversity certification assessment report is not required, an application for the modification of a biodiversity certification is to be accompanied by a revised biodiversity certification assessment report prepared by an accredited person.

**Note—**

Section 8.7 requires a biodiversity certification assessment report for any proposed modification.

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

(a) if the approved conservation or other measures under the biodiversity certification have not been complied with to the satisfaction of the Minister, or

(b) if the Minister is of the opinion that a party to the biodiversity certification has failed to comply with an order made by the Minister in respect of the party under section 8.18 (Minister may order party to rectify contravention of agreement), or

(c) if the Minister is of the opinion that any agreement entered into in connection with the biodiversity certification has been contravened, or

(d) in any other circumstances prescribed by the regulations.

### **8.23 Appeals**

(1) A party to a biodiversity certification, or a party to a biodiversity certification agreement entered into in connection with a biodiversity certification, who is dissatisfied with a decision of the Minister to suspend, revoke or modify the biodiversity certification may appeal to the Land and Environment Court against the decision.

(2) An appeal may be made no later than 3 months after the order suspending, revoking or modifying biodiversity certification is published in the Gazette.

(3) This section does not confer a right of appeal on a party to a biodiversity certification, or a party to a biodiversity certification agreement, if the party is a Minister or a public

authority (other than a State owned corporation).

## **Division 7 General provisions relating to certification**

### **8.24 Notification of certification and changes to certification**

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

### **8.25 Intra-government dispute resolution arrangements**

- (1) This section applies to the following disputes:
  - (a) a dispute between a party to a biodiversity certification, or a party to a biodiversity certification agreement, and the Minister in connection with a decision of the Minister to suspend, revoke or modify the biodiversity certification,
  - (b) a dispute between a public authority that is a party to a biodiversity certification and the Minister in connection with a failure by the public authority to comply with any of the approved conservation or other measures under the biodiversity certification or to implement equivalent conservation measures,
  - (c) a dispute between a public authority that is a party to a biodiversity certification and the Minister in connection with a decision of the Minister to require the public authority to pay a penalty under this Part.
- (2) A dispute to which this section applies may be referred to the Premier.
- (3) The Premier may, for the purpose of resolving a dispute referred to the Premier under this section:
  - (a) appoint a person or panel to hold an inquiry and make a report to the Premier, or
  - (b) hold an inquiry into the dispute.

- (4) After the completion of the inquiry, and after considering any report, the Premier may make such order with respect to the dispute, having regard to the public interest and to the circumstances of the case, as the Premier thinks fit.
- (5) An order made by the Premier may direct the payment of any costs or expenses of or incidental to the holding of the inquiry.
- (6) A public authority is to comply with an order given under this section and is, despite the provisions of any Act, taken to have power to comply with any such order.
- (7) If a matter that is referred to the Premier under this section is also the subject of proceedings before the Land and Environment Court:
  - (a) the Premier may suspend or terminate action under this section pending a decision of the Land and Environment Court, and
  - (b) a decision of the Land and Environment Court prevails.
- (8) In this section:

**public authority** includes a Minister but does not include a State owned corporation.

#### **8.26 General provisions relating to biodiversity certification**

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

- (6) The regulations may make further provision for or with respect to biodiversity certification, including with respect to the following:
- (a) the payment of fees in connection with the operation of this Part,
  - (b) the extension of biodiversity certification,
  - (c) the modification of biodiversity certification and applications for any such modification,
  - (d) consultation by an applicant for biodiversity certification who is not a planning authority with the relevant planning authority.

## **Part 9 Public consultation and public registers**

### **Division 1 Public consultation**

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

- (1) This Division applies to the following (a **public consultation document**):
- (a) a proposed declaration of an area as an area of outstanding biodiversity value,
  - (b) a proposed code of practice that is to be made by the Minister under section 2.9,
  - (c) a strategy included in the Biodiversity Conservation Program in relation to a threatened species or ecological community,
  - (d) the Biodiversity Conservation Investment Strategy,
  - (e) the biodiversity assessment method,
  - (f) the scheme for the accreditation of persons to prepare biodiversity assessment reports.
- (2) Public consultation in accordance with this Division is required before a public consultation document is made.
- (3) A reference in this Division to making a public consultation document includes a reference to issuing, adopting or publishing a public consultation document.

#### **9.2 Minimum public exhibition period for proposed public consultation documents**

- (1) Before a public consultation document is made, the proposed document is to be made publicly available for a period of at least 4 weeks.
- (2) The person making the public consultation document may extend the period of public consultation for the proposed document.



### **9.3 Submissions about proposed public consultation documents**

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

### **9.4 Amendment of public consultation documents**

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

### **9.5 Validity of public consultation documents**

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

### **9.6 Regulations relating to public consultation**

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

## **Division 2 Public registers**

### **9.7 Registers to which Division applies**

- (1) Public registers of the following are to be kept and made available in accordance with this Division:
  - (a) biodiversity conservation licences (including the conditions of those licences) and

- all decisions made to vary, suspend or cancel those licences,
- (b) declarations of areas of outstanding biodiversity value under Part 3 and any amendment or revocation of a declaration,
  - (c) private land conservation agreements under Part 5, including details of any variation or cancellation of any such agreement,
  - (d) biodiversity credits under Part 6, including documents creating the credits, the number and class (if any) of the credits, the name of the current and former holders of the credits and details relating to all transfers, suspensions, cancellations and retirement of the credits,
  - (e) the persons who are accredited persons under section 6.10,
  - (f) orders made under Part 8 conferring, extending, suspending, revoking or modifying biodiversity certification of land,
  - (g) interim protection orders in force under Division 3 of Part 11,
  - (h) remediation orders in force under Division 4 of Part 11,
  - (i) strategies included in the Biodiversity Conservation Program in relation to a threatened species or ecological community,
  - (j) any other register of information relating to the administration of this Act or biodiversity conservation that is prescribed by the regulations.
- (2) The Environment Agency Head is responsible for keeping and making available any such public register.
- (3) The Environment Agency Head may engage the Biodiversity Conservation Trust or other persons or bodies to keep (or to assist in keeping) any such public register on behalf of the Environment Agency Head.
- (4) Any such register may be kept only in electronic form.

### **9.8 Registers to be available on government website**

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

### **9.9 Providing other access to registers**

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

### **9.10 Restriction of access to certain information in registers**

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

### **9.11 Regulations relating to public registers**

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

## **Part 10 Biodiversity Conservation Trust**

### **Division 1 Establishment, functions and operation of Trust**

#### **10.1 Establishment of Trust**

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

#### **10.2 Status of Trust**

- (1) The Trust is a statutory body representing the Crown.
- (2) The Trust is subject to the control and direction of the Minister, except in relation to payments from the Biodiversity Conservation Trust Public Fund.
- (3) The Trust is to publish any directions given to the Trust by the Minister.

#### **10.3 Trust Board**

- (1) There is to be a Board of the Trust.

- (2) The Board of the Trust is to consist of not less than 5 members and not more than 11 members appointed by the Minister.
- (3) The affairs of the Trust are to be managed by the Board.
- (4) Any act, matter or thing done in the name of, or on behalf of, the Trust by the Board is taken to have been done by the Trust.
- (5) Schedule 8 contains provisions relating to the members and procedure of the Board.

#### **10.4 Object of Trust**

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

#### **Note—**

For donations to the Biodiversity Conservation Trust Public Fund maintained by the Trust to have tax deductible status under Subdivision 30-E of the *Income Tax Assessment Act 1997* of the Commonwealth, the Trust must have as its principal purpose the protection and enhancement of the natural environment or a significant aspect of the natural environment.

#### **10.5 Functions of Trust**

- (1) The Trust has the following functions:
  - (a) to negotiate, enter into and administer private land conservation agreements,

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

**Note—**

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

**10.6 Powers of Trust**

- (1) The Trust has power to do all things that are necessary or convenient to be done for or in connection with the exercise of its functions or that are supplemental or incidental to, or consequential on, the exercise of its functions.
- (2) Without limiting subsection (1), the Trust has power to do the following:
  - (a) to buy, sell, hold, mortgage, lease or otherwise deal with land,
  - (b) to acquire, transfer or retire biodiversity credits,
  - (c) to enter into private land conservation agreements as land owner,

- (d) by mutual agreement with the Crown, to surrender land vested in the Trust (whether on trust or otherwise) to the Crown to be used for a purpose specified by the Trust,
- (e) to buy or otherwise acquire, sell, hold, create security interests in and otherwise deal in access licences, holdings in access licences and water authorities under the *Water Management Act 2000*,
- (f) to borrow money, either with or without security,
- (g) to act as trustee of money or other property vested in the Trust,
- (h) to invest money in any fund managed or maintained by the Trust in the manner authorised by the *Public Authorities (Financial Arrangements) Act 1987* or (if that Act does not confer power on the Trust to invest money) to invest the money in the same way as trustees may invest trust funds or in any other way approved by the Treasurer,
- (i) to make and enter into contracts or other arrangements for the carrying out of works, the performance of services or the supply of goods or materials,
- (j) to appoint agents.

#### **10.7 Trust to conduct activities in accordance with approved business plan**

- (1) The Trust must conduct its activities, as far as is practicable, in accordance with a business plan approved and published under this section.
- (2) The Trust must, no later than 6 months after the commencement of this Act and at least every 4 years thereafter, prepare and submit to the Minister a draft business plan for the conduct of its activities.
- (3) The Minister may approve a draft business plan submitted by the Trust, with such modifications (if any) as the Minister considers appropriate.
- (4) A business plan approved by the Minister is to be published by the Trust.
- (5) The regulations may make provision with respect to the preparation, approval and publication of a business plan under this section.

#### **10.8 Acquisition of property by gift**

- (1) The Trust may acquire any property by gift (whether on trust or otherwise) for the purposes of this Act and may agree to, and carry out, the conditions of any such gift, but only if the carrying out of any such condition is not inconsistent with the functions of the Trust.
- (2) The rule of law against remoteness of vesting does not apply to any condition of a gift

to which the Trust has agreed under this section.

- (3) The *Duties Act 1997* does not apply to or in respect of any gift made or to be made to the Trust.
- (4) The Trust must not agree to any condition of a gift of money or property that is made to or to be held in the Biodiversity Conservation Trust Public Fund.

**Note—**

Gifts of money or property made to the Public Fund may be used only for the principal purpose of the Trust.

- (5) In this section, **gift** includes a devise or bequest.

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

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

### **10.10 Staff of Trust**

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

**Note—**

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

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

#### **10.11 Delegation by Biodiversity Conservation Trust**

The Trust may delegate any of the functions of the Trust (other than this power of delegation) to:

- (a) a member or committee of the Board of the Trust, or
- (b) any employee of the Trust, or
- (c) any person, or a person of a class, prescribed by the regulations.

#### **10.12 Annual reports of Trust**

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

#### **10.13 Exemption from certain State taxes**

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

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

#### **10.14 Recovery of money by Trust**

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

#### **10.15 Saving provision relating to existing Trust**

The Biodiversity Conservation Trust established under this Division is a continuation of, and the same legal entity as, the Nature Conservation Trust established under the *Nature Conservation Trust Act 2001* immediately before the repeal of that Act by this Act.

## **Division 2 Biodiversity Conservation Fund**

#### **10.16 Biodiversity Conservation Fund**

- (1) There is to be established by this Act in the Special Deposits Account the Biodiversity Conservation Fund.
- (2) The following amounts are to be paid into the Fund, subject to any requirements specified in the regulations:



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

#### **10.17 Management and control of Biodiversity Conservation Fund**

- (1) The Trust is to manage and control the Biodiversity Conservation Fund in accordance with this Act and the regulations.
- (2) The regulations may make further provision with respect to the Fund and its management and control.

### **Division 3 Biodiversity Conservation Trust Public Fund**

#### **10.18 Biodiversity Conservation Trust Public Fund**

- (1) The Trust is to establish and maintain a public fund for the principal purpose of the Trust.
- (2) The fund is to be called the Biodiversity Conservation Trust Public Fund.
- (3) The Public Fund is not-for-profit.
- (4) The following are to be held in the Public Fund:
  - (a) all gifts of money or property made for the principal purpose of the Trust that are

to be made to the Public Fund under section 30-130 of the *Income Tax Assessment Act 1997* of the Commonwealth,

(b) all contributions made in relation to a fundraising event held for the principal purpose of the Trust that are to be made to the Public Fund under section 30-130 of the *Income Tax Assessment Act 1997* of the Commonwealth,

(c) any money received by the Trust because of such gifts or contributions.

(5) No other money or property is to be held in the Public Fund.

(6) Money and property held in the Public Fund may be used by the Trust only for its principal purpose.

(7) Money held in the Public Fund is to be paid into an account kept, for the purposes of the Public Fund, with an authorised deposit-taking institution.

(8) The Trust must comply with any requirements made of it in connection with registration as an environmental organisation under Subdivision 30-E of the *Income Tax Assessment Act 1997* of the Commonwealth.

(9) In particular, the Trust must:

(a) comply with any rules made by the Treasurer and the Environment Minister under Subdivision 30-E of the *Income Tax Assessment Act 1997* of the Commonwealth to ensure that gifts or contributions made to the Public Fund are used only for its principal purpose, and

(b) provide to the Environment Secretary under Subdivision 30-E of the *Income Tax Assessment Act 1997* of the Commonwealth, within 4 months after the end of each financial year of the Trust, any statistical information about gifts or contributions made to the Public Fund during that financial year required for the purposes of compliance with that Act.

(10) The Trust must appoint a management committee to manage the Public Fund on its behalf.

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

(1) On the dissolution of the Trust, any outstanding property held in the Biodiversity Conservation Trust Public Fund after the Trust is dissolved is to be transferred to a tax exempt fund determined by the Minister that is maintained for a similar purpose to the principal purpose of the Trust.

(2) A **tax exempt fund** is a fund that is on the register of environmental organisations kept under Subdivision 30-E of the *Income Tax Assessment Act 1997* of the Commonwealth.

- (3) Preference is to be given to a tax exempt fund that is used for the protection of biodiversity in New South Wales.

## **Part 11 Regulatory compliance mechanisms**

### **Division 1 Preliminary**

#### **11.1 Definitions: Part 11**

In this Part:

***animal protection direction*** means a direction under Division 6.

***biodiversity offsets enforcement order*** means an order under Division 5.

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

***remediation order*** means an order under Division 4.

***stop work order*** means an order under Division 2.

#### **11.2 Purposes for which powers may be exercised under this Part**

- (1) The powers under this Part may be exercised for the purposes of this Act or Part 5A of the [Local Land Services Act 2013](#).
- (2) This Part does not affect the exercise of powers under the [Local Land Services Act 2013](#), the [Environmental Planning and Assessment Act 1979](#) or any other Act in relation to purposes for which powers may be exercised under this Part.

### **Division 2 Stop work orders**

#### **11.3 Environment Agency Head may make stop work order**

- (1) If the Environment Agency Head is of the opinion that any action is being, or is about to be, carried out (or that any action that should be carried out is not being carried out) in any area of land that is likely to result in a contravention of this Act or Part 5A of the [Local Land Services Act 2013](#), the Environment Agency Head may order:
  - (a) that the action cease and not be carried out within the period of 40 days (or a lesser specified period) after the order is made, or
  - (b) in the case of action that is not being carried out—that the action be carried out within the period specified in the order.
- (2) For the purposes of this section, an act is likely to result in such a contravention if the Environment Agency Head has reasonable cause to suspect that it is likely to do so. The Environment Agency Head is not required to establish that any defence to a prosecution for the contravention is not available.

- (3) The Environment Agency Head is not required, before making a stop work order, to notify any person who may be affected by the order.

#### **11.4 Taking effect and extension of stop work order**

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

#### **11.5 Offence—contravention of stop work order**

A person must not contravene a stop work order.

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

#### **11.6 Appeal against stop work order**

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

#### **11.7 Consultation about modification or licensing of proposed detrimental action**

- (1) After making a stop work order, the Environment Agency Head must immediately consult with the person taking or proposing to take the relevant action to determine whether any modification of the action may be sufficient to prevent the contravention of this Act or Part 5A of the [Local Land Services Act 2013](#).

- (2) The Environment Agency Head may, for that purpose, request the person to provide information to determine whether any modification of the action would be sufficient or whether a biodiversity conservation licence or other authority should be issued.

### **Division 3 Interim protection orders**

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

- (1) The Environment Agency Head may recommend to the Minister the making of an interim protection order in respect of an area of land:
  - (a) that has, in the Agency Head's opinion, natural or scientific significance, or
  - (b) on which the Agency Head intends to exercise any of the Agency Head's functions under this Act in relation to threatened species or ecological communities or to protected animals or protected plants, or
  - (c) that is a declared area of outstanding biodiversity value or the habitat of a threatened species or ecological community.
- (2) This subsection applies where the Environment Agency Head has made a stop work order in relation to a contravention of this Act or Part 5A of the [Local Land Services Act 2013](#). The Environment Agency Head is to recommend to the Minister the making of an interim protection order if, after consulting the person taking or proposing to take the relevant action, the Environment Agency Head is of the opinion that satisfactory arrangements cannot be made to prevent the contravention concerned and that it is appropriate to make an interim protection order in the circumstances.

#### **11.9 Making of interim protection orders**

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

#### **11.10 Taking effect and duration of interim protection order**

- (1) An interim protection order takes effect on the date of its publication in the Gazette or on a later date specified in the order.
- (2) An interim protection order has effect for such period (not exceeding 2 years)

specified in the order.

- (3) An interim protection order ceases to have effect if the order is revoked by the Minister by notice published in the Gazette.
- (4) An interim protection order also ceases to have effect if the land subject to the order is reserved under the *National Parks and Wildlife Act 1974*.

#### **11.11 Notice of making of interim protection order**

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

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

#### **11.12 Offence—contravention of interim protection order**

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

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

#### **11.13 Appeal against interim protection order**

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

## **Division 4 Remediation orders**

### **11.14 Definition of “damage”**

In this Division:

**damage:**

- (a) in relation to a plant—includes picking the plant, and
- (b) in relation to an animal—includes harming the animal, and
- (c) in relation to native vegetation—includes clearing the native vegetation.

### **11.15 Orders for remediation work relating to damage to land, habitat and plants and animals**

- (1) The Environment Agency Head may order a person to carry out specified remediation work in a specified manner and within a specified time, if the Environment Agency Head is satisfied that any of the following has been damaged in or as a result of the commission of an offence against this Act or the regulations or the commission of a native vegetation offence (whether or not any person has been proceeded against or convicted for the offence):
  - (a) any declared area of outstanding biodiversity value,
  - (b) any habitat of a threatened species or threatened ecological community,
  - (c) any plant or animal that is of, or is part of, a threatened species or threatened ecological community,
  - (d) any native vegetation on category 2-regulated land under Part 5A of the [Local Land Services Act 2013](#).
- (2) A remediation order may, as an alternative to requiring a person to carry out specified remediation work in a specified manner, require the person to carry out work that will achieve a specified remediation outcome.
- (3) A remediation order is to be served in writing on the person to whom it is given.
- (4) A remediation order may be varied or revoked in the same manner in which a remediation order may be given.

### **11.16 Remediation work required by order**

- (1) The specified remediation work to be carried out by a person to whom a remediation order is given may include one or more of the following types of work:
  - (a) work to control, abate or mitigate the damage to the area, habitat, plant, animal or vegetation concerned,

(b) work to maintain, remediate or restore the damaged area, habitat, plant, animal or vegetation concerned (including replacing removed or dead plants or animals).

(2) A remediation order may also require the person to carry out the following actions (and any such action that is required to be carried out is to be regarded for the purposes of this Division as part of the remediation work required by the order):

- (a) ascertaining the nature and extent of the damage concerned and furnishing the information or records obtained to other persons (including to the Environment Agency Head),
- (b) preparing, furnishing and carrying out a plan of action,
- (c) engaging a suitably qualified person to plan, design or carry out the work required by the order,
- (d) furnishing progress reports,
- (e) monitoring, sampling and analysing anything to ascertain the nature and extent of the damage concerned or the progress in remediating the damage,
- (f) vacating the land concerned (or part of it) or ceasing to carry on, modifying or not commencing an activity on, or use of, the land (or part of it),
- (g) carrying on an activity (or an aspect of it) only during particular times or in a particular manner,
- (h) construction, installation or removal of anything (including plants and structures such as fencing, walls, bunds or other barriers),
- (i) erecting or displaying on the land concerned any sign or notice containing directions to persons not to enter the land or not to use the land in a specified manner or for a specified purpose or containing other directions of that kind or any other kind,
- (j) refraining from disturbance or further disturbance of the land concerned in a specified manner or below a specified depth,
- (k) informing the Environment Agency Head of any change in the ownership or occupancy of the land concerned, to the extent that the person subject to the requirement is aware of the change.

#### **11.17 Persons to whom remediation orders may be given**

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

- (a) the current or former landholder of any land on which the damage concerned occurred,



- (b) any other person the Environment Agency Head reasonably believes is responsible for the damage concerned.

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

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

**11.19 Development consent not required to carry out remediation work**

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

**11.20 Entry to land to carry out remediation work**

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

**11.21 Recovery by person given remediation order**

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

**11.22 Offence of contravening remediation order or obstructing remediation work**

- (1) A person must not, without reasonable excuse, contravene a remediation order to which the person is subject.

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

- (2) An example of a reasonable excuse is that the person was unable to enter the land because of the refusal of access to the land by its occupier, but entry to that land was essential for the person to avoid committing the offence.

- (3) A person must not intentionally obstruct anyone who is carrying out remediation work under a remediation order.

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

### **11.23 Appeals under this Division**

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

## **Division 5 Biodiversity offsets enforcement order**

### **11.24 Definitions**

In this Division, words and expressions have the same meanings as in Part 6.

### **11.25 Order requiring biodiversity stewardship 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 Division only if:
  - (a) the person is the owner of a biodiversity stewardship 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, or is not being, carried out in accordance with the relevant biodiversity stewardship agreement.
- (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 not being carried out in accordance with the biodiversity stewardship agreement and which have been transferred or retired.

**Note—**

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

- (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 the Minister intends to make the direction, and
  - (b) specifies in that notice the reasons for the Minister's intention to do so, and
  - (c) gives the person a reasonable opportunity to make submissions in relation to the

proposed direction, and

(d) takes into consideration any such submissions by the person.

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

#### **11.26 Order requiring owner to rectify breach of biodiversity stewardship agreement**

(1) The Minister may, by order in writing to a person, direct a person who is the owner of a biodiversity stewardship site to carry out at the person's cost, within a period specified in the order, such work or other actions as the Minister considers necessary to rectify any breach of a biodiversity stewardship agreement.

(2) If the requirements of the order are not complied with within the period specified in it, the Minister:

(a) may enter the land and cause the work or actions specified in the order to be carried out, and

(b) may, by proceedings brought in any court of competent jurisdiction, recover as a debt from the person to whom the order was given the reasonable cost of complying with those requirements.

(3) A direction may be given to a person under this section only if before doing so the Minister:

(a) gives notice to the person that the Minister intends to make the direction, and

(b) specifies in that notice the reasons for the Minister's intention to do so, and

(c) gives the person a reasonable opportunity to make submissions in relation to the proposed direction, and

(d) takes into consideration any such submissions by the person.

(4) This section does not prevent the Minister from seeking an award of damages against the owner of a biodiversity stewardship site for a breach of a biodiversity stewardship agreement.

#### **11.27 Offence—contravention of biodiversity offsets enforcement order**

(1) A person who is given a biodiversity offsets enforcement order must not contravene the order.

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

**Note—**

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

- (2) It is not an excuse for a failure to comply with a biodiversity offsets enforcement order that the person who is the subject of the order does not, at the time the order is made, hold a sufficient number of biodiversity credits to comply with the order.

**Note—**

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

- (3) A court that finds a person guilty of an offence under this section may, in addition to or in substitution for any monetary penalty for the offence, by order direct the person to retire, in accordance with this Part, biodiversity credits of a specified number and class (if applicable) within a time specified in the order.

### **11.28 Appeals under this Division**

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

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

### **11.29 Definition of “protected animals”**

In this Division:

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

### **11.30 Authorised officer who may give directions**

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

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

### **11.31 Directions to stop activity distressing protected animals**

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

### **11.32 Directions for welfare of protected animals in confinement**

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

### **11.33 Taking effect and duration of animal protection direction**

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

### **11.34 Appeals to Minister against animal protection direction**

- (1) A person who is given an animal protection direction by an authorised officer other than the Minister may appeal to the Minister against the giving of the direction within 14 days after the direction is given.
- (2) The lodging of an appeal does not, except to the extent that the Minister otherwise directs in relation to the appeal, operate to stay action on the direction appealed against.
- (3) After hearing an appeal, the Minister may:
  - (a) confirm the direction, or

- (b) modify or revoke the direction.

### **11.35 Directions by Minister**

The Minister is not to give an animal protection direction unless a direction in similar terms has been given to the person by an authorised officer other than the Minister.

### **11.36 Offence—contravention of animal protection direction**

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

Maximum penalty (includes additional daily penalty):

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

## **Part 12 Investigation powers**

### **Division 1 Preliminary**

#### **12.1 Definitions: Part 12**

In this Part:

**authorised officer** means a person appointed under Division 2.

**motor vehicle** has the same meaning as in the [Road Transport Act 2013](#).

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

**premises** includes:

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

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

**specify** an act, matter or thing, includes:

- (a) describe the act, matter or thing, and

(b) specify a class of acts, matters or things.

**vessel** means any kind of vessel used in navigation.

## **12.2 Purposes for which powers under this Part may be exercised**

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

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

(2) Powers may also be exercised under this Part for the following purposes:

- (a) for determining whether there has been compliance with or a contravention of Part 5A of the [Local Land Services Act 2013](#), the regulations under that Part, land management (native vegetation) codes, certificates, approvals or other instruments or requirements issued or made under that Part,
- (b) for obtaining information or records for purposes connected with the enforcement of that Part,
- (c) generally for the enforcement of that Part.

## **12.3 Effect on other functions**

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

## **Division 2 Authorised officers**

### **12.4 Appointment of authorised officers**

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

### **12.5 Scope of authority**

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

### **12.6 Identification**

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

## **Division 3 Powers to require information and records**

### **12.7 Application of Part**

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

### **12.8 Requirement to provide information and records**

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

### **12.9 Manner, time etc for compliance**

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

### **12.10 Provisions relating to records**

- (1) A notice under this Part may only require a person to furnish existing records that are in the person's possession or that are within the person's power to obtain lawfully.
- (2) The body or person to whom any record is furnished under this Part may take copies of it.



- (3) If any record required to be furnished under this Part is in electronic, mechanical or other form, the notice requires the record to be furnished in written form, unless the notice otherwise provides.

## **Division 4 Powers of entry and search of premises**

### **12.11 Powers of authorised officers to enter premises**

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

### **12.12 Entry into residential premises only with permission or warrant**

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

### **12.13 Powers of authorised officers to do things at premises**

- (1) An authorised officer may, at any premises lawfully entered, do anything that in the opinion of the authorised officer is necessary to be done for the purposes of this Part, including (but not limited to) the things specified in subsection (2).
- (2) An authorised officer may do any or all of the following:
  - (a) examine and inspect any animal, plant, works, vehicle, aircraft or other article,
  - (b) take and remove samples,
  - (c) make such examinations, inquiries and tests as the authorised officer considers necessary,
  - (d) take such photographs, films, audio, video and other recordings as the authorised officer considers necessary,
  - (e) require records to be produced for inspection,
  - (f) examine and inspect any records,
  - (g) copy any records,

- (h) seize anything that the authorised officer has reasonable grounds for believing is connected with an offence against this Act or the regulations or with a native vegetation offence,
  - (i) for the purposes of any such seizure—direct a person who has the power to deliver up the thing to deliver up the thing,
  - (j) for the purposes of any such seizure—direct the occupier of the premises where the thing is seized to retain it at those premises or at another place under the control of the occupier,
  - (k) do any other thing the authorised officer is empowered to do under this Part.
- (3) The power to seize anything connected with an offence includes a power to seize:
- (a) a thing with respect to which the offence has been committed, and
  - (b) a thing that will afford evidence of the commission of the offence, and
  - (c) a thing that was used for the purpose of committing the offence.

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

#### **12.14 Search warrants**

- (1) **Application for search warrant** An authorised officer under this Part may apply to an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002* for the issue of a search warrant if the authorised officer under this Part believes on reasonable grounds that:
- (a) a provision of this Act or the regulations (or of Part 5A of the *Local Land Services Act 2013* or the regulations under that Part) is being or has been contravened at any premises, or
  - (b) there is in or on any premises matter or a thing that is connected with an offence under this Act or the regulations or with a native vegetation offence.
- (2) **Issue of search warrant** An authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002* to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised officer under this Part named in the warrant:
- (a) to enter the premises, and
  - (b) to exercise any function of an authorised officer under this Part.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.

(4) **Definitions** In this section:

***matter or a thing*** connected with an offence means:

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

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

#### **12.15 Authorised officers may request assistance**

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

#### **12.16 Assistance to be given to authorised officers**

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

#### **12.17 Care to be taken and compensation**

- (1) In the exercise of a power of entering or searching premises under this Part, the authorised officer must do as little damage as possible.
- (2) The Environment Agency Head must compensate all interested parties for any damage caused by an authorised officer in exercising a power of entering premises (but not any damage caused by the exercise of any other power), unless the occupier obstructed or hindered the authorised officer in the exercise of the power of entry.

#### **12.18 Disposal of things seized**

The regulations may make provision with respect to the disposal or return of things seized under this Part.

## **Division 5 Powers to question and to identify persons**

### **12.19 Power of authorised officers to require answers**

- (1) An authorised officer may require a person whom the authorised officer suspects on reasonable grounds to have knowledge of matters in respect of which information is reasonably required for the purposes of this Act (or of Part 5A of the *Local Land Services Act 2013*) to answer questions in relation to those matters.
- (2) The Environment Agency Head may, by notice in writing, require a corporation to nominate, in writing within the time specified in the notice, a director or officer of the corporation to be the corporation's representative for the purpose of answering questions under this section.
- (3) Answers given by a person so nominated bind the corporation.
- (4) An authorised officer may, by notice in writing, require a person to attend at a specified place and time to answer questions under this section if attendance at that place is reasonably required in order that the questions can be properly put and answered.
- (5) The place and time at which a person may be required to so attend is to be:
  - (a) a place or time nominated by the person, or
  - (b) if the place and time nominated is not reasonable in the circumstances or a place and time is not nominated by the person—a place and time nominated by the authorised officer that is reasonable in the circumstances.

### **12.20 Recording of evidence**

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

### **12.21 Power of authorised officers to demand name and address**

- (1) **Name and address to be given if offence suspected** An authorised officer may require a person whom the authorised officer suspects on reasonable grounds to have committed an offence against this Act or the regulations or a native vegetation

offence to state his or her full name and residential address.

- (2) **Proof of name and address** An authorised officer may request a person who is required under this section to state his or her full name and residential address to provide proof of the name and address. It is not an offence to fail to comply with any such request.
- (3) **Power of arrest** A person who, being required to do so under this section:
- (a) refuses to state his or her name or residential address, or
  - (b) states a name or residential address that in the opinion of the authorised officer is false,
- may without any other warrant than this Act be apprehended by the authorised officer and taken before a Magistrate or court officer to be dealt with according to law.
- (4) **Bail** A Magistrate or court officer before whom a person is so taken may make a bail decision under the [Bail Act 2013](#) in respect of the person.
- (5) If the person has not been charged with an offence, the [Bail Act 2013](#) applies as if the person were accused of an offence.
- (6) For the purpose of applying the [Bail Act 2013](#), a court officer has the same functions as an authorised justice under that Act.
- (7) In this section:

**court officer** means an authorised officer under the [Criminal Procedure Act 1986](#).

## Division 6 General

### 12.22 Offences

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

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

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

Maximum penalty: Tier 4 monetary penalty.

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

Maximum penalty: Tier 1 monetary penalty.

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

Maximum penalty: Tier 1 monetary penalty.

- (5) A person who assaults, threatens or abuses an authorised officer in the exercise of the authorised officer's powers under this Part is guilty of an offence.

Maximum penalty: Tier 1 monetary penalty.

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

Maximum penalty: Tier 2 monetary penalty.

### **12.23 Provisions relating to requirements to furnish records or information or answer questions**

- (1) **Warning to be given on each occasion** A person is not guilty of an offence of failing to comply with a requirement under this Part to furnish records or information or to answer a question unless the person was warned on that occasion that a failure to comply is an offence.
- (2) **Self-incrimination not an excuse** A person is not excused from a requirement under this Part to furnish records or information or to answer a question on the ground that the record, information or answer might incriminate the person or make the person liable to a penalty.
- (3) **Information or answer not admissible if objection made** However, any information furnished or answer given by a natural person in compliance with a requirement under this Part is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under this Part) if:
- (a) the person objected at the time to doing so on the ground that it might incriminate the person, or
  - (b) the person was not warned on that occasion that the person may object to furnishing the information or giving the answer on the ground that it might incriminate the person.
- (4) **Records admissible** Any record furnished by a person in compliance with a requirement under this Part is not inadmissible in evidence against the person in criminal proceedings on the ground that the record might incriminate the person.
- (5) **Further information** Further information obtained as a result of a record or information furnished or of an answer given in compliance with a requirement under this Part is not inadmissible on the ground:
- (a) that the record or information had to be furnished or the answer had to be given, or

(b) that the record or information furnished or answer given might incriminate the person.

(6) **Requirement to state name and address** This section extends to a requirement under this Part to state a person's name and address.

#### **12.24 Revocation or variation**

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

#### **12.25 Extraterritorial application**

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

#### **12.26 Extraterritorial exercise of functions**

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

### **Division 7 Special provisions relating to native vegetation clearing enforcement**

#### **12.27 Application of Division**

This Division applies to the exercise of powers under this Part only for the purposes referred to in section 12.2 (2).

### **12.28 Entry into premises requires approval of Environment Agency Head**

- (1) An authorised officer is not to enter premises pursuant to a power conferred by this Part unless the Environment Agency Head has approved of that entry.
- (2) This section does not apply to any entry to any premises with the authority of a search warrant under this Part.

### **12.29 Notice to attend to answer questions requires approval of Environment Agency Head**

An authorised officer is not authorised to require a person to attend at a specified place and time to answer questions under this Part unless the Environment Agency Head has approved of that requirement.

### **12.30 Authorised officers cannot arrest person for failing to give name and address**

An authorised officer may not arrest a person under this Part in relation to a requirement for the person to state their name and address in connection with an alleged native vegetation offence.

### **12.31 Incriminating information or answer not admissible whether or not objection made**

Any information furnished or answer given by a natural person in compliance with a requirement under this Part is not admissible in evidence against the person in proceedings for a native vegetation offence if the information or answer might incriminate the person (whether or not the person objected at the time to giving the information or answer on the ground it might incriminate the person).

## **Part 13 Criminal and civil proceedings**

### **Division 1 Criminal proceedings**

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

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

**Note—**

Section 14.10 provides that the regulations may create offences and impose a monetary penalty for an offence against the regulations not exceeding \$5,500.

- (2) The maximum monetary penalty for **Tier 1** is:
  - (a) in the case of a corporation:



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

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

### 13.2 Proceedings for offences

- (1) Proceedings for an offence against this Act or the regulations, or for a native vegetation offence, may be dealt with summarily before the Local Court or before the Land and Environment Court in its summary jurisdiction.

- (2) If proceedings for an offence are brought in the Local Court, the maximum monetary penalty that the Local Court may impose for the offence is, despite any other provision of this Act, \$110,000 (including within that maximum amount any additional daily penalty or any additional penalty for each animal or plant affected by the offence) or the maximum monetary penalty provided for the offence, whichever is the lesser.

### **13.3 Authority to take proceedings**

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

### **13.4 Time within which proceedings may be commenced**

- (1) Proceedings for an offence against this Act or the regulations, or for a native vegetation offence, may be commenced not later than 2 years after the date on which the offence is alleged to have been committed.
- (2) Proceedings for an offence against this Act or the regulations, or for a native vegetation offence, may also be commenced within, but not later than, 2 years after the date on which evidence of the alleged offence first came to the attention of any relevant investigation officer.
- (3) If subsection (2) is relied on for the purpose of commencing proceedings for an offence, the court attendance notice or application must contain particulars of the date on which evidence of the offence first came to the attention of any relevant investigation officer and need not contain particulars of the date on which the offence was committed. The date on which evidence first came to the attention of any relevant investigation officer is the date specified in the court attendance notice or application, unless the contrary is established.
- (4) This section applies despite anything in the *Criminal Procedure Act 1986* or any other Act.
- (5) In this section:

**evidence** of an offence means evidence of any act or omission constituting the offence.

**investigation officer** means an authorised officer within the meaning of Part 12, whether or not the person has the functions of an investigation officer in connection with the offence concerned.

**relevant investigation officer** means:

- (a) in relation to proceedings for an offence instituted by or with the authority of the Environment Agency Head—any investigation officer who is an employee of the Office of Environment and Heritage, or
- (b) in relation to proceedings for an offence instituted by any other person—any investigation officer.

### 13.5 Penalty notices for certain offences

- (1) An authorised officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations, or a native vegetation offence, that is prescribed by the regulations as a penalty notice offence.
- (3) The [Fines Act 1996](#) applies to a penalty notice issued under this section.

**Note—**

The [Fines Act 1996](#) provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.

- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).
- (5) A penalty notice issued under this section may be withdrawn by any authorised officer within 28 days after the penalty notice was issued. If the penalty notice is withdrawn:
  - (a) any amount that has been paid under the penalty notice is to be repaid to the person who paid it, and
  - (b) proceedings may be taken in respect of the alleged offence as if the penalty notice had not been issued.
- (6) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (7) In this section, **authorised officer** means a person who is declared by the regulations to be an authorised officer for the purposes of this section or who belongs to a class of persons so declared.

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

- (1) For the purposes of this section, an **executive liability offence** is an offence against any of the following provisions that is committed by a corporation:

- (a) section 2.1 or 2.2 (Harming animals or picking plants), in the case of an animal or plant that is (or is part of) a threatened species or threatened ecological community,
- (b) section 2.3 (Damaging declared areas of outstanding biodiversity value),
- (c) section 2.4 (Damaging habitat of threatened species or ecological community),
- (d) section 2.5 (Dealing in animals or plants), in the case of an animal or plant that is (or is part of) a threatened species or threatened ecological community,
- (e) section 60N of the *Local Land Services Act 2013* (Unauthorised clearing of native vegetation in regulated rural area—offence),
- (f) section 11.5, 11.12, 11.22 or 11.27 (Contravening stop work order, interim protection order, remediation order or biodiversity offsets enforcement order),
- (g) section 13.26 (Offence of failing to comply with court order), being an order in relation to an offence involving threatened species, threatened ecological communities, declared areas of outstanding biodiversity value or the clearing of native vegetation, but not being an order in relation to costs and expenses incurred by a public authority or agency.

(2) A person commits an offence against this section if:

- (a) a corporation commits an executive liability offence, and
- (b) the person is:
  - (i) a director of the corporation, or
  - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the executive liability offence, and
- (c) the person:
  - (i) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and
  - (ii) fails to take all reasonable steps to prevent or stop the commission of that offence.

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

(3) The prosecution bears the legal burden of proving the elements of the offence against this section.

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

(7) In this section:

**director** has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

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

(a) action towards:

- (i) assessing the corporation's compliance with the provision creating the executive liability offence, and
- (ii) ensuring that the corporation arranged regular professional assessments of its compliance with the provision,

(b) action towards ensuring that the corporation's employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them to enable them to comply with the provision creating the executive liability offence so far as the provision is relevant to them,

(c) action towards ensuring that:

- (i) the plant, equipment and other resources, and
- (ii) the structures, work systems and other processes,

relevant to compliance with the provision creating the executive liability offence are appropriate in all the circumstances,

(d) action towards creating and maintaining a corporate culture that does not direct, encourage, tolerate or lead to non-compliance with the provision creating the executive liability offence.

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

**the offences**

- (1) For the purposes of this section, a **corporate offence** is an offence against this Act or the regulations, or a native vegetation offence, that is capable of being committed by a corporation, whether or not it is an executive liability offence referred to in section 13.6.
- (2) A person commits an offence against this section if:
  - (a) a corporation commits a corporate offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
  - (c) the person:
    - (i) aids, abets, counsels or procures the commission of the corporate offence, or
    - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
    - (iii) conspires with others to effect the commission of the corporate offence, or
    - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

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

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

### **13.8 Evidence as to state of mind of corporation**

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

### **13.9 Ancillary offences**

- (1) A person who:
  - (a) causes or permits another person to commit, or
  - (b) aids, abets, counsels or procures another person to commit, or
  - (c) conspires to commit,an offence under a provision of this Act or the regulations (or of Part 5A of the [Local Land Services Act 2013](#) or the regulations under that Part) is guilty of an offence against that provision and is liable, on conviction, to the same penalty applicable to an offence against that provision.
- (2) A person does not commit an offence because of this section for any act or omission that is an offence under section 13.7 (Liability of directors etc for offences by corporations—accessory to the commission of the offences).

### **13.10 Offence—false or misleading information**

- (1) A person must not provide information in connection with a matter under this Act (or under Part 5A of the [Local Land Services Act 2013](#)) that the person knows, or ought reasonably to know, is false or misleading in a material particular.

Maximum penalty: Tier 1 monetary penalty.

- (2) For the purposes of this section, a person provides information in connection with any such matter if:
  - (a) the person is an applicant for a licence, approval, certificate or other authority under this Act (or under Part 5A of the [Local Land Services Act 2013](#)), or for a variation of any such authority, and the information is provided by the applicant in or in connection with the application, or
  - (b) the person is engaged by any such applicant and the information is provided by that person for the purposes of the application, or



- (c) the person provides information in connection with any other matter or thing under this Act (or under Part 5A of the *Local Land Services Act 2013*) that the regulations declare to be the provision of information in connection with a matter under this Act.

**Note—**

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

**13.11 Continuing offences**

- (1) A person who is guilty of an offence because the person contravenes a requirement made by or under this Act or the regulations (whether the requirement is imposed by a notice or otherwise) to do or cease to do something (whether or not within a specified period or before a particular time):
- (a) continues, until the requirement is complied with and despite the fact that any specified period has expired or time has passed, to be liable to comply with the requirement, and
  - (b) is guilty of a continuing offence for each day the contravention continues.
- (2) This section does not apply to an offence if the relevant provision of this Act or the regulations does not provide for a penalty for a continuing offence.
- (3) This section does not apply to the extent that a requirement of a notice is revoked.
- (4) A reference in this section to this Act or the regulations includes a reference to Part 5A of the *Local Land Services Act 2013* and the regulations under that Part.

**13.12 Sentencing for offence—matters to be considered**

- (1) In imposing a penalty for an offence against this Act or the regulations (or a native vegetation offence), the court is to take into consideration the following (so far as they are relevant):
- (a) the extent of the harm caused or likely to be caused by the commission of the offence,
  - (b) the practical measures that may be taken to prevent, control, abate or mitigate that harm,
  - (c) the extent to which the person who committed the offence could reasonably have foreseen the harm caused or likely to be caused by the commission of the offence,
  - (d) the extent to which the person who committed the offence had control over the causes that gave rise to the offence,

(e) whether, in committing the offence, the person was complying with orders from an employer or supervising employee,

(f) whether the offence was committed for commercial gain.

(2) The court may take into consideration other matters that it considers relevant.

## **Division 2 Civil proceedings**

### **13.13 Definition of “breach”**

In this section:

***breach*** includes a threatened or apprehended breach.

### **13.14 Civil proceedings to remedy or restrain breaches of this Act or regulations (or Part 5A of [Local Land Services Act 2013](#))**

(1) Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of:

(a) this Act or the regulations, or

(b) Part 5A of the [Local Land Services Act 2013](#) or the regulations under that Part.

(2) Any such proceedings may be brought whether or not proceedings have been instituted for an offence against this Act or the regulations or for a native vegetation offence.

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

(4) Without limiting the powers of the Court under this section, an order under this section may suspend any biodiversity conservation licence or any approval, certificate or other authority under the [Local Land Services Act 2013](#).

### **13.15 Civil proceedings for enforcement of private land conservation agreements**

(1) Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of a biodiversity stewardship agreement.

(2) The Minister, 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 breach of any private land conservation agreement.

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

- (4) Without limiting the powers of the Court under this section, the Court may:
- (a) in the case of proceedings brought by the Minister—award damages against the owner of the land subject to the private land conservation agreement for a breach of the agreement that arose from an intentional, reckless or negligent act or omission by or on behalf of the owner or a previous owner of the land (being an act or omission of which the owner had notice) including a failure by the owner or previous owner to prevent another person from causing a breach of the agreement, and
  - (b) in any case involving a biodiversity stewardship agreement—direct the owner of the biodiversity stewardship site to retire biodiversity credits of a specified number and class (if applicable) within a period specified in the order.

**Note—**

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

- (5) In assessing damages for breach of a private land conservation agreement by an owner or previous owner, the Court may have regard to:
- (a) any detriment to the public interest arising from the breach, and
  - (b) any financial or other benefit that the owner or previous owner gained or sought to gain by committing the breach, and
  - (c) any other matter that it considers relevant.
- (6) Section 89 of the *Conveyancing Act 1919* does not authorise any court to modify or wholly or partially extinguish any restriction or obligation created by a private land conservation agreement except with the consent of the Minister.

**13.16 Civil proceedings for enforcement of biodiversity certification 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 breach of a biodiversity certification agreement under this Act.
- (2) In any such proceedings, a consent to institute the proceedings, purporting to have been signed by the Minister, is evidence of that consent without proof of the signature of the Minister.
- (3) If the Court is satisfied that a breach has been committed or that a breach will, unless restrained by order of the Court, be committed, it may make such orders as it thinks fit to remedy or restrain the breach.

### 13.17 Provisions relating to proceedings under this Division

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

**Note—**

If an act or omission that constitutes an offence against this Act occurred outside NSW, proceedings for the offence may be taken in NSW if a geographical nexus exists between NSW and the offence—see Part 1A of (and section 3 of and Schedule 2 to) the [Crimes Act 1900](#).

## Division 3 Ancillary court orders

### 13.18 Operation of Division

- (1) **Application to proved offences** This Division applies where a court finds an offence against this Act or the regulations (or a native vegetation offence) proved.
- (2) **Meaning of proved offences** Without limiting the generality of subsection (1), a court finds an offence proved if:
  - (a) the court convicts the offender of the offence, or
  - (b) the court makes an order under section 10 of the [Crimes \(Sentencing Procedure\) Act 1999](#) against the offender in relation to the offence (in which case the order is not a punishment for the purposes of that section).
- (3) **Definitions** In this Division:

**damage** to the habitat of animals or plants, includes:

- (a) damage to a declared area of outstanding biodiversity value, and
- (b) any clearing of native vegetation that constitutes a native vegetation offence.

**the court** means the court that finds the offence proved.

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

### **13.19 Orders generally**

- (1) **Orders may be made** One or more orders may be made under this Division against the offender.
- (2) **Orders are additional** Orders may be made under this Division in addition to any penalty that may be imposed or any other action that may be taken in relation to the offence.
- (3) **Other action not required** Orders may be made under this Division regardless of whether any penalty is imposed, or other action taken, in relation to the offence.

### **13.20 Orders for restoration and prevention**

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

### **13.21 Orders for costs, expenses and compensation at time offence proved**

- (1) The court may, if it appears to the court that:
  - (a) a public authority has incurred costs and expenses in connection with:
    - (i) the prevention, control, abatement or mitigation of any damage to animals or plants, or their habitat, caused by the commission of the offence, or

- (ii) making good any resulting damage to animals or plants or their habitat, or
- (b) a person (including a public authority) has, by reason of the commission of the offence, suffered loss of or damage to property or has incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage,

order the offender to pay to the public authority or person the costs and expenses so incurred, or compensation for the loss or damage so suffered, as the case may be, in such amount as is fixed by the order.

- (2) An order made by the Land and Environment Court under subsection (1) is enforceable as if it were an order made by the Court in Class 4 proceedings under the [Land and Environment Court Act 1979](#).
- (3) The Local Court may not make an order under subsection (1) for the payment of an amount that exceeds the amount for which an order may be made by the court when exercising jurisdiction under the [Civil Procedure Act 2005](#). An order made by the court is enforceable as if it were an order made by the court when exercising jurisdiction under that Act.

### **13.22 Recovery of costs, expenses and compensation after offence proved**

- (1) If, after the court finds the offence proved:
  - (a) a public authority has incurred costs and expenses in connection with:
    - (i) the prevention, control, abatement or mitigation of any damage to animals or plants, or their habitat, caused by the commission of the offence, or
    - (ii) making good any resulting damage to animals or plants or their habitat, or
  - (b) a person (including a public authority) has, by reason of the commission of the offence, suffered loss of or damage to property or has incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage,

the person or public authority may recover from the offender the costs and expenses incurred or the amount of the loss or damage in the Land and Environment Court.

- (2) The amount of any such costs and expenses (but not the amount of any such loss or damage) may be recovered as a debt.

### **13.23 Orders regarding costs and expenses of investigation**

- (1) The court may, if it appears to the court that the Office of Environment and Heritage has reasonably incurred costs and expenses during the investigation of the offence, order the offender to pay to the Environment Agency Head the costs and expenses so

incurred in such amount as is fixed by the order.

(2) An order made by the Land and Environment Court under subsection (1) is enforceable as if it were an order made by the Court in Class 4 proceedings under the *Land and Environment Court Act 1979*. An order made by the Local Court under subsection (1) is enforceable as if it were an order made by the court when exercising jurisdiction under the *Civil Procedure Act 2005*.

(3) In this section:

**costs and expenses**, in relation to the investigation of an offence, means the costs and expenses:

(a) in conducting any inspection, test, measurement or analysis, or

(b) of transporting, storing or disposing of evidence,

during the investigation of the offence.

#### **13.24 Orders regarding monetary benefits**

(1) The court may order the offender to pay, as part of the penalty for committing the offence, an additional penalty of an amount the court is satisfied, on the balance of probabilities, represents the amount of any monetary benefits acquired by the offender, or accrued or accruing to the offender, as a result of the commission of the offence.

(2) The amount of an additional penalty for an offence is not subject to any maximum amount of penalty provided elsewhere by or under this Act.

(3) The regulations may prescribe a protocol to be used in determining the amount that represents the monetary benefit acquired by the offender or accrued or accruing to the offender.

(4) In this section:

**monetary benefits** means monetary, financial or economic benefits.

**the court** does not include the Local Court.

#### **13.25 Additional orders**

(1) **Orders** The court may do any one or more of the following:

(a) order the offender to take specified action to publicise the offence (including the circumstances of the offence) and its consequences and any other orders made against the person,

(b) order the offender to take specified action to notify specified persons or classes of persons of the offence (including the circumstances of the offence) and its

consequences and of any orders made against the person (including, for example, the publication in an annual report or any other notice to shareholders of a company or the notification of persons aggrieved or affected by the offender's conduct),

- (c) order the offender to carry out a specified project for the restoration or enhancement of the terrestrial environment in a public place or for the public benefit,
- (d) order the offender to carry out or commission a specified environmental or other audit of activities carried on by the offender,
- (e) order the offender to pay a specified amount to a specified organisation (including into the Biodiversity Conservation Fund), for the purposes of a specified project for the restoration or enhancement of the terrestrial environment,
- (f) order the offender to attend, or to cause an employee or employees or a contractor or contractors of the offender to attend, a training or other course specified by the court,
- (g) order the offender to establish, for employees or contractors of the offender, a training course of a kind specified by the court,
- (h) if the Environment Agency Head is a party to the proceedings, order the offender to provide a financial assurance, of a form and amount specified by the court, to the Environment Agency Head, if the court orders the offender to carry out a specified work or program for the restoration or enhancement of the terrestrial environment.

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

- (2) Without limiting subsection (1) (c), the court may order the offender to carry out any social or community activity for the benefit of the community or persons that are adversely affected by the offence (a **restorative justice activity**) that the offender has agreed to carry out. However, the Local Court is not authorised to make an order under this subsection.
- (3) **Machinery** The court may, in an order under this section, fix a period for compliance and impose any other requirements the court considers necessary or expedient for enforcement of the order.
- (4) **Failure to publicise or notify** If the offender fails to comply with an order under subsection (1) (a) or (b), the prosecutor or a person authorised by the prosecutor may take action to carry out the order as far as may be practicable, including action to publicise or notify:



- (a) the original contravention, its consequences, and any other penalties imposed on the offender, and
  - (b) the failure to comply with the order.
- (5) **Cost of publicising or notifying** The reasonable cost of taking action referred to in subsection (4) is recoverable by the prosecutor or person taking the action, in a court of competent jurisdiction, as a debt from the offender.
- (6) **Financial assurances** Sections 302–307 of the *Protection of the Environment Operations Act 1997* apply (subject to the regulations) to a financial assurance provided by an offender under an order made under this section in the same way as they apply to a financial assurance given by a holder of a licence under a condition of a licence under Part 9.4 of that Act.

### **13.26 Offence of failing to comply with court order**

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

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

## **Division 4 Enforceable undertakings**

### **13.27 Enforcement of undertakings**

- (1) The Environment Agency Head may accept a written undertaking given by a person for the purposes of this Division in connection with a matter in relation to which the Environment Agency Head has a function under this Act.
- (2) Without limiting subsection (1), an undertaking that the Environment Agency Head may accept includes an undertaking to carry out a restorative justice activity.
- (3) The person may withdraw or vary the undertaking at any time, but only with the consent in writing of the Environment Agency Head. The consent of the Environment Agency Head is required even if the undertaking purports to authorise withdrawal or variation of the undertaking without that consent.
- (4) The Environment Agency Head may apply to the Land and Environment Court for an order under subsection (5) if the Environment Agency Head considers that the person who gave the undertaking has breached any of its terms.
- (5) The Court may make all or any of the following orders if it is satisfied that the person has breached a term of the undertaking:
  - (a) an order directing the person to comply with that term of the undertaking,
  - (b) an order directing the person to pay to the State an amount not exceeding the

amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach,

- (c) any order that the Court thinks appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach,
- (d) an order suspending or revoking any biodiversity conservation licence held by the person or any approval, certificate or other authority held by the person under the [Local Land Services Act 2013](#),
- (e) an order requiring the person to prevent, control, abate or mitigate any actual or likely damage to animals or plants, or their habitat, or to a declared area of outstanding biodiversity value, caused by the breach,
- (f) an order requiring the person to make good any actual or likely damage to animals or plants, or their habitat, or to such a declared area, caused by the breach,
- (g) any other order the Court considers appropriate.

## **Division 5 Evidentiary provisions**

### **13.28 Onus of proof of reasonable excuse**

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

### **13.29 Responsibility of landholder for activities carried out on the land**

- (1) In any criminal or civil proceedings under this Act, the landholder of any land on which an offence or contravention is alleged to have occurred is taken to have carried out the activity constituting the alleged offence or contravention unless it is established that:
  - (a) the activity was carried out by another person, and
  - (b) the landholder did not cause or permit the other person to carry out the activity.
- (2) This section does not prevent proceedings being taken against the person who actually carried out the activity.
- (3) This section does not apply to an offence under section 2.5 (Dealing in animals or plants) or any other offence excluded by the regulations.

### **13.30 Documentary evidence generally**

Any document purporting:

- (a) to be a document issued, made or given for the purposes of this Act or the [Local Land](#)

*Services Act 2013*, and

- (b) to have been signed by the person authorised to issue, make or give the document, or by another person acting as delegate or on behalf of the person, and
- (c) to have been issued, made or given on a specified day,

is admissible in any criminal or civil proceedings under this Act and (in the absence of evidence to the contrary) is to be taken to be such a document, to have been so signed and to have been issued, made or given on that day.

### **13.31 Certificate evidence of certain matters**

- (1) A document signed by the Environment Agency Head (or by an officer prescribed by the regulations) and certifying any one or more of the relevant matters specified in subsection (2) is admissible in criminal or civil proceedings under this Act and (in the absence of evidence to the contrary) is evidence of the matters so certified.
- (2) The relevant matters are as follows:
  - (a) that a specified person was, at a specified time or during a specified period, a landholder of specified land,
  - (b) that specified particulars were or were not included in a public register under Division 2 of Part 9 at a specified time or during a specified period,
  - (c) that a specified person was served with a specified document under this Act or Part 5A of the *Local Land Services Act 2013*,
  - (d) that specified information required to be furnished under this Act or Part 5A of the *Local Land Services Act 2013* was or was not received,
  - (e) that a specified function of the Minister or the Environment Agency Head was delegated to a specified person under this Act during a specified period,
  - (f) that a specified person was or was not, at a specified time or during a specified period, an authorised officer under Part 12 or an employee of a specified public authority,
  - (g) that a specified native vegetation regulatory map published under Part 5A of the *Local Land Services Act 2013* was duly prepared and published in accordance with that Part,
  - (h) any other matter prescribed by the regulations.

### **13.32 Evidence from photographs and other images of land**

- (1) This section applies to a photographic or other image of an area of land formed from data captured by a device carried by an aircraft, satellite or other craft (and

information recorded on the image) that the Environment Agency Head, or an officer prescribed by the regulations, certifies as an approved image.

- (2) An approved image is admissible in criminal or civil proceedings under this Act and (in the absence of evidence to the contrary) is evidence of the matter depicted on the image and of the information recorded on the image relating to the location or boundaries of the land, the time when or period during which the image was taken or other matter prescribed by the regulations.
- (3) In any criminal or civil proceedings in which an approved image is admitted in evidence:
  - (a) the image is presumed (in the absence of evidence to the contrary) to be orthorectified, and
  - (b) evidence is not required (in the absence of evidence to the contrary) of the accuracy of any process used to orthorectify the image or of the accuracy of any process used to determine the boundaries of the land recorded on the image.

### **13.33 Proof of certain appointments not required**

In any criminal or civil proceedings under this Act, proof is not required (until evidence is given to the contrary) of the appointment of the Environment Agency Head or other employee of a public authority.

## **Part 14 Miscellaneous**

### **14.1 Act to bind Crown**

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

### **14.2 Biodiversity Conservation Advisory Panel**

- (1) There is established by this Act a Biodiversity Conservation Advisory Panel (the **Advisory Panel**).
- (2) The function of the Advisory Panel is to advise the Minister on any matter on which the Minister requests advice that relates to the management of biodiversity conservation. The Advisory Panel also has the function of advising the Environment Agency Head on any proposed declaration of an area of outstanding biodiversity value.
- (3) The Advisory Panel is subject to the control and direction of the Minister in relation to the work it undertakes, but is not subject to the control and direction of the Minister in relation to the content of any advice given by the Advisory Panel.
- (4) The Advisory Panel is to consist of not less than 5, and not more than 8, members

appointed by the Minister. The members of the Advisory Panel are to have such qualifications and expertise as the Minister considers appropriate for the work of the Panel.

- (5) The Minister is to appoint one of the members of the Advisory Panel as the Chairperson of the Panel.
- (6) The Advisory Panel may consult with, obtain advice from, or request the assistance of any person who has expertise relevant to the work of the Panel.
- (7) The regulations may make provision for or with respect to the members and procedure of the Advisory Panel.

#### **14.3 Biodiversity information programs**

- (1) The Environment Agency Head is to establish programs for the collection, monitoring and assessment of information on biodiversity.
- (2) The regulations may make provision for or with respect to those programs (including the information to be included in those programs).

#### **14.4 Delegation of functions by Minister or Environment Agency Head**

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

#### **14.5 Exclusion of personal liability**

- (1) In this section:

***protected person*** means any of the following:

- (a) the Minister,
- (b) the Environment Agency Head or any other employee of the Office of Environment and Heritage,

- (c) a member of the Threatened Species Scientific Committee,
  - (d) a member of the Biodiversity Conservation Advisory Panel,
  - (e) a member of the Board of the Biodiversity Conservation Trust or an employee of the Trust,
  - (f) a person acting under the direction of any of the above persons.
- (2) Anything done or omitted to be done by a protected person does not subject the protected person personally to any action, liability, claim or demand if the thing was done, or omitted to be done, in good faith for the purpose of exercising the functions of the protected person under this Act.
- (3) However, any such liability attaches instead to the Crown (or, in the case of a member of the Board of the Biodiversity Conservation Trust or an employee of the Trust, to the Trust).

#### **14.6 Fees and other charges recoverable by Environment Agency Head**

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

#### **14.7 Relationship between this Act and the [Fisheries Management Act 1994](#)**

- (1) The Minister administering this Act 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.

Any species of fish or marine vegetation that is the subject of an order in force under this subsection is taken to be a species of an animal or plant (and not a species of fish or marine vegetation) for the purposes of this Act and that Act, in accordance with the terms of the order.

- (2) The Minister administering the [Fisheries Management Act 1994](#) may, by order made with the concurrence of the Minister administering this Act:
- (a) declare a species of animal to be a species of fish for the purposes of that Act if it

is an invertebrate and it is a species that may inhabit water at some stage of its biological development, or

- (b) declare a species of plant to be a species of marine vegetation for the purposes of that Act if it is a species that may inhabit water (other than freshwater) at some stage of its biological development.

Any species of animal or plant that is the subject of an order in force under this subsection is taken to be a species of fish or marine vegetation (and not a species of animal or plant) for the purposes of that Act and this Act, in accordance with the terms of the order.

- (3) The Minister administering this Act and the Minister administering the *Fisheries Management Act 1994* may consult with each other, the Chairpersons of the Scientific Committee and the Fisheries Scientific Committee and other persons or bodies for the purpose of determining whether an order under this section should be made and the terms of the order.
- (4) If the Ministers are unable to resolve any dispute between them as to the making or the terms of an order under this section, the matter is to be referred to the Premier for resolution. The decision of the Premier in relation to the matter is to be given effect to by the Ministers.
- (5) An order under this section is to be published on the NSW legislation website.
- (6) In this section:

**fish** has the same meaning as in the *Fisheries Management Act 1994*.

**freshwater** has the same meaning as in the *Fisheries Management Act 1994*.

#### **14.8 Native title rights and interests**

This Act does not affect the operation of the *Native Title Act 1993* of the Commonwealth or the *Native Title (New South Wales) Act 1994* in respect of the recognition of native title rights and interests within the meaning of the Commonwealth Act or in any other respect.

#### **14.9 Service of documents**

- (1) A document that is authorised or required by this Act or the regulations to be served on any person may be served by any of the following methods:
- (a) in the case of an individual—by personal delivery to the person,
- (b) by post to the address specified by the person for the service of documents of that kind,
- (c) in the case of an individual who has not specified such an address—by post to the residential or business address of the person last known to the person serving the

document,

- (d) in the case of a corporation—by post to the registered office or any other office of the corporation or by leaving it at any such office with a person apparently over the age of 16 years,
- (e) by email to an email address specified by the person for the service of documents of that kind, or
- (f) by any other method authorised by the regulations for the service of documents of that kind.

(2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person by any other method.

(3) In this section, **serve** includes give or send.

#### **14.10 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may create offences punishable by a monetary penalty not exceeding \$5,500.

#### **14.11 Review of Act**

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

**Note—**

Part 5A of the [Local Land Services Act 2013](#) requires the review under this Act to be undertaken in conjunction with the review under that Act of the native vegetation land management provisions of that Part.

- (2) The Minister is to include public consultation as a part of the review.
- (3) The review is to be undertaken as soon as possible after the period of 5 years from the commencement of a majority of the provisions of this Act.
- (4) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.



## Schedule 1 Threatened species

(Section 4.2)

### Part 1 Critically endangered species

#### Division 1 Animals

##### Vertebrates

##### Amphibians

###### Hylidae

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

###### Myobatrachidae

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

##### Reptiles

###### Chelidae

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

##### Birds

###### Accipitridae

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

###### Turnicidae

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

###### Burhinidae

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

###### Charadriidae

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

## Cacatuidae

*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

### Potoroidae

\* *Potorous longipes* Seebeck and Johnston, 1980

Long-footed Potoroo

## Invertebrates

### Mollusca

#### Charopidae

\* *Mystivagor mastersi* (Brazier, 1872)

Masters Charopid Land Snail

\* *Pseudocharopa ledgbirdi* (Etheridge, 1889)

Mount Lidgbird Charopid Land Snail

\* *Pseudocharopa whiteleggei* (Etheridge, 1889)

Whitelegge's Land Snail

#### Helicarionidae

\* *Gudeoconcha sophiae magnifica* Iredale, 1944

Magnificent Helicarionid Land Snail

## Arthropoda

### Insecta

#### Phasmatodea

Phasmatidae

\* *Dryococelus australis* (Montrouzier, 1855)

Lord Howe Island Phasmid

#### Lepidoptera

Lycaenidae

*Jalmenus eubulus* Miskin, 1876

## Division 2 Plants

### Plants

Araucariaceae

\* *Wollemia nobilis* W.G. Jones, K.D. Hill & J.M. Allen

Wollemi Pine

Areaceae

*Lepidorrhachis mooreana* (F. Muell.) O.F. Cook

Little Mountain Palm

Convolvulaceae

\* *Calystegia affinis* Endl.

Dilleniaceae

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

*Hibbertia spanantha* Toelken & A.F. Rob.

Euphorbiaceae

\* *Fontainea oraria* Jessup & Guymer

Fabaceae

*Bossiaea fragrans* K.L. McDougall

\* *Glycine latrobeana* (Meisn.) Benth.

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

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

Gentianaceae

\* *Gentiana bredboensis* L.G. Adams

\* *Gentiana wingecarribiensis* L. Adams

Wingecarribee Gentian

Haloragaceae

*Myriophyllum implicatum* Orchard

Lamiaceae

\* *Prostanthera marifolia* R. Br.

Malvaceae

*Lasiopetalum behrii* F. Muell.

Myrtaceae

*Callistemon megalongensis* (Craven & S.M. Douglas) Udovicic & R.D. Spencer

Megalong Valley Bottlebrush

\* *Eucalyptus imlayensis* Crisp & Brooker

\* *Eucalyptus recurva* Crisp

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

Orchidaceae

*Caladenia attenuata* (Brinsley) D.L. Jones

*Corunastylis* sp. Charmhaven (NSW896673)

*Diuris flavescens* D.L. Jones

\* *Genoplesium insigne* D.L. Jones

*Genoplesium littorale* D.L. Jones

Tuncurry Midge Orchid

\* *Genoplesium plumosum* (Rupp) D.L. Jones & M.A. Clem.

*Prasophyllum bagoense* D.L. Jones

*Prasophyllum canaliculatum* D.L. Jones

\* *Prasophyllum fuscum* R. Br. *sensu stricto*

*Prasophyllum innubum* D.L. Jones

*Prasophyllum keltonii* D.L. Jones

*Prasophyllum* sp. Majors Creek (Jones 11084)

*Prasophyllum* sp. Moama (D.L. Jones 19276)

\* *Prasophyllum uroglossum* Rupp

\* *Pterostylis despectans* (Nicholls) M.A. Clem & D.L. Jones

*Pterostylis oreophila* Clemesha

*Pterostylis ventricosa* (D.L. Jones) G.N. Backh.

\* *Pterostylis vernalis* (D.L. Jones) G.N. Backh.

*Thelymitra adorata* Jeanes

Wyong Sun Orchid

*Thelymitra kangaloonica* Jeanes

*Thelymitra atronitida* Jeanes

#### Orobanchaceae

\* *Euphrasia arguta* R. Br.

#### Poaceae

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

#### Proteaceae

*Banksia conferta* A.S. George subsp. *conferta*

*Banksia vincentia* Stimpson & P.H. Weston

\* *Grevillea caleyi* R. Br.

\* *Grevillea iaspicula* McGill.

*Grevillea ilicifolia* (R.Br.) R.Br. subsp. *ilicifolia*

\* *Persoonia pauciflora* P.H. Weston

North Rothbury Persoonia

#### Rhamnaceae

*Pomaderris delicata* N.G. Walsh & F. Coates

\* *Pomaderris reperta* N.G. Walsh & F. Coates

*Pomaderris walshii* J.C. Millott & K.L. McDougall

#### Rutaceae

\* *Zieria adenophora* Blakely

\* *Zieria buxijugum* J.D. Briggs & J.A. Armstr.

\* *Zieria formosa* J.D. Briggs & J.A. Armstr.

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

Sapindaceae

*Dodonaea stenozyga* F. Muell.

## Division 3 Populations

Nil

## Part 2 Endangered species

### Division 1 Animals

#### Vertebrates

#### Amphibians

##### Hylidae

- |                                                 |                            |
|-------------------------------------------------|----------------------------|
| * <i>Litoria aurea</i> (Lesson, 1829)           | Green and Golden Bell Frog |
| * <i>Litoria booroolongensis</i> (Moore, 1961)  | Booroolong Frog            |
| * <i>Litoria raniformis</i> (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>Phyloria kundagungan</i> (Ingram & Corben, 1975)                          | Mountain Frog          |
| <i>Phyloria loveridgei</i> Parker, 1940                                      | Loveridge's Frog       |
| <i>Phyloria pughi</i> Knowles, Mahony, Armstrong and Donnellan, 2004         | a frog                 |
| <i>Phyloria richmondensis</i> Knowles, Mahony, Armstrong and Donnellan, 2004 | a frog                 |

#### Reptiles

##### Agamidae

- |                                                                           |                          |
|---------------------------------------------------------------------------|--------------------------|
| <i>Ctenophorus mirrityana</i> (McLean, Moussalli, Sass & Stuart-Fox 2013) | Barrier Range Dragon     |
| * <i>Tympanocryptis pinguicollis</i> Mitchell, 1948                       | Grassland Earless Dragon |

Cheloniidae

\* *Caretta caretta* (Linnaeus, 1758) Loggerhead Turtle

Dermochelyidae

\* *Dermochelys coriacea* (Vandelli, 1761) Leatherback Turtle

Pygopodidae

*Aprasia inaurita* Kluge, 1974 Mallee Worm-lizard

*Delma australis* Kluge, 1974 Marble-faced Delma

Diplodactylidae

*Amalosia rhombifer* (J.E. Gray, 1845) Zigzag Velvet Gecko

*Diplodactylus platyurus* Parker, 1926 Eastern Fat-tailed Gecko

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

Diomedeidae

\* *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

**Mammals**

Dasyuridae

*Antechinomys laniger* (Gould, 1856)

Kultarr

*Antechinus arktos* Baker, Mutton, Hines & Van Dyck, 2014

Black-tailed Antechinus

*Dasyurus viverrinus* (Shaw, 1800)

Eastern Quoll

Peramelidae

\* *Isoodon obesulus obesulus* (Shaw, 1797)

Southern Brown Bandicoot (eastern)

Vombatidae

*Lasiorhinus latifrons* (Owen, 1845)

Southern Hairy-nosed Wombat

Burramyidae

\* *Burramys parvus* Broom, 1896

Mountain Pygmy-possum

*Cercartetus concinnus* (Gould, 1845)

Western Pygmy Possum

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 bolami* Troughton, 1932

Bolam's Mouse

*Pseudomys delicatulus* (Gould, 1842)

Delicate Mouse

\* *Pseudomys oralis* Thomas, 1921

Hastings River Mouse

## Marine mammals

### Dugongidae

*Dugong dugon* (Müller, 1776)

Dugong

### Balaenidae

\* *Eubalaena australis* (Desmoulins, 1822)

Southern Right Whale

### Balaenopteridae

\* *Balaenoptera musculus* (Linnaeus, 1758)

Blue Whale

## Invertebrates

### Annelida

### Oligochaeta

### Opisthopera

### Megascolecidae

*Pericryptodrilus nanus* Jamieson, 1977

## Molluscs

### Bulimulidae

\* *Placostylus bivaricosus* (Gaskoin, 1855)

a land snail

### Camaenidae

*Meridolum corneovirens* (Pfeiffer, 1851)

a land snail

\* *Thersites mitchellae* (Cox, 1864)

a land snail

## Arthropoda

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## **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

*Argynnis hyperbius* (Linnaeus, 1763)

Laced Fritillary

#### Lycaenidae

\* *Paralucia spinifera* Edwards and Common, 1978

Purple Copper Butterfly,  
Bathurst Copper Butterfly

#### Noctuidae

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

### **Odonata**

#### Petaluridae

*Petalura gigantea* (Leach, 1815)

Giant Dragonfly

*Petalura litorea* Theischinger 1999

## **Division 2 Fungi**

### **Basidiomycota**

## Hygrophoraceae

*Camarophylloopsis kearneyi* A.M. Young

*Hygrocybe austropratensis* A.M. Young

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

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

*Hygrocybe lanecovensii* A.M. Young

## Alga

### Charophyta

#### Characeae

*Nitella partita* Nordst.

## Division 3 Plants

#### Acanthaceae

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

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

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

\* *Xerothamnella parvifolia* C. White

#### Anthericaceae

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

#### Apiaceae

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

\* *Trachymene scapigera* (Domin) B.L. Burtt

#### Apocynaceae

\* *Cynanchum elegans* (Benth.) Domin

\* *Marsdenia longiloba* Benth.

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

\* *Tylophora woollsii* 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

Asteraceae

*Brachyscome ascendens* G.L. Davis

\* *Calotis moorei* P. Short

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

*Cratystylis conocephala* (F. Muell.) S. Moore

*Erodiophyllum elderi* F. Muell.

*Kippistia suaedifolia* F. Muell.

*Leptorhynchus orientalis* Paul G. Wilson

*Leptorhynchus waitzia* Sonder

\* *Olearia flocktoniae* Maiden & E. Betche

*Ozothamnus vagans* (C.T. White) Anderb.

\* *Rutidosia leptorrhynchoides* F. Muell.

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

*Senecio spathulatus* A. Rich.

*Senecio squarrosus* A. Rich.

Brassicaceae

*Irenepharsus magicus* Hewson

\* *Irenepharsus trypherus* Hewson

\* *Lepidium hyssopifolium* Desv.

\* *Lepidium 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.) Volken

- \* *Sclerolaena napiformis* Paul G. Wilson

*Threlkeldia inchoata* (J. Black) J. Black

Convolvulaceae

*Convolvulus tedmoorei* R.W. Johnson

*Ipomoea diamantinensis* J. Black

*Ipomoea polymorpha* Roemer & Schultes

*Wilsonia rotundifolia* Hook.

Cupressaceae

*Callitris baileyi* C. White

Cyperaceae

*Carex archeri* Boott

*Carex klaphakei* K.L. Wilson

*Carex raleighii* Nelves

*Cyperus aquatilis* R. Br.

*Cyperus conicus* (R. Br.) Boeck

\* *Cyperus semifertilis* S.T. Blake

*Eleocharis tetraquetra* Nees

Davalliaceae

*Arthropteris palisotii* (Desv.) Alston

Davidsoniaceae

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

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

Dilleniaceae

*Hibbertia hexandra* C. White

*Hibbertia procumbens* (Labill.) DC.

*Hibbertia puberula* Toelken

*Hibbertia stricta* subsp. *furcatula* Toelken

*Hibbertia superans* Toelken

*Hibbertia tenuifolia* Toelken

Droseraceae

*Aldrovanda vesiculosa* L.

Dryopteridaceae

*Lastreopsis hispida* (Sw.) Tind.

*Polystichum moorei* H. Christ

Ebenaceae

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

*Diospyros yandina* Jessup

Elaeocarpaceae

- \* *Elaeocarpus sedentarius* Maynard & Crayn Minyon Quandong
- \* *Elaeocarpus williamsianus* Guyer

Ericaceae

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

Eriocaulaceae

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

Euphorbiaceae

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

Fabaceae

- Acacia acanthoclada* F. Muell.
- Acacia acrionastes* Pedley
- Acacia atrox* Kodela
- \* *Acacia bynoeana* Benth.  
*Acacia chrysotricha* Tind  
*Acacia dangarensis* Tindale & Kodela
- \* *Acacia gordonii* (Tind.) Pedley



- Acacia jucunda* Maiden & Blakely
- Acacia notabilis* F. Muell.
- Acacia petraea* Pedley
- \* *Acacia pubifolia* Pedley
- Acacia rivalis* J. Black
- \* *Acacia ruppii* Maiden & E. Betche
- \* *Acacia terminalis* (Salisb.) J.F. Macbr. subsp. *terminalis*
- \* *Almaleea cambagei* (Maiden & E. 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 colutooides* F. Muell.
- Swainsona flavicarinata* J. Black
- \* *Swainsona recta* A. Lee
- Swainsona viridis* J. Black

Flacourtiaceae

*Xylosma parvifolia* 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. Betché) Orch.

Lamiaceae

*Plectranthus alloplectus* S.T. Blake

\* *Plectranthus nitidus* P. Forst.

\* *Prostanthera askania* B.J. Conn

\* *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

Linderniaceae

*Lindernia alsinoides* R. Br.

Lindsaeaceae

*Lindsaea brachypoda* (Baker) Salomon

*Lindsaea fraseri* Hook.

*Lindsaea incisa* Prent.

Loganiaceae

*Geniostoma huttonii* B.J. Conn

*Mitrasacme pygmaea* R. Br.

Loranthaceae

\* *Amyema plicatula* (Krause) Danser

*Muellerina myrtifolia* (Cunn. ex Benth.) Barlow

Lythraceae

*Rotala tripartita* Beesley

Malvaceae

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

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

*Sida rohlenae* Domin

Marattiaceae

*Angiopteris evecta* Hoffm.

Marsileaceae

*Pilularia novae-hollandiae* A. Braun

Menispermaceae

*Tinospora smilacina* Benth.

Monimiaceae

\* *Daphnandra johnsonii* Schodde

Myrsinaceae

\* *Myrsine richmondensis* Jackes

Myrtaceae

*Angophora exul* K.D. Hill

- \* *Baeckea kandos* A.R. Bean

*Choricarpia subargentea* (C. White) L. Johnson

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

*Eucalyptus castrensis* K.D. Hill

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

*Eucalyptus largeana* Blakely & Beuzev. Craven Grey Box

*Eucalyptus macarthurii* H. Deane & Maiden

*Eucalyptus magnificata* L. Johnson & K. Hill

*Eucalyptus microcodon* L. Johnson & K. Hill

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

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

*Eucalyptus saxatilis* Kirkpatr. & Brooker

- \* *Eucalyptus scoparia* Maiden

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

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

*Homoranthus binghiensis* J.T. Hunter

*Homoranthus croftianus* J.T. Hunter

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

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

*Melaleuca irbyana* R.T. Baker

- \* *Micromyrtus grandis* J.T. Hunter

- \* *Micromyrtus minutiflora* (F. Muell.) Benth.

- \* *Syzygium paniculatum* Gaertn.

- \* *Triplarina imbricata* (Sm.) A.R. Bean

- \* *Triplarina nowraensis* A.R. Bean

- \* *Uromyrtus australis* A.J. Scott

Orchidaceae

- \* *Caladenia arenaria* Fitzg.

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

Orobanchaceae

*Centranthera cochinchinensis* (Lour.) Merr.

\* *Euphrasia collina* subsp. *muelleri* (Wettst.) W.R. Barker

*Euphrasia orthocheila* subsp. *peraspera* W.R. Barker

*Euphrasia scabra* R. Br.

Phyllanthaceae

*Phyllanthus maderaspatensis* L.

*Phyllanthus microcladus* Muell. Arg.

Picrodendraceae

*Pseudanthus ovalifolius* F. Muell.

Platyzomataceae

*Platyzoma microphyllum* R. Br.

Poaceae

*Alexfloydia repens* B.K. Simon

*Austrostipa nullanulla* (J. Everett & S.W.L. Jacobs) S.W.L. Jacobs & J. Everett

\* *Austrostipa wakoolica* (Vickery, S.W.L. Jacobs & J. Everett) S.W.L. Jacobs & J. Everett

\* *Deyeuxia appressa* Vickery

\* *Digitaria porrecta* S.T. Blake

*Distichlis distichophylla* (Labill.) Fassett

*Elionurus citreus* (R. Br.) Munro ex Benth.

\* *Homopholis belsonii* C.E. Hubb

\* *Plinthanthesis rodwayi* (C.E. Hubb) S.T. Blake

*Rytidosperma vickeryae* M. Gray & H. P. Linder

Podocarpaceae

\* *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 divaricata* R. Br.
- \* *Grevillea guthrieana* P. Olde & N. Marriott
- Grevillea hilliana* F. Muell.
- \* *Grevillea masonii* P. Olde & N. Marriott
- \* *Grevillea mollis* P. Olde & Molyneux
- \* *Grevillea obtusiflora* R. Br.
- Grevillea parviflora* subsp. *supplicans* Makinson
- Grevillea renwickiana* F. Muell.
- \* *Grevillea rivularis* L. Johnson & McGillivray
- \* *Grevillea wilkinsonii* R. Makinson
- \* *Hakea dohertyi* Haegi
- \* *Hakea pulvinifera* L. Johnson
- \* *Persoonia bargoensis* P.H. Weston & L.A.S. Johnson
- \* *Persoonia glaucescens* Sieber ex Spreng.
- Persoonia hindii* P.H. Weston & L.A.S. Johnson
- \* *Persoonia hirsuta* Pers.
- \* *Persoonia mollis* subsp. *maxima* Krauss & L. Johnson
- \* *Persoonia nutans* R. Br.

Psilotaceae

*Psilotum complanatum* Sw.

Rhamnaceae

*Pomaderris adnata* N.G. Walsh & F. Coates

- \* *Pomaderris brunnea* N.A. Wakef.

*Pomaderris cocoparrana* N.G. Walsh

\* *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* J.B. Williams & J.T. Hunter

*Boronia hapalophylla* Duretto, F.J. Edwards & P.G. Edwards

\* *Boronia repanda* (F. Muell. ex E. Betche) Maiden & E. Betche

*Boronia ruppii* Cheel

*Coatesia paniculata* F. Muell.

\* *Correa lawrenceana* var. *genoensis* Paul G. Wilson

\* *Leionema lachnaeoides* (A. Cunn.) Paul G. Wilson

*Melicope vitiflora* (F. Muell.) T.G. Hartley

*Phebalium bifidum* P.H. Weston & M. Turton

\* *Phebalium glandulosum* subsp. *eglandulosum* (Blakely) Paul G. Wilson

*Philotheca myoporoides* subsp. *obovatifolia* M.J. Bayly

*Zieria adenodonta* (F. Muell.) J.A. Armstrong

\* *Zieria baeuerlenii* J.A. Armstrong

\* *Zieria citriodora* J.A. Armstrong



- \* *Zieria covenyi* J.A. Armstrong
- \* *Zieria floydii* J.A. Armstrong
- \* *Zieria granulata* C. Moore ex Benth.
- \* *Zieria ingramii* J.A. Armstrong
- \* *Zieria involucrata* R. Br. ex Benth.
- \* *Zieria lasiocaulis* J.A. Armstrong
- \* *Zieria obcordata* A. Cunn.
- \* *Zieria prostrata* J.A. Armstrong

Santalaceae

*Santalum murrayanum* (Mitchell) Gardner

Sapindaceae

*Cupaniopsis serrata* (F. Muell.) Radlk.

- \* *Diploglottis campbellii* Cheel

*Dodonaea microzyga* F. Muell. var. *microzyga*

*Dodonaea sinuolata* subsp. *acrodentata* J. West

Sapotaceae

*Niemeyera chartacea* (Bailey) C. White

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

*Solanum sulphureum* A.R. Bean

Stackhousiaceae

*Stackhousia clementii* Domin

Thymelaeaceae

*Pimelea axiflora* F. Muell. ex Meissner subsp. *pubescens* Rye

*Pimelea elongata* Threlfall

*Pimelea serpyllifolia* R. Br. subsp. *serpyllifolia*

\* *Pimelea spicata* R. Br.

\* *Pimelea venosa* Threlfall

Tiliaceae

\* *Corchorus cunninghamii* F. Muell.

Urticaceae

*Dendrocnide moroides* (Wedd.) Chew

Violaceae

*Viola cleistogamoides* (L. Adams) Seppelt

Zamiaceae

*Macrozamia humilis* D.L. Jones

*Macrozamia johnsonii* D.L. Jones & K. Hill

Zannichelliaceae

*Zannichellia palustris* L.

## Division 4 Populations

### Animals

#### Invertebrates

##### Arthropoda

##### Coleoptera

###### Chrysomelidae

*Menippus darcyi* Reid & Nally, 2008

*Menippus darcyi* population in the  
Sutherland Shire

### Vertebrates

#### Amphibians

Myobatrachidae

*Adelotus brevis* (Günther, 1863)

Tusked Frog population in the Nandewar and New England Tableland Bioregions

**Reptiles**

Scincidae

*Liopholis whitii* (Lacépède, 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 (as described in the final determination of the Scientific Committee published in the Gazette on 28 November 2014)

*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

*Petauroides volans* (Kerr, 1792)

Greater Glider population in the Mount Gibraltar Reserve area

Phascolarctidae

*Phascolarctos cinereus* (Goldfuss, 1817)

Koala, Hawks Nest and Tea Gardens population

*Phascolarctos cinereus* (Goldfuss, 1817)

Koala in the Pittwater Local Government Area

*Phascolarctos cinereus* (Goldfuss, 1817)

Koala population between the Tweed River and Brunswick River east of the Pacific Highway

Potoroidae

*Potorous tridactylus* (Kerr, 1792)

Long-nosed Potoroo, Cobaki Lakes and Tweed Heads West population

**Plants**

Apocynaceae

*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

Casuarinaceae

*Allocasuarina diminuta* subsp. *mimica* L.A.S. Johnson

*Allocasuarina diminuta* subsp. *mimica* population in the Sutherland Shire and Liverpool City local government areas

*Allocasuarina inophloia* (F. Muell. & F.M. Bailey) L.A.S. Johnson

Stringybark She-Oak population in the Clarence Valley local government area

Cupressaceae

*Callitris endlicheri* (Parl.) Bailey

Black Cypress Pine, Woronora Plateau population

## Fabaceae

<i>Acacia pendula</i> A. Cunn. ex G. Don	<i>Acacia pendula</i> population in the Hunter catchment
<i>Acacia prominens</i> Cunn. ex Don	Gosford Wattle, Hurstville and Kogarah Local Government Areas
<i>Chorizema parviflorum</i> Benth.	<i>Chorizema parviflorum</i> Benth. in the Wollongong and Shellharbour Local Government Areas
<i>Dillwynia tenuifolia</i> Sieber ex D.C.	<i>Dillwynia tenuifolia</i> , Kemp's Creek
<i>Dillwynia tenuifolia</i> Sieber ex D.C.	<i>Dillwynia tenuifolia</i> Sieber ex D.C. in the Baulkham Hills local government area
<i>Glycine clandestina</i> (broad leaf form) (Pullen 13342)	<i>Glycine clandestina</i> (broad leaf form) in the Nambucca Local Government Area
<i>Lespedeza juncea</i> subsp. <i>sericea</i> (Thunb.) Steenis	<i>Lespedeza juncea</i> subsp. <i>sericea</i> in the Wollongong Local Government Area
<i>Pultenaea villifera</i> Sieber ex DC.	<i>Pultenaea villifera</i> Sieber ex DC. population in the Blue Mountains local government area

## Lamiaceae

<i>Prostanthera saxicola</i> R. Br.	<i>Prostanthera saxicola</i> population in Sutherland and Liverpool local government areas
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## Malvaceae

<i>Keraudrenia corollata</i> var. <i>denticulata</i> C. T. White	<i>Keraudrenia corollata</i> var. <i>denticulata</i> in the Hawkesbury local government area
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## Myrtaceae

<i>Darwinia fascicularis</i> subsp. <i>oligantha</i>	<i>Darwinia fascicularis</i> subsp. <i>oligantha</i> population in the Baulkham Hills and Hornsby Local Government Areas
<i>Eucalyptus aggregata</i> H. Deane & Maiden	<i>Eucalyptus aggregata</i> population in the Wingecaribee local government area
<i>Eucalyptus camaldulensis</i> Dehnh.	<i>Eucalyptus camaldulensis</i> 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

*Gossia acmenoides* (F. Muell) N. Snow & Guymer

*Gossia acmenoides* population in the Sydney Basin Bioregion south of the Georges River

#### 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

## Part 3 Vulnerable species

### Division 1 Animals

#### Vertebrates

#### Amphibians

## Hylidae

<i>Litoria brevipalmata</i> Tyler, Martin & Watson, 1972	Green-thighed Frog
<i>Litoria daviesae</i> Mahony, Knowles, Foster & Donnellan, 2001	
* <i>Litoria littlejohni</i> A.M. White, Whitford and Mahoney, 1994	Littlejohn's Tree Frog
* <i>Litoria olongburensis</i> Liem & Ingram, 1977	Olongburra Frog
<i>Litoria subglandulosa</i> Tyler & Anstis, 1983	Glandular Frog

## Myobatrachidae

<i>Assa darlingtoni</i> (Loveridge, 1933)	Pouched Frog
<i>Crinia sloanei</i> Littlejohn, 1958	Sloane's Froglet
<i>Crinia tinnula</i> Straughan & Main, 1966	Wallum Froglet
* <i>Heleioporus australiacus</i> (Shaw & Nodder, 1795)	Giant Burrowing Frog
<i>Phyloria sphagnicolus</i> (Moore, 1958)	Sphagnum Frog
<i>Pseudophryne australis</i> (Gray, 1835)	Red-crowned Toadlet

## Reptiles

### Carphodactylidae

- \* *Uvidicolus sphyrurus* (Ogilby, 1892)

### Cheloniidae

- \* *Chelonia mydas* (Linnaeus, 1758) Green Turtle

### Chelidae

- \* *Myuchelys belli* (Gray, 1844) Bell's Turtle, Western Sawshelled Turtle

### Diplodactylidae

*Lucasium stenodactylum* (Boulenger, 1896) Crowned Gecko

*Strophurus elderi* (Stirling & Zietz, 1893) Jewelled Gecko

### Gekkonidae

- \* *Christinus guentheri* (Boulenger, 1885) Lord Howe Island Southern Gecko

### Pygopodidae

- \* *Aprasia parapulchella* Kluge, 1974 Pink-tailed Legless Lizard



* <i>Delma impar</i> (Fischer, 1882)	Striped Legless Lizard
Varanidae	
<i>Varanus rosenbergi</i> Mertens, 1957	Rosenberg's Goanna
Scincidae	
* <i>Coeranoscincus reticulatus</i> (Günther, 1873)	Three-toed Snake-tooth Skink
<i>Ctenotus brooksi</i> (Loveridge, 1933)	Wedgesnout Ctenotus
<i>Lerista xanthura</i> Storr, 1976	Yellow-tailed Plain Slider
* <i>Oligosoma lichenigera</i> (O'Shaughnessy, 1874)	Lord Howe Island Skink
<i>Tiliqua multifasciata</i> Sternfeld, 1919	Centralian Blue-tongued Lizard
<i>Tiliqua occipitalis</i> (Peters, 1863)	Western Blue-tongued Lizard
Boidae	
<i>Antaresia stimsoni</i> (Smith, 1985)	Stimson's Python
<i>Aspidites ramsayi</i> (Macleay, 1882)	Woma
Elapidae	
<i>Cacophis harriettae</i> Krefft, 1869	White-crowned Snake
<i>Demansia rimicola</i> Scanlon, 2007	A whip snake
<i>Hoplocephalus bitorquatus</i> (Jan, 1859)	Pale-headed Snake
<i>Hoplocephalus stephensii</i> Krefft, 1869	Stephens' Banded Snake
<i>Simoselaps fasciolatus</i> (Gunther, 1872)	Narrow-banded Snake
<i>Suta flagellum</i> (McCoy, 1878)	Little Whip Snake
<b>Birds</b>	
Anseranatidae	
<i>Anseranas semipalmata</i> (Latham, 1798)	Magpie Goose
Anatidae	
<i>Oxyura australis</i> Gould, 1837	Blue-billed Duck
<i>Stictonetta naevosa</i> (Gould, 1841)	Freckled Duck
Procellariidae	
<i>Ardenna carneipes</i> (Gould, 1844)	Flesh-footed Shearwater

* <i>Macronectes halli</i> 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
Falconidae	
<i>Falco subniger</i> G.R. Gray, 1843	Black Falcon
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

*Grus rubicunda* (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

<i>Callocephalon fimbriatum</i> (Grant, 1803)	Gang-gang Cockatoo
<i>Calyptorhynchus banksii samueli</i> Mathews, 1917	Red-tailed Black-Cockatoo (inland subspecies)
<i>Calyptorhynchus lathami</i> (Temminck, 1807)	Glossy Black-Cockatoo
<i>Lophochroa leadbeateri</i> (Vigors, 1831)	Major Mitchell's Cockatoo

Psittacidae

<i>Glossopsitta porphyrocephala</i> (Dietrichsen, 1837)	Purple-crowned Lorikeet
<i>Glossopsitta pusilla</i> (Shaw, 1790)	Little Lorikeet
<i>Neophema pulchella</i> (Shaw, 1792)	Turquoise Parrot
<i>Neophema splendida</i> (Gould, 1841)	Scarlet-chested Parrot
<i>Pezoporus wallicus wallicus</i> (Kerr, 1792)	Eastern Ground Parrot
* <i>Polytelis swainsonii</i> (Desmarest, 1826)	Superb Parrot

Strigidae

<i>Ninox connivens</i> (Latham, 1801)	Barking Owl
<i>Ninox strenua</i> (Gould, 1838)	Powerful Owl

Tytonidae

<i>Tyto longimembris</i> (Jerdon, 1839)	Eastern Grass Owl
<i>Tyto novaehollandiae</i> (Stephens, 1826)	Masked Owl
<i>Tyto tenebricosa</i> (Gould, 1845)	Sooty Owl

Podargidae

<i>Podargus ocellatus</i> Quoy & Gaimard, 1830	Marbled Frogmouth
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Halcyonidae

<i>Todiramphus chloris</i> (Boddaert, 1783)	Collared Kingfisher
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Menuridae

<i>Menura alberti</i> Bonaparte, 1850	Albert's Lyrebird
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Atrichornithidae

<i>Atrichornis rufescens</i> (Ramsay, 1867)	Rufous Scrub-bird
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Climacteridae

*Climacteris picumnus victoriae* Mathews, 1912 Brown Treecreeper (eastern subspecies)

Maluridae

*Amytornis striatus* (Gould, 1840) Striated Grasswren

Acanthizidae

*Calamanthus campestris* (Gould, 1841) Rufous Fieldwren

*Chthonicola sagittata* (Latham, 1801) Speckled Warbler

*Hylacola cautus* Gould, 1843 Shy Heathwren

*Pyrrholaemus brunneus* Gould, 1841 Redthroat

Meliphagidae

*Certhionyx variegatus* Lesson, 1830 Pied Honeyeater

*Epthianura albifrons* (Jardine & Selby, 1828) White-fronted Chat

*Grantiella picta* (Gould, 1838) Painted Honeyeater

*Lichenostomus cratitius* (Gould, 1841) Purple-gaped Honeyeater

*Lichenostomus fasciocularis* (Gould, 1854) Mangrove Honeyeater

*Melithreptus gularis gularis* (Gould, 1837) Black-chinned Honeyeater (eastern subspecies)

Petroicidae

*Drymodes brunneopygia* Gould, 1841 Southern Scrub-robin

*Melanodryas cucullata cucullata* (Latham, 1801) Hooded Robin (south-eastern form)

*Petroica boodang* (Lesson, 1838) Scarlet Robin

*Petroica phoenicea* Gould, 1837 Flame Robin

*Petroica rodinogaster* (Drapiez, 1819) Pink Robin

Pomatostomidae

*Pomatostomus halli* Cowles, 1964 Hall's Babbler

*Pomatostomus temporalis temporalis* (Vigors & Horsfield, 1827) Grey-crowned Babbler (eastern subspecies)

Psophodidae

*Cinclosoma castanotum* Gould, 1840 Chestnut Quail-thrush

Neosittidae

*Daphoenositta chrysoptera* (Latham, 1801)

Varied Sittella

Pachycephalidae

*Pachycephala inornata* Gould, 1841

Gilbert's Whistler

*Pachycephala olivacea* Vigors & Horsfield, 1827

Olive Whistler

*Pachycephala pectoralis contempta* Hartert, 1898

Golden Whistler (Lord Howe Is. subsp.)

Monarchidae

*Carterornis leucotis* (Gould, 1850)

White-eared Monarch

Campephagidae

*Coracina lineata* (Swainson, 1825)

Barred Cuckoo-shrike

Artamidae

*Artamus cyanopterus cyanopterus* (Latham, 1802)

Dusky Woodswallow

\* *Strepera graculina crissalis* Sharpe, 1877

Pied Currawong (Lord Howe Is. subsp.)

Timaliidae

*Zosterops lateralis tephropleurus* Gould, 1855

Silvereye (Lord Howe Is. subsp.)

Estrildidae

*Stagonopleura guttata* (Shaw, 1796)

Diamond Firetail

**Mammals**

Burramyidae

*Cercartetus nanus* (Desmarest, 1818)

Eastern Pygmy-possum

Dasyuridae

\* *Dasyurus maculatus* (Kerr, 1792)

Spotted-tailed Quoll

*Ningau i yvonneae* Kitchener, Stoddart & Henry, 1983

Southern Ningau

*Phascogale tapoatafa* (Meyer, 1793)

Brush-tailed Phascogale

*Planigale maculata* (Gould, 1851)

Common Planigale

*Sminthopsis leucopus* (Gray, 1842)

White-footed Dunnart

*Sminthopsis macroura* (Gould, 1845)

Stripe-faced Dunnart

Phascolarctidae

*Phascolarctos cinereus* (Goldfuss, 1817) Koala

Petauridae

*Petaurus australis* Shaw, 1791 Yellow-bellied Glider

*Petaurus norfolcensis* (Kerr, 1792) Squirrel Glider

Potoroidae

*Aepyprymnus rufescens* (Gray, 1837) Rufous Bettong

\* *Potorous tridactylus* (Kerr, 1792) Long-nosed Potoroo

Macropodidae

*Macropus parma* Waterhouse, 1845 Parma Wallaby

*Thylogale stigmatica* (Gould, 1860) Red-legged Pademelon

Pteropodidae

*Nyctimene robinsoni* Thomas, 1904 Eastern Tube-nosed Bat

\* *Pteropus poliocephalus* Temminck, 1825 Grey-headed Flying-fox

*Syconycteris australis* (Peters, 1867) Common Blossom-bat

Emballonuridae

*Saccolaimus flaviventris* (Peters, 1867) Yellow-bellied Sheath-tail-bat

Molossidae

*Mormopterus lumsdenae* Reardon, McKenzie and Adams, 2014 Northern Free-tailed 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

<i>Nyctophilus bifax</i> Thomas, 1915	Eastern Long-eared Bat
* <i>Nyctophilus corbeni</i> Parnaby, 2009	Corben's Long-eared Bat
<i>Scoteanax rueppellii</i> (Peters, 1866)	Greater Broad-nosed Bat
<i>Vespadelus baverstocki</i> (Kitchener, Jones & Caputi, 1987)	Inland Forest Bat
<i>Vespadelus troughtoni</i> (Kitchener, Jones & Caputi, 1987)	Eastern Cave Bat
<b>Muridae</b>	
<i>Leggadina forresti</i> (Thomas, 1906)	Forrest's Mouse
<i>Mastacomys fuscus</i> Thomas, 1882	Broad-toothed Rat
<i>Pseudomys gracilicaudatus</i> (Gould, 1845)	Eastern Chestnut Mouse
<i>Pseudomys hermannsburgensis</i> (Waite, 1896)	Sandy Inland Mouse
* <i>Pseudomys pilligaensis</i> Fox & Briscoe, 1980	Pilliga Mouse
<i>Rattus villosissimus</i> (Waite, 1898)	Long-haired Rat

## Marine mammals

### Otariidae

<i>Arctocephalus forsteri</i> (Lesson, 1828)	New Zealand Fur-seal
<i>Arctocephalus pusillus doriferus</i> Jones, 1925	Australian Fur-seal

### Physeteridae

<i>Physeter macrocephalus</i> Linnaeus, 1758	Sperm Whale
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### Balaenopteridae

* <i>Megaptera novaeangliae</i> (Borowski, 1781)	Humpback Whale
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## Division 2 Fungi

### Basidiomycota

#### Hygrophoraceae

<i>Hygrocybe anomala</i> var. <i>ianthinomarginata</i> A.M. Young
<i>Hygrocybe aurantipes</i> A.M. Young
<i>Hygrocybe reesiae</i> A.M. Young
<i>Hygrocybe rubronivea</i> A.M. Young



## Division 3 Plants

### Apiaceae

*Xanthosia scopulicola* J.M. Hart & Henwood

### Apocynaceae

\* *Parsonsia dorrigoensis* J.B. Williams

\* *Tylophora linearis* P.I. Forst.

### Araliaceae

\* *Astrotricha crassifolia* Blakely

### Argophyllaceae

\* *Corokia whiteana* L.S. Sm.

### Asteliaceae

\* *Neoastelia spectabilis* J.B. Williams

### Asteraceae

\* *Ammobium craspedioides* Benth.

\* *Argyrotegium nitidulum* (Hook. f.) J.M. Ward & Breitw.

\* *Brachyscome muelleroides* G. L. R. Davis

\* *Brachyscome papillosa* G. L. R. Davis

\* *Calotis glandulosa* F. Muell.

\* *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.

Corynocarpaceae

- \* *Corynocarpus rupestris* Guymer subsp. *rupestris*

Cunoniaceae

- \* *Acrophyllum australe* (Cunn.) Hoogl.

Cupressaceae

- \* *Callitris oblonga* A. Rich. & Rich.

Cyperaceae

*Cyperus rupicola* S.T. Blake

- \* *Eleocharis obicis* L.A.S. Johnson & O.D. Evans

*Lepidosperma evansianum* K.L. Wilson

Dilleniaceae

- \* *Hibbertia marginata* Conn

Doryanthaceae

*Doryanthes palmeri* W. Hill ex Benth.

Elaeocarpaceae

- \* *Tetratheca glandulosa* Sm.
- \* *Tetratheca juncea* Sm.

Ericaceae

- \* *Budawangia gnidioides* (Summerh.) Telford
- Dracophyllum macranthum* E.A.Br. & N. Streiber
- Epacris purpurascens* var. *purpurascens*

\* *Epacris sparsa* R. Br.

*Gaultheria viridicarpa* subsp. *merinoensis* J.B. Williams ms

\* *Gaultheria viridicarpa* J.B. Williams ms subsp. *viridicarpa*

\* *Leucopogon exolasius* (F. Muell.) F. Muell. ex Benth.

\* *Styphelia perileuca* J. Powell

#### 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. Betcher) 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 sejuncta* M.L. Williams, Drinnan & N.G. Walsh

\* *Prostanthera stricta* R. Baker

\* *Westringia davidii* Conn

Lauraceae

\* *Cryptocarya foetida* R. Baker

\* *Endiandra hayesii* Kosterm.

Malvaceae

\* *Commersonia procumbens* (Maiden & Betche) Guymer

\* *Lasiopetalum joyceae* Blakely

\* *Lasiopetalum longistamineum* Maiden & Betche

Meliaceae

\* *Owenia cepiodora* F. Muell.

Menispermaceae

\* *Tinospora tinosporoides* (F. Muell.) Forman

Myrtaceae

\* *Angophora inopina* K.D. Hill

\* *Angophora robur* L. Johnson & K. Hill

*Callistemon linearifolius* (Link) DC.

\* *Darwinia biflora* (Cheel) B. Briggs

*Darwinia glaucophylla* B.G. Briggs

*Darwinia peduncularis* B. Briggs

*Eucalyptus aggregata* Deane & Maiden

Black Gum

\* *Eucalyptus alligatrix* L.A.S. Johnson & K.D. Hill subsp. *alligatrix*

*Eucalyptus approximans* Maiden

\* *Eucalyptus aquatica* (Blakely) L. Johnson & K. Hill

\* *Eucalyptus benthamii* Maiden & Cabbage

*Eucalyptus boliviana* J.B. Williams & K.D. Hill

\* *Eucalyptus caleyi* subsp. *ovendenii* L. Johnson & K. Hill

\* *Eucalyptus camfieldii* Maiden

\* *Eucalyptus cannonii* R. Baker

- \* *Eucalyptus canobolensis* (L.A.S. Johnson & K.D. Hill) J.T. Hunter
- Eucalyptus corticosa* L.A.S. Johnson
- Eucalyptus dissita* K.D. Hill
- Eucalyptus fracta* K.D. Hill
- \* *Eucalyptus glaucina* Blakely
- \* *Eucalyptus kartzoffiana* L. Johnson & Blaxell
- \* *Eucalyptus langleyi* L. Johnson & Blaxell
- Eucalyptus leucoxylon* F. Muell. subsp. *pruinosa* (F. Muell. Ex. Miq.) Boland Yellow Gum
- \* *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
- \* *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
- \* *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

*Caladenia montana* G.W. Carr

*Chiloglottis platyptera* D.L. Jones

- \* *Cryptostylis hunteriana* Nicholls

- \* *Diuris praecox* D.L. Jones

*Diuris tricolor* Fitzg.

- \* *Diuris venosa* Rupp

- \* *Genoplesium vernale* D.L. Jones

*Oberonia titania* Lindl.

*Peristeranthus hillii* (F. Muell.) T.E. Hunt.

*Prasophyllum pallens* D.L. Jones

- \* *Prasophyllum retroflexum* D.L. Jones

*Pterostylis alpina* R.S. Rogers

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

- \* *Pterostylis cobarensis* M.A. Clem.

- \* *Pterostylis cucullata* R. Br.

*Pterostylis elegans* D.L. Jones

*Pterostylis nigricans* L. Jones & M.A. Clem.

- \* *Pterostylis pulchella* Messmer

- \* *Rhizanthella slateri* (Rupp) M.A. Clem. and P.J. Cribb

- \* *Sarcochilus fitzgeraldii* F. Muell.

- \* *Sarcochilus hartmannii* F. Muell.

- \* *Sarcochilus weinthalii* (F.M. Bailey) Dockrill

*Thelymitra alpicola* Jeanes

Orobanchaceae

- \* *Euphrasia bella* S.T. Blake

\* *Euphrasia bowdeniae* W.R. Barker

*Euphrasia ciliolata* W.R. Barker

Plantaginaceae

*Veronica blakelyi* (B.G. Briggs & Ehrend.) B.G. Briggs

Poaceae

\* *Amphibromus fluitans* Kirk

*Ancistrachne maidenii* (A.A. Ham.) Vickery

\* *Arthraxon hispidus* (Thunb.) Makino

\* *Austrostipa metatoris* (J. Everett & S.W.L. Jacobs) S.W.L. Jacobs & J. Everett

\* *Dichanthium setosum* S.T. Blake

*Paspalidium grandispiculatum* B.K Simon

\* *Rytidosperma pumilum* (Kirk) Linder

Polygonaceae

*Muehlenbeckia costata* K.L. Wilson and Makinson ms

\* *Persicaria elatior* (R. Br.) Sojak

Proteaceae

\* *Floydia praealta* (F. Muell.) L. Johnson & B. Briggs

\* *Grevillea banyabba* P. Olde & N. Marriott

\* *Grevillea evansiana* McKee

*Grevillea juniperina* R. Br. subsp. *juniperina*

\* *Grevillea kennedyana* F. Muell.

\* *Grevillea molyneuxii* D.J. McGillivray

\* *Grevillea parviflora* R. Br. subsp. *parviflora*

\* *Grevillea quadricauda* P. Olde & N. Marriott

\* *Grevillea rhizomatosa* P. Olde & N. Marriott

\* *Grevillea scortechinii* subsp. *sarmentosa* (Blakely & McKie) McGillivray

\* *Grevillea shiressii* Blakely

\* *Hakea archaeoides* W.R. Barker

\* *Hakea fraseri* R. Br.



- \* *Hicksbeachia pinnatifolia* F. Muell.
- \* *Isopogon fletcheri* F. Muell.
- \* *Macadamia tetraphylla* L. Johnson
- \* *Persoonia acerosa* Sieber ex Schultes & Schultes f.
- \* *Persoonia marginata* Cunn. ex R. Br.

Ranunculaceae

- \* *Clematis fawcettii* F. Muell.
- \* *Ranunculus anemoneus* F. Muell.

Restionaceae

- \* *Baloskion longipes* (L.A.S. Johnson & O.D. Evans) B.G. Briggs & L.A.S. Johnson

Rhamnaceae

*Discaria nitida* Tortosa

*Pomaderris bodalla* N.G. Walsh & F. Coates

- \* *Pomaderris gilmourii* var. *cana* N. Walsh

*Pomaderris notata* S.T. Blake

- \* *Pomaderris pallida* Wakef.
- \* *Pomaderris parrisiae* N. Walsh

Rubiaceae

- \* *Asperula asthenes* Airy Shaw & Turrill

Rutaceae

- \* *Boronia deanei* Maiden & E. Betche
- \* *Boronia granitica* Maiden & E. Betche
- \* *Boronia umbellata* P. Weston
- \* *Bosistoa transversa* J.F. Bailey & C.T. White
- \* *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

Solonaceae

- \* *Solanum karsense* Symon

Surianaceae

- \* *Cadellia pentastylis* F. Muell.

Symplocaceae

- \* *Symplocos baeuerlenii* R. Baker

Thymelaeaceae

- \* *Pimelea curviflora* R. Br. var. *curviflora*

Winteraceae

- \* *Tasmannia glaucifolia* J. Williams

- \* *Tasmannia purpurascens* (Vick.) A.C. Smith

## Division 4 Populations

### Schedule 2 Threatened ecological communities

(Section 4.2)

#### Part 1 Critically endangered ecological communities

Agnes Banks Woodland in the Sydney Basin Bioregion (as described in the final determination of the Scientific Committee to list the ecological community)

- \* Artesian Springs Ecological Community in the Great Artesian Basin (as described in the final determination of the Scientific Committee to list the ecological community)
- \* Blue Gum High Forest in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

- \* Cumberland Plain Woodland in the Sydney Basin Bioregion (as described in the final determination of the Scientific Committee to list the ecological community)  
  
Elderslie Banksia Scrub Forest (as described in the final determination of the Scientific Committee to list the ecological community)  
  
Gnarled Mossy Cloud Forest on Lord Howe Island (as described in the final determination of the Scientific Committee to list the ecological community)
- \* Hunter Valley Weeping Myall Woodland in the Sydney Basin Bioregion (as described in the final determination of the Scientific Committee to list the ecological community)  
  
Hygrocybeae Community of Lane Cove Bushland Park in the Sydney Basin Bioregion (as described in the final determination of the Scientific Committee to list the ecological community)  
  
Kincumber Scribbly Gum Forest in the Sydney Basin Bioregion (as described in the final determination of the Scientific Committee to list the ecological community)  
  
*Lagunaria* Swamp Forest on Lord Howe Island (as described in the final determination of the Scientific Community to list the ecological community)  
  
Mallee and Mallee-Broombush dominated woodland and shrubland, lacking *Triodia*, in the NSW South Western Slopes Bioregion (as described in the final determination of the Scientific Committee to list the ecological community)  
  
Marsh Club-rush Sedgeland in the Darling Riverine Plains Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)
- \* New England Peppermint (*Eucalyptus nova-anglica*) Woodland on Basalts and Sediments in the New England Tableland Bioregion (as described in the final determination of the Scientific Community to list the ecological community)  
  
Porcupine Grass—Red Mallee—Gum Coolabah hummock grassland/low sparse woodland in the Broken Hill Complex Bioregion (as described in the final determination of the Scientific Committee to list the ecological community)  
  
Shale Sandstone Transition Forest in the Sydney Basin Bioregion (as described in the final determination of the Scientific Committee to list the ecological community)  
  
Sun Valley Cabbage Gum Forest in the Sydney Basin Bioregion (as described in the final determination of the Scientific Committee to list the ecological community)  
  
Windswept Feldmark in the Australian Alps Bioregion (as described in the final determination of the Scientific Committee to list the ecological community)

## Part 2 Endangered ecological communities

*Acacia loderi* Shrublands (as described in the determination of the Scientific Committee under Division 5 of Part 2)

*Acacia melvillei* Shrubland in the Riverina and Murray-Darling Depression Bioregions (as described in the final determination of the Scientific Committee to list the ecological community)

*Allocasuarina luehmannii* Woodland in the Riverina and Murray-Darling Depression Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Araluen Scarp Grassy Forest in the South East Corner Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Bangalay Sand Forest of the Sydney Basin and South East Corner Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Ben Halls Gap National Park Sphagnum Moss Cool Temperate Rainforest (as described in the final determination of the Scientific Committee to list the ecological community)

\* Blue Mountains Basalt Forest in the Sydney Basin Bioregion (as described in the final determination of the Scientific Committee to list the ecological community)

Blue Mountains Shale Cap Forest in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Brigalow within the Brigalow Belt South, Nandewar and Darling Riverine Plains Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Brigalow-Gidgee woodland/shrubland in the Mulga Lands and Darling Riverine Plains Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Brogo Wet Vine Forest in the South East Corner Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Byron Bay Dwarf Graminoid Clay Heath Community (as described in the final determination of the Scientific Committee to list the ecological community)

*Cadellia pentastylis* (Ooline) community in the Nandewar and Brigalow Belt South Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Carbeen Open Forest community in the Darling Riverine Plains and Brigalow Belt South Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Carex Sedgeland of the New England Tableland, Nandewar, Brigalow Belt South and NSW North Coast Bioregions (as described in the final determination of the Scientific Committee to list the ecological community)

Castlereagh Swamp Woodland Community (as described in the final determination of the Scientific Committee to list the ecological community)

Central Hunter Grey Box—Ironbark Woodland in the New South Wales North Coast and Sydney Basin Bioregions (as described in the final determination of the Scientific Committee to list the ecological community)

Central Hunter Ironbark—Spotted Gum—Grey Box Forest in the New South Wales North Coast and Sydney Basin Bioregions (as described in the final determination of the Scientific Committee to list the ecological community)

Coastal Cypress Pine Forest in the New South Wales North Coast Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Coastal Saltmarsh in the New South Wales North Coast, Sydney Basin and South East Corner Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Coastal Upland Swamp in the Sydney Basin Bioregion (as described in the final determination of the Scientific Committee to list the ecological community)

Cooks River/Castlereagh Ironbark Forest in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Coolac-Tumut Serpentinite Shrubby Woodland in the NSW South Western Slopes and South Eastern Highlands Bioregions (as described in the final determination of the Scientific Committee to list the ecological community)

Coolibah-Black Box Woodland in the Darling Riverine Plains, Brigalow Belt South, Cobar Penepplain and Mulga Lands 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)

Freshwater Wetlands on Coastal Floodplains of the New South Wales North Coast, Sydney Basin and South East Corner Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Fuzzy Box Woodland on alluvial soils of the South Western Slopes, Darling Riverine Plains and Brigalow Belt South Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Genowlan Point *Allocasuarina nana* heathland (as described in the final determination of the Scientific Committee to list the ecological community)

Grey Box—Grey Gum Wet Sclerophyll Forest in the NSW North Coast Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

*Halosarcia lylei* low open-shrubland in the Murray Darling Depression Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Howell Shrublands in the New England Tableland and Nandewar Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2 published in the Gazette on 2 December 2011)

Hunter Floodplain Red Gum Woodland in the NSW North Coast and Sydney Basin Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Hunter Lowland Redgum Forest in the Sydney Basin and New South Wales North Coast Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Hunter Valley Vine Thicket in the NSW North Coast and Sydney Basin Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Illawarra Lowlands Grassy Woodland in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Illawarra Subtropical Rainforest in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Inland Grey Box Woodland in the Riverina, NSW South Western Slopes, Cobar Penneplain, Nandewar and Brigalow Belt South Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Kurnell Dune Forest in the Sutherland Shire and City of Rockdale (as described in the final determination of the Scientific Committee to list the ecological community)

Kurri Sand Swamp Woodland in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Littoral Rainforest in the New South Wales North Coast, Sydney Basin and South East Corner Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Low woodland with heathland on indurated sand at Norah Head (as described in the final determination of the Scientific Committee to list the ecological community)

Lower Hunter Spotted Gum—Ironbark Forest in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Lowland Grassy Woodland in the South East Corner Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Lowland Rainforest in the NSW North Coast and Sydney Basin Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Lowland Rainforest on Floodplain in the New South Wales North Coast Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Maroota Sands Swamp Forest (as described in the final determination of the Scientific Committee to list the ecological community)

McKies Stringybark/Blackbutt Open Forest in the Nandewar and New England Tableland Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

*Melaleuca armillaris* Tall Shrubland in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Milton Ulladulla Subtropical Rainforest in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Moist Shale Woodland in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Montane Peatlands and Swamps of the New England Tableland, NSW North Coast, Sydney Basin, South East Corner, South Eastern Highlands and Australian Alps Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Mt Canobolas *Xanthoparmelia* Lichen Community (as described in the final determination of the Scientific Committee to list the ecological community)

Mount Gibraltar Forest in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Mount Kaputar high elevation and dry rainforest land snail and slug community in the Nandewar and Brigalow Belt South Bioregions (as described in the final determination of the Scientific Committee to list the ecological community)

Myall Woodland in the Darling Riverine Plains, Brigalow Belt South, Cobar Penepplain, Murray-Darling Depression, Riverina and NSW South Western Slopes bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Native Vegetation on Cracking Clay Soils of the Liverpool Plains (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Newnes Plateau Shrub Swamp in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

O'Hares Creek Shale Forest (as described in the final determination of the Scientific Committee to list the ecological community)

Pilliga Outwash Ephemeral Wetlands in the Brigalow Belt South Bioregion (as described in the final determination of the Scientific Committee to list the ecological community)

Pittwater and Wagstaffe Spotted Gum Forest in the Sydney Basin Bioregion (as described in the final determination of the Scientific Committee to list the ecological community)

Quorrobolong Scribbly Gum Woodland in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Ribbon Gum—Mountain Gum—Snow Gum Grassy Forest/Woodland of the New England Tableland Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

River-Flat Eucalypt Forest on Coastal Floodplains of the New South Wales North Coast, Sydney Basin and South East Corner Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Robertson Basalt Tall Open-forest in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Robertson Rainforest in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Sandhill Pine Woodland in the Riverina, Murray-Darling Depression and NSW South Western Slopes Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

\* Semi-evergreen Vine Thicket in the Brigalow Belt South and Nandewar Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Shale Gravel Transition Forest in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Southern Highlands Shale Woodlands in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Southern Sydney sheltered forest on transitional sandstone soils in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Subtropical Coastal Floodplain Forest of the New South Wales North Coast Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Swamp Oak Floodplain Forest of the New South Wales North Coast, Sydney Basin and South East Corner Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Swamp Sclerophyll Forest on Coastal Floodplains of the New South Wales North Coast, Sydney Basin and South East Corner Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Sydney Freshwater Wetlands in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

\* Sydney Turpentine-Ironbark Forest (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Tableland Basalt Forest in the Sydney Basin and South Eastern Highlands Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Tablelands Snow Gum, Black Sallee, Candlebark and Ribbon Gum Grassy Woodland in the South Eastern Highlands, Sydney Basin, South East Corner and NSW South Western Slopes Bioregions (as described in the final determination of the Scientific Committee to list the ecological community)

The Shorebird community occurring on the relict tidal delta sands at Taren Point (as described in the final determination of the Scientific Committee to list the ecological community)

*Themeda* grassland on seacliffs and coastal headlands in the NSW North Coast, Sydney Basin and South East Corner Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Umina Coastal Sandplain Woodland in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Upland Wetlands of the Drainage Divide of the New England Tableland Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Warkworth Sands Woodland in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Western Sydney Dry Rainforest in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

\* White Box Yellow Box Blakely's Red Gum Woodland (as described in the determination of the Scientific Committee under Division 5 of Part 2)

White Gum Moist Forest in the NSW North Coast Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

### **Part 3 Vulnerable ecological communities**

Blue Mountains Swamps in the Sydney Basin Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2)

Castlereagh Scribbly Gum Woodland in the Sydney Basin Bioregion (as described in the final determination of the Scientific Committee to list the ecological community)

Hunter Valley Foothills Slaty Gum Woodland in the Sydney Basin Bioregion (as described in the final determination of the Scientific Committee to list the ecological community)

Lower Hunter Valley Dry Rainforest in the Sydney Basin and NSW North Coast Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2)



## Schedule 3 Extinct species, species extinct in the wild and collapsed ecological communities

(Section 4.2)

### Part 1 Extinct species

#### Animals

##### Vertebrates

##### Reptiles

###### Elapidae

*Oxyuranus microlepidotus* (McCoy, 1879) Fierce Snake

##### Birds

###### Rallidae

\* *Porphyrio albus* (Shaw, 1790) White Gallinule

###### Columbidae

\* *Columba vitiensis godmanae* (Mathews, 1915) White-throated Pigeon (Lord Howe Is. subsp.)

###### Psittacidae

\* *Psephotus pulcherrimus* (Gould, 1845) Paradise Parrot

\* *Cyanoramphus novaezelandiae subflavescens* Salvadori, 1891 Red-crowned Parakeet (Lord Howe Is. subsp.)

\* *Pezoporus occidentalis* (Gould, 1861) Night Parrot

###### Strigidae

\* *Ninox novaeseelandiae albaria* Ramsay, 1888 Southern Boobook (Lord Howe Is. subsp.)

###### Acanthizidae

\* *Gerygone insularis* Ramsey, 1878 Lord Howe Gerygone

###### Rhipiduridae

\* *Rhipidura fuliginosa* (Sparrman, 1787) New Zealand Fantail (Lord Howe Is. subsp.)

Sturnidae

- \* *Aplonis fusca hulliana* Mathews, 1912 Tasman Starling (Lord Howe Is. subsp.)

Timaliidae

- \* *Zosterops strenuus* Gould, 1855 Robust White-eye

Turdidae

- \* *Turdus poliocephalus vinitinctus* (Gould, 1855) Island Thrush (Lord Howe Is. subsp.)

Estrildidae

- \* *Neochmia ruficauda* (Gould, 1837) Star Finch
- \* *Poephila cincta cincta* (Gould, 1837) Black-throated Finch (southern subspecies)

**Mammals**

Dasyuridae

- \* *Dasycercus 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)

- |                                                       |                                            |
|-------------------------------------------------------|--------------------------------------------|
| * <i>Bettongia penicillata penicillata</i> Gray, 1837 | Brush-tailed Bettong (South-East Mainland) |
| * <i>Bettongia tropica</i> Wakefield, 1967            | Northern Bettong                           |
| Macropodidae                                          |                                            |
| * <i>Lagorchestes leporides</i> (Gould, 1841)         | Eastern Hare-wallaby                       |
| * <i>Onychogalea fraenata</i> (Gould, 1841)           | Bridled Nailtail Wallaby                   |
| * <i>Onychogalea lunata</i> (Gould, 1841)             | Crescent Nailtail Wallaby                  |
| Vespertilionidae                                      |                                            |
| * <i>Nyctophilus howensis</i> McKean, 1973            | Lord Howe Island Bat                       |
| Muridae                                               |                                            |
| * <i>Conilurus albipes</i> (Lichtenstein, 1829)       | White-footed Tree-rat                      |
| * <i>Leporillus apicalis</i> (Gould, 1853)            | Lesser Stick-nest Rat                      |
| * <i>Leporillus conditor</i> (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 glaucus</i> Thomas, 1910                 | Blue-grey Mouse                            |
| * <i>Pseudomys gouldii</i> (Waterhouse, 1839)         | Gould's Mouse                              |

## **Invertebrates**

### **Arthropoda**

#### **Insecta**

##### **Coleoptera**

###### Curculionidae

- |                                                         |                                |
|---------------------------------------------------------|--------------------------------|
| <i>Hybomorphus melanosomus</i> (Saunders & Jekel, 1855) | Lord Howe Island ground weevil |
|---------------------------------------------------------|--------------------------------|

## **Plants**

### Acanthaceae

- \* *Rhaphidospora bonneyana* (F. Muell.) R. Barker

Aizoaceae

*Glinus orygioides* F. Muell.

- \* *Trianthesa cypseleoides* (Fenzl) Benth.

Amaranthaceae

*Ptilotus extenuatus* Benl

Asteraceae

- \* *Acanthocladium dockeri* F. Muell.

*Blumea lacera* (Burman f.) DC.

- \* *Olearia oliganthema* F. Muell. ex Benth.

- \* *Senecio behrianus* Sonder & F. Muell.

- \* *Senecio georgianus* DC.

- \* *Rhaponticum australe* (Gaudich.) Sojak

Austral Cornflower

Brassicaceae

*Lepidium foliosum* Desv.

*Stenopetalum velutinum* F. Muell.

Chenopodiaceae

*Atriplex acutiloba* R. Anderson

*Maireana lanosa* (Lindley) Paul G. Wilson

*Osteocarpum pentapterum* (F. Muell. & Tate) Volkens

Dennstaedtiaceae

*Hypolepis elegans* Carruth.

Elaeocarpaceae

*Tetratheca pilosa* Labill. subsp. *pilosa*

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.

Orobanchaceae

\* *Euphrasia ruptura* W.R. Barker

Polygalaceae

*Comesperma scoparium* Drummond

Proteaceae

*Grevillea nematophylla* F. Muell.

\* *Persoonia laxa* L. Johnson & P. Weston

Rhamnaceae

*Pomaderris paniculosa* F. Muell. ex Reissek subsp. *paniculosa*

Rosaceae

\* *Aphanes pentamera* Rothm.

Rubiaceae

*Knoxia sumatrensis* (Retz.) DC.

Rutaceae

*Micromelum minutum* (Forster f.) Wight & Arn.

*Philotheca angustifolia* (Paul G. Wilson) Paul G. Wilson subsp.  
*angustifolia*

Sapindaceae

*Dodonaea stenophylla* F. Muell.

Solanaceae

*Solanum bauerianum* Endl.

## Part 2 Species extinct in the wild

## Part 3 Collapsed ecological communities

## Schedule 4 Key threatening processes

(Section 4.31)

Aggressive exclusion of birds from woodland and forest habitat by abundant Noisy Miners, *Manorina melanocephala* (Latham, 1802)

Alteration of habitat following subsidence due to longwall mining

Alteration to the natural flow regimes of rivers and streams and their floodplains and wetlands (as described in the final determination of the Scientific Committee to list the threatening process)

Anthropogenic Climate Change

Bushrock removal (as described in the final determination of the Scientific Committee to list the threatening process)

Clearing of native vegetation (as defined and described in the final determination of the Scientific Committee to list the key threatening process)

Competition and grazing by the feral European Rabbit, *Oryctolagus cuniculus* (L.)

Competition and habitat degradation by Feral Goats, *Capra hircus* Linnaeus 1758

Competition from feral honey bees, *Apis mellifera* L.

Death or injury to marine species following capture in shark control programs on ocean beaches (as described in the final determination of the Scientific Committee to list the key threatening process)

Entanglement in or ingestion of anthropogenic debris in marine and estuarine environments (as described in the final determination of the Scientific Committee to list the key threatening process)

Forest eucalypt dieback associated with over-abundant psyllids and Bell Miners

Herbivory and environmental degradation caused by feral deer

High frequency fire resulting in the disruption of life cycle processes in plants and animals and loss of vegetation structure and composition

Importation of Red Imported Fire Ants *Solenopsis invicta* Buren 1972

Infection by Psittacine Circoviral (beak and feather) Disease affecting endangered psittacine species and populations

Infection of frogs by amphibian chytrid causing the disease chytridiomycosis

Infection of native plants by *Phytophthora cinnamomi*

Introduction and establishment of Exotic Rust Fungi of the order Pucciniales pathogenic on plants of

the family Myrtaceae

Introduction of the Large Earth Bumblebee *Bombus terrestris* (L.)

Invasion and establishment of exotic vines and scramblers

Invasion and establishment of Scotch Broom (*Cytisus scoparius*)

Invasion and establishment of the Cane Toad (*Bufo marinus*)

Invasion, establishment and spread of Lantana (*Lantana camara* L. *sens. lat*)

Invasion of native plant communities by African Olive *Olea europaea* subsp. *cuspidata* (Wall. ex G. Don) Cif.

Invasion of native plant communities by *Chrysanthemoides monilifera*

Invasion of native plant communities by exotic perennial grasses

Invasion of the Yellow Crazy Ant, *Anoplolepis gracilipes* (Fr. Smith) into NSW

Loss and degradation of native plant and animal habitat by invasion of escaped garden plants, including aquatic plants

Loss of hollow-bearing trees

Loss or degradation (or both) of sites used for hill-topping by butterflies

Predation and hybridisation by Feral Dogs, *Canis lupus familiaris*

Predation by *Gambusia holbrooki* Girard, 1859 (Plague Minnow or Mosquito Fish) (as described in the final determination of the Scientific Committee to list the threatening process)

Predation by the European Red Fox *Vulpes vulpes* (Linnaeus, 1758)

Predation by the Feral Cat *Felis catus* (Linnaeus, 1758)

Predation by the Ship Rat *Rattus rattus* on Lord Howe Island

Predation, habitat degradation, competition and disease transmission by Feral Pigs, *Sus scrofa* Linnaeus 1758

Removal of dead wood and dead trees

## **Schedule 5 Protected animals**

### **Note—**

Some protected animals specified in this Schedule may also be a threatened species or a part of a threatened ecological community. Provisions of this Act relating to the protection of protected animals generally also apply to animals that are a threatened species or a part of a threatened ecological community.

Any of the following that are native to Australia or that periodically or occasionally migrate to Australia (including their eggs and young):

**amphibians**—frogs or other members of the class amphibia.

**birds**—birds of any species.

**mammals**—mammals of any species (including aquatic or amphibious mammals but not including dingoes).

**reptiles**—snakes, lizards, crocodiles, tortoises, turtles or other members of the class reptilia.

## Schedule 6 Protected plants

### Note—

Some protected plants specified in this Schedule may also be a threatened species or a part of a threatened ecological community. Provisions of this Act relating to the protection of protected plants generally also apply to plants that are a threatened species or a part of a threatened ecological community.

## Part 1 Plant parts used in the cut-flower industry

Scientific Name	Common Name(s)
<b>Group 1</b>	
<b>Group 2</b>	
<i>Adiantum</i> spp.	Maidenhair Fern
<i>Archontophoenix cunninghamiana</i>	Bangalow Palm (foliage only)
<i>Baeckea linifolia</i>	Weeping Baeckea
<i>Baeckea virgata</i>	Twiggy Heath Myrtle, Tall Baeckea
<i>Banksia spinulosa</i>	Hairpin Banksia
<i>Cassinia aureonitens</i>	Yellow Cassinia
<i>Caustis</i> spp., native to NSW	Curly Sedges, Old Man's Whiskers
<i>Cordyline stricta</i>	Narrow-leaved Palm Lily
<i>Crowea exalata</i>	Crowea
<i>Crowea saligna</i>	Crowea
<i>Davallia pyxidata</i>	Hare's Foot Fern
<i>Dodonaea lobulata</i>	Lobed-leaved Hop Bush
<i>Eriostemon</i> spp. native to NSW	
<i>Gahnia sieberiana</i>	Red-fruited Saw Sedge
<i>Isopogon</i> spp., native to NSW	Drumsticks, Cone Bushes
<i>Kunzea ambigua</i>	Tick Bush
<i>Kunzea capitata</i>	Pink Kunzea



<i>Leptospermum lanigerum</i>	Woolly Tea-tree
<i>Leptospermum rotundifolium</i>	Round-leaf Tea-tree
<i>Livistona australis</i> (foliage only)	Cabbage Tree Palm, Fan Palm
<i>Lomatia silaifolia</i>	Crinkle Bush
<i>Persoonia</i> spp., native to NSW (except <i>P. pinifolia</i> )	Geebung
<i>Petrophile</i> spp., native to NSW	Conesticks
<i>Phebalium squamulosum</i>	Scaly Phebalium
<i>Philothea</i> spp., native to NSW (except <i>P. obovalis</i> )	Philothea
<i>Ptilotus exaltatus</i>	Tall Mulla Mulla
<i>Ptilotus obovatus</i>	Smoke Bush, Cotton Bush
<i>Pycnosorus</i> spp., native to NSW	Billy-buttons
<i>Restio tetraphyllus</i>	Tassel-rush
<i>Sprengelia incarnata</i>	Pink Swamp Heath
<i>Sticherus flabellatus</i>	Shiny Fan-fern, Umbrella Fern
<i>Swainsona formosa</i>	Sturt's Desert Pea
<i>Tmesipteris</i> spp., native to NSW	Ferns
<i>Xanthorrhoea</i> spp. (foliage only)	Grass Trees
<i>Xylomelum</i> spp., native to NSW	Woody Pear
Zamiaceae, native to NSW	Cycads

**Group 3**

<i>Actinotus</i> spp., native to NSW (except <i>A. minor</i> )	Flannel Flower
<i>Boronia</i> spp., native to NSW	Boronias
<i>Doryanthes excelsa</i> (foliage only)	Giant Lilies
<i>Eriostemon australasius</i>	Wax Flower
<i>Lycopodium</i> spp., native to NSW	Mountain Moss
<i>Persoonia pinifolia</i>	Pine-leaved Geebung
<i>Philothea obovalis</i>	Wax Flower

**Group 4**

<i>Blandfordia</i> spp.	Christmas Bells
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<i>Doryanthes excelsa</i> (flowers only)	Giant Lily
<i>Xanthorrhoea</i> spp. (flowers only)	Grass Tree
<b>Group 5</b>	
<i>Boronia deanei</i>	Dean's Boronia
<i>Boronia umbellata</i>	Boronia
<i>Craspedia</i> spp., native to NSW	Billy Buttons
<i>Dicranopteris linearis</i>	
<i>Doryanthes palmeri</i>	Spear Lily
<i>Grevillea longifolia</i>	Fern-leaf Grevillea
<i>Isopogon fletcheri</i>	
<i>Leptospermum spectabile</i>	
<i>Macrozamia johnsonii</i>	Cycad
<i>Macrozamia pauli-guilielmi</i> ssp. <i>flexuosa</i>	Cycad
<i>Persoonia</i> spp.	Geebung
<i>Phebalium bifidum</i>	
<i>Phebalium glandulosum</i> ssp. <i>eglandulosum</i>	
<i>Philothea ericifolia</i>	
<i>Philothea obovatifolia</i>	Native Daphne, Long-leaf Wax Flower
<i>Telopea</i> spp., native to NSW	Waratah

## Part 2 Whole plants

### Scientific Name

### Common Name(s)

#### Group 1

<i>Asplenium australasicum</i>	Bird's Nest Fern
<i>Asplenium polyodon</i>	Sickle Spleenwort, Mare's Tail Fern
<i>Asplenium harmanii</i>	Fern
<i>Cyathea</i> spp.	Tree Ferns
<i>Dicksonia</i> spp.	Tree Ferns
<i>Platycterium</i> spp., native to NSW	Elkhorn and Staghorn Ferns

#### Group 2

<i>Dendrobium aemulum</i>	Ironbark Orchid, White Feather Orchid
<i>Dendrobium gracilicaule</i>	
<i>Dendrobium linguiforme</i>	Tongue Orchid
<i>Dendrobium speciosum</i> var. <i>hillii</i>	King Orchid, Rock Lily, Tar-beri
<i>Xanthorrhoea</i> spp.	Grass Trees
Zamiaceae, native to NSW	Cycads

### **Group 3**

Arecaceae, native to NSW	Palms
<i>Cymbidium suave</i>	Snake Orchid
<i>Oberonia complanata</i>	
<i>Oberonia titania</i>	
<i>Pandanus</i> spp., native to NSW	Pandanus
<i>Taeniophyllum muelleri</i>	
<i>Todea barbara</i>	King Fern

### **Group 4**

Orchidaceae, native to NSW	Orchids
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### **Group 5**

<i>Wollemia nobilis</i>	Wollemi Pine
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## **Schedule 7 Provisions relating to members and procedure of Threatened Species Scientific Committee**

### **1 Provisions relating to members of Scientific Committee**

- (1) Subject to this Act, a member of the Scientific Committee holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (2) A person who serves as a member of the Scientific Committee for 2 consecutive periods is not eligible to be a member of the Scientific Committee for 3 years after the end of those consecutive periods.
- (3) In determining the term of office to be provided for by a member's instrument of appointment, the Minister is to have regard to the desirability of maintaining some continuity of membership of the Scientific Committee.
- (4) A member is entitled to be paid such remuneration (including travelling and

subsistence allowances) as the Minister may from time to time determine in respect of the member.

- (5) The office of a member becomes vacant if the member:
- (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Minister under this clause or by the Governor under Part 6 of the *Government Sector Employment Act 2013*, or
  - (e) is absent from 4 consecutive meetings of the Scientific Committee of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Scientific Committee or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Scientific Committee for having been absent from those meetings, or
  - (f) becomes a mentally incapacitated person, or
  - (g) ceases to have the qualification required for the member's appointment.
- (6) The Minister may remove a member from office.
- (7) Part 4 of the *Government Sector Employment Act 2013* does not apply to or in respect of the appointment of a member.
- (8) If by or under any Act provision is made:
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

## **2 Chairperson and Deputy Chairperson**

A Chairperson and a Deputy Chairperson of the Scientific Committee are to be appointed by the Minister from among the members of the Scientific Committee.

## **3 Disclosure of pecuniary interests**

- (1) If:

- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Scientific Committee, and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Scientific Committee.

- (2) A disclosure by a member at a meeting of the Scientific Committee that the member:
  - (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

- (3) Particulars of any disclosure made under this clause must be recorded by the Scientific Committee in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee (if any) determined by the Scientific Committee.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Scientific Committee otherwise determines:
  - (a) be present during any deliberation of the Scientific Committee with respect to the matter, or
  - (b) take part in any decision of the Scientific Committee with respect to the matter.
- (5) For the purposes of the making of a determination by the Scientific Committee under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
  - (a) be present during any deliberation of the Scientific Committee for the purpose of making the determination, or
  - (b) take part in the making by the Scientific Committee of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Scientific Committee.

#### **4 Procedure of Scientific Committee**

- (1) The procedure for the calling of meetings of the Scientific Committee and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Scientific Committee.
- (2) The quorum for a meeting of the Scientific Committee is 6 members.
- (3) The Chairperson of the Scientific Committee or, in the absence of the Chairperson, the Deputy Chairperson or, in the absence of both the Chairperson and the Deputy Chairperson, another member elected to chair the meeting, is to preside at a meeting of the Scientific Committee. The person presiding at a meeting has a deliberative vote but not a casting vote.
- (4) A decision supported by a majority of the votes cast at a meeting of the Scientific Committee at which a quorum is present is the decision of the Scientific Committee.
- (5) The Scientific Committee may invite suitably qualified persons to attend meetings to advise or inform the Scientific Committee on any matter.

#### **5 Transaction of business outside meeting or by telephone or other means**

- (1) The Scientific Committee may, if it thinks fit, transact any of its business by the circulation of papers among all the members for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Scientific Committee.
- (2) The Scientific Committee may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),the Chairperson and each other member have the same voting rights as they have at an ordinary meeting of the Scientific Committee.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meeting of the Scientific Committee.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

## 6 Service of documents on Scientific Committee

For the purposes of this Act, a nomination for listing under this Act or any other document is made, issued or given to the Scientific Committee if it is addressed to the Scientific Committee and is:

- (a) lodged at the head office of the Office of Environment and Heritage, or
- (b) sent by post to the head office of that Office, or
- (c) sent by 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 any Act or law.

## Schedule 8 Members and procedure of Board of Biodiversity Conservation Trust

(Section 10.3)

### 1 Definitions

In this Schedule:

**Board** means the Board of the Biodiversity Conservation Trust.

**Chairperson** means the Chairperson of the Board.

**Deputy Chairperson** means the Deputy Chairperson of the Board.

**member** means any member of the Board.

### 2 Members of Board

- (1) The persons appointed as members of the Board are to be persons who, in the opinion of the Minister, have skills and experience in one or more of the following areas:
  - (a) increasing public knowledge, understanding and appreciation of the importance of biodiversity by private landholders and other community members,
  - (b) protection and conservation of biodiversity,
  - (c) management of natural resources, including agricultural land,
  - (d) agricultural land production systems,
  - (e) land use planning and operation of local councils,
  - (f) marketing, fundraising, communications and stakeholder engagement,
  - (g) economics and financial management (including investment fund management),

- (h) information technology,
- (i) law, governance and administration,
- (j) decision-making and leadership.

- (2) A government sector employee is eligible to be appointed as a member of the Board.
- (3) The Minister may publicly advertise for nominations for appointment of persons as members of the Board.
- (4) The Minister is to consult the Minister for Planning and the Minister for Primary Industries in relation to the appointment of members of the Board.

### **3 Terms of office of members**

Subject to this Schedule and the regulations, a member holds office for such period (not exceeding 5 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

### **4 Remuneration**

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member (being at a rate that does not exceed any rate prescribed by the regulations).

### **5 Vacancy in office of member**

- (1) The office of a member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Minister under this clause, or
  - (e) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or by post, except on leave granted by the Minister or unless the member is excused by the Minister for having been absent from those meetings, or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (g) becomes a mentally incapacitated person, or
  - (h) is convicted in New South Wales of an offence that is punishable by imprisonment



for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

- (2) The Minister may remove a member from office at any time.
- (3) If the office of any member becomes vacant, a person is, subject to this Act and the regulations, to be appointed to fill the vacancy.

## **6 Chairperson and Deputy Chairperson**

- (1) The Minister is to appoint a non-government member as the Chairperson and is to appoint another non-government member as Deputy Chairperson.
- (2) The Chairperson or Deputy Chairperson vacates office as Chairperson or Deputy Chairperson if the person:
  - (a) ceases to be a member of the Board, or
  - (b) resigns from that office by instrument in writing addressed to the Minister, or
  - (c) is removed from office by the Minister.
- (3) If the office of Chairperson or Deputy Chairperson becomes vacant, a non-government member is to be appointed to fill the vacancy.

## **7 Disclosure of pecuniary interests**

- (1) If:
  - (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board, and
  - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.
- (2) A disclosure by a member at a meeting of the Board that the member:
  - (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person,is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person that may arise after the date of the disclosure and that is required to be disclosed under subclause (1).

- (3) Particulars of any disclosure made under this clause must be recorded by the Board in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Board.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Board otherwise determines:
  - (a) be present during any deliberation of the Board with respect to the matter, or
  - (b) take part in any decision of the Board with respect to the matter.
- (5) For the purposes of the making of a determination by the Board under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
  - (a) be present during any deliberation of the Board for the purpose of making the determination, or
  - (b) take part in the making by the Board of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Board.
- (7) This clause applies to a member of a committee of the Board and the committee in the same way as it applies to a member of the Board and the Board.

## **8 Effect of certain other Acts**

- (1) The provisions of the [Government Sector Employment Act 2013](#) relating to the employment of Public Service employees do not apply to a member.
- (2) If by or under any Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

## **9 General procedure**

The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Board.

## **10 Quorum**

The quorum for a meeting of the Board is a majority of its members for the time being.

## **11 Presiding member**

- (1) The Chairperson (or, in the absence of the Chairperson, the Deputy Chairperson, or in the absence of both the Chairperson and the Deputy Chairperson, a person elected by the members of the Board who are present at a meeting of the Board) is to preside at a meeting of the Board.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

## **12 Voting**

A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

## **13 Transaction of business outside meetings or by telephone etc**

- (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Board made at a meeting of the Board.
- (2) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone or other electronic means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),the Chairperson and each other member have the same voting rights as they have at an ordinary meeting of the Board.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Board.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by electronic means.

## **14 Seal of Trust**

- (1) The seal of the Trust is to be kept by a member of the Board, or a member of staff of

the Trust, authorised by the Board to keep it.

- (2) The seal of the Trust is to be affixed to a document only:
  - (a) in the presence of that member of the Board or of the staff of the Trust who is authorised to do so by the Board generally or in a particular case or class of cases, and
  - (b) with an attestation by the signature of that member of the Board or member of staff of the fact of the affixing of the seal.

## **Schedule 9 Savings, transitional and other provisions**

### **Part 1 General**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act, the [Local Land Services Amendment Act 2016](#) or any Act that amends this Act (or Part 5A of, or Schedule 5A to, the [Local Land Services Act 2013](#)).
- (2) Any such provision has effect despite anything to the contrary in this Schedule. The regulations may make separate savings and transitional provisions or amend this Schedule to consolidate the savings and transitional provisions.
- (3) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (4) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### **Part 2 General provisions consequent on enactment of this Act and the [Local Land Services Amendment Act 2016](#)**

#### **2 Definition of “former Act”**

In this Schedule:

**former Act** means any of the following Acts or parts of Acts:

- (a) *Native Vegetation Act 2003*,
- (b) *Threatened Species Conservation Act 1995*,
- (c) *Nature Conservation Trust Act 2001*,
- (d) that part of the *National Parks and Wildlife Act 1974* that is repealed by this Act.

### 3 References to former Act

- (1) A reference in any Act or in any instrument made under an Act (other than in this Act or an instrument made under this Act):
  - (a) to a former Act is to be read as including a reference to this Act, or
  - (b) to a provision of a former Act is to be read as including a reference to a corresponding provision of this Act.
- (2) This clause has effect subject to this Schedule and to any contrary intention in the provision in which the relevant reference occurs.

### 4 General saving

- (1) If anything done under a former Act before the repeal of the former Act and still having effect immediately before that repeal could have been done under this Act if this Act had been in force when the thing was done, the thing done continues to have effect as if it had been done under this Act.
- (2) This clause has effect subject to this Schedule and to any contrary intention.

## Part 3 Specific provisions consequent on enactment of this Act

### Note—

Further detailed savings and transitional provisions are to be included in this Part by the regulations (see clause 1 (2)). The provisions are to include (but are not limited to) the following:

- (a) Preservation (in relation to clearing native vegetation) of anything authorised by a property vegetation plan approved under the *Native Vegetation Act 2003*, being an act that had the benefit of biodiversity certification of the native vegetation reform package under Division 4 of Part 7 of the *Threatened Species Conservation Act 1995* when the plan was approved (including clearing under private land conservation agreements under the repealed legislation).
- (b) Continuation of the operation of existing biodiversity offsets arrangements (including continuation of the operation of biodiversity certified land and biobanking statements under the repealed *Threatened Species Conservation Act 1995*).
- (c) Preservation of existing private land conservation agreements under the *National Parks and Wildlife Act 1974* or under the *Nature Conservation Trust Act 2001*.
- (d) The dis-application of biodiversity assessment under this Act for development or activities that are assessed under the proposed Biodiversity Management Plan for strategic assessment in the Upper Hunter that is to be endorsed under Part 10

of the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth.

- (e) The amendment made by Schedule 11 to section 6 (2) of the *Protection of the Environment Administration Act 1991* is not to apply to the EPA's licensing function under Chapter 3 of the *Protection of the Environment Operations Act 1997*.

## **Division 1 Provisions relating to protection of animals and plants**

### **5 Existing TSC Act and NPW Act licences as biodiversity conservation licences**

- (1) The following are **existing licences** for the purposes of this clause:
- (a) a licence under Part 6 of the *Threatened Species Conservation Act 1995*,
  - (b) a licence under section 120 (General licence), section 121 (Occupier's licence), section 123 (Commercial fauna harvester's licence), section 124 (Fauna dealer's licence), section 125A (Emu licence), section 126 (Import and export licences), section 127 (Licence to liberate animals), section 131 (Licence to pick protected native plants), section 132 (Licence to grow native plants for sale), section 132A (Import and export licences for protected native plants) or section 132C (Scientific licences) of the *National Parks and Wildlife Act 1974*.
- (2) An existing licence in force on the commencement of this Act is taken to be a biodiversity conservation licence under Part 2 of this Act and has effect according to its tenor (subject to this Act) for the balance of the period for which it was granted.
- (3) A reference in any Act or in any instrument made under an Act (other than in this Act or an instrument made under this Act) to an existing licence is to be read as including a reference to a biodiversity conservation licence under Part 2 of this Act (subject to any contrary intention in the provision in which the relevant reference occurs).

## **Division 2 Provisions relating to areas of outstanding biodiversity value**

### **6 Existing critical habitat continued as declared areas of outstanding biodiversity value**

Any area that was, immediately before the commencement of this Act, declared to be critical habitat under Part 3 of the *Threatened Species Conservation Act 1995* is taken to have been declared under Part 3 of this Act as an area of outstanding biodiversity value.

**Note—**

The areas concerned include the critical habitat for the Little Penguin population at Manly, for the Mitchell's Rainforest Snail in Stotts Island Nature Reserve, for the Gould's Petrel on Cabbage Tree Island and for the Wollemi Pine.

## **Division 3 Provisions relating to threatened species and ecological**

## **communities**

### **7 Saving provision relating to existing Scientific Committee**

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

### **8 Existing strategies for species/ecological communities in Priorities Action Statement continued as strategies of Biodiversity Conservation Program**

A strategy for species or ecological communities set out in the Threatened Species Priorities Action Statement under section 90A of the *Threatened Species Conservation Act 1995* immediately before the commencement of this Act is taken to be a strategy included in the Biodiversity Conservation Program under Part 4 of this Act.

## **Division 4 Provisions relating to biodiversity offsets scheme**

### **9 Biobanking Trust Fund to become Biodiversity Stewardship Payments Fund**

- (1) The Biobanking Trust Fund established by section 127ZW of the *Threatened Species Conservation Act 1995* is abolished on the commencement of this Act.
- (2) On the abolition of the Biobanking Trust Fund, money standing to the credit of the Fund and its other assets and liabilities becomes money standing to the credit of the Biodiversity Stewardship Payments Fund established by section 6.34 of this Act and the other assets and liabilities of that Fund.

## **Schedule 10 Repeal of Acts and regulations**

The following Acts and regulations are repealed:

- (a) *Threatened Species Conservation Act 1995 No 101*,
- (b) *Threatened Species Conservation Regulation 2010*,
- (c) *Threatened Species Conservation (Biodiversity Banking) Regulation 2008*,
- (d) *Nature Conservation Trust Act 2001 No 10*.

## Schedule 11 Amendment of Acts and instruments

### 11.1 Environmental Planning and Assessment Act 1979 No 203

- [1] **Section 4 Definitions of “critical habitat”, “ecological community”, “endangered ecological community”, “endangered population”, “endangered species”, “habitat”, “population”, “recovery plan”, “species”, “species impact statement”, “threat abatement plan”, “threatened species”, “threatened species, populations and ecological communities and threatened species, population or ecological community”, “threatening process”, “vulnerable ecological community” and “vulnerable species”**

Omit the definitions.

- [2] **Section 4 (6A)**

Omit the subsection.

- [3] **Section 5 Objects**

Omit “, populations” from section 5 (a) (vi).

- [4] **Section 5AA**

Insert after section 5:

**5AA Application of Part 7 of Biodiversity Conservation Act 2016 and Part 7A of Fisheries Management Act 1994**

This Act has effect subject to the provisions of Part 7 of the *Biodiversity Conservation Act 2016* and Part 7A of the *Fisheries Management Act 1994* that relate to the operation of this Act in connection with the terrestrial and aquatic environment.

**Note—**

Those Acts contain additional requirements with respect to assessments, consents and approvals under this Act.

- [5] **Section 5A Significant effect on threatened species, populations or ecological communities, or their habitats, section 5B Planning authorities to have regard to register of critical habitat, section 5C Application of Act with respect to threatened species conservation—fish and marine vegetation, and section 5D Application of Act to vulnerable ecological communities**

Omit the sections.

- [6] **Section 26 Contents of environmental planning instruments**

Omit “, populations” from section 26 (1) (e1).



**[7] Section 26 (1A) and (1B)**

Omit the subsections.

**[8] Section 26 (4)**

Omit the subsection. Insert instead:

- (4) An environmental planning instrument that makes provision for or with respect to protecting or preserving trees or other vegetation may make provision:
- (a) for authorising the council (or other person or body) to determine the trees or other vegetation included in or excluded from the relevant provisions, and
  - (b) for requiring a permit, approval or other authorisation to remove or otherwise affect trees or other vegetation that is granted by the council (or other person or body), and
  - (c) for an appeal to the Court against a refusal to grant any such permit, approval or other authorisation.

**[9] Section 26, note**

Omit the note.

**[10] Section 76 Development that does not need consent**

Omit section 76 (3) (a) (i). Insert instead:

- (i) is a declared area of outstanding biodiversity value under the *Biodiversity Conservation Act 2016* or declared critical habitat under Part 7A of the *Fisheries Management Act 1994*, or

**[11] Section 78A Application**

Omit section 78A (8) and (8A). Insert instead:

- (8) A development application for State significant development or designated development is to be accompanied by an environmental impact statement prepared by or on behalf of the applicant in the form prescribed by the regulations.

**[12] Section 79B Consultation and concurrence**

Omit section 79B (3), (4), (5), (6), (7), (8A) and (8B).

**[13] Section 79B (10)**

Omit “or by subsection (3)”.

**[14] Section 79C Evaluation**

Omit the second note to section 79C (1).

**[15] Section 89I Biobanking—special provisions**

Omit the section.

**[16] Section 89J Approvals etc legislation that does not apply**

Omit section 89J (1) (e).

**[17] Section 96 Modification of consents—generally**

Omit section 96 (5).

**[18] Section 96AA Modification by consent authorities of consents granted by the Court**

Omit section 96AA (1B).

**[19] Section 105A Transitional—amendment to list of vulnerable species**

Omit the section.

**[20] Section 110C Determining authorities to have regard to register of critical habitat**

Omit the section.

**[21] Section 110D Transitional—amendment of list of vulnerable species**

Omit the section.

**[22] Section 111 Duty to consider environmental impact**

Omit section 111 (2) and (4) and the note.

**[23] Section 112 Decision of determining authority in relation to certain activities**

Omit “(including critical habitat) or threatened species, populations or ecological communities, or their habitats” from section 112 (1).

**[24] Section 112 (1B) and (1C)**

Omit the subsections.

**[25] Section 112 (4)**

Omit “(including critical habitat) or threatened species, populations or ecological communities, or their habitats” wherever occurring.

**[26] Section 112A Determining authorities to have regard to recovery plans and threat**

**abatement plans**

Omit the section.

**[27] Section 112B Consultation with Minister for the Environment if Minister is determining authority**

Omit the section.

**[28] Section 112C Concurrence of or consultation with Chief Executive of the Office of Environment and Heritage if Minister is not determining authority**

Omit the section.

**[29] Section 112D Matters to be considered by Chief Executive of the Office of Environment and Heritage as concurrence authority**

Omit the section.

**[30] Section 112E Matters to be considered by Minister or Chief Executive of the Office of Environment and Heritage when consulted**

Omit the section.

**[31] Section 115S Transitional—amendment to list of vulnerable species**

Omit the section.

**[32] Section 115ZC Biobanking—special provisions**

Omit the section.

**[33] Section 115ZG Approvals etc legislation that does not apply**

Omit section 115ZG (1) (e).

**[34] Section 115ZG (3) (a)**

Omit “or the *Threatened Species Conservation Act 1995*”.

**[35] Section 115ZG (3) (b)**

Omit “, Division 1 (Stop work orders) of Part 7 of the *Threatened Species Conservation Act 1995*”.

**[36] Section 115ZG (3) (c1)**

Insert after section 115ZG (3) (c):

(c1) an order or direction under Part 11 (Regulatory compliance mechanisms) of the *Biodiversity Conservation Act 2016*,

## 11.2 Fisheries Management Act 1994 No 38

### [1] Section 4 Definitions

Insert after section 4 (1):

**Note—**

Section 14.7 of the *Biodiversity Conservation Act 2016* enables certain animals to be declared to be fish and certain fish to be declared to be animals, and also enables certain plants to be declared to be marine vegetation and certain marine vegetation to be declared to be plants, for the purposes of that Act and this Act.

### [2] Section 220A, note

Omit the note to the section.

### [3] Section 220B Definitions

Omit the definitions of **BDAC**, **region** and **SEAC**.

### [4] Section 220B (1)

Omit the definition of **fish** and the definition of **marine vegetation**.

Insert instead respectively:

**fish** means any fish indigenous to New South Wales.

**marine vegetation** means any marine vegetation indigenous to New South Wales.

### [5] Section 220B (1), definition of “Threatened Species Scientific Committee”, section 220IA, section 221ZB (4), section 221W (3)

Omit “*Threatened Species Conservation Act 1995*” wherever occurring.

Insert instead “*Biodiversity Conservation Act 2016*”.

### [6] Section 220BA Relationship of Part to Threatened Species Conservation Act 1995

Omit the section.

### [7] Section 220IA Referral of nomination to Threatened Species Committee

Omit “Schedule 3” and “Division 3 of Part 2” wherever occurring.

Insert instead “Schedule 1” and “Part 4” respectively.

### [8] Section 220V, note

Omit the note to the section.

**[9] Section 220ZF Defences**

Omit section 220ZF (1) (b1) and (f).

**[10] Section 220ZF (1)**

Insert after section 220ZF (1) (b1):

(b2) was essential for the clearing of native vegetation in accordance with the authority conferred by Part 5A of, and Schedule 5A to, the *Local Land Services Act 2013*, or

**[11] Section 220ZGB Interfering with fish of threatened species**

Omit “licence under Part 6 of the *Threatened Species Conservation Act 1995*” from section 220ZGB (4) (d).

Insert instead “biodiversity conservation licence under the *Biodiversity Conservation Act 2016*”.

**[12] Section 220ZJA Joint preparation of recovery and threat abatement plans**

Omit the section.

**[13] Section 221V Joint management agreements**

Insert after section 221V (1):

(1A) Other persons may also be parties to a joint management agreement.

**[14] Part 7A, Division 10 (Biodiversity certification of native vegetation reform package) and Division 11 (Biodiversity certification of environmental planning instruments)**

Omit the Divisions.

**[15] Part 7A, Division 12**

Insert after Division 11 of Part 7A:

## **Division 12 Application of Planning Act**

### **221ZT Application of Division**

This Division applies to the following:

- (a) the grant or refusal of a development consent under Part 4 of the Planning Act (other than a complying development certificate),

- (b) environmental assessment under Part 5 of the Planning Act.

## **221ZU Definitions**

- (1) In this Division:

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

**development** means development within the meaning of the Planning Act.

**Fisheries Agency Head** means the Secretary of the Department of Industry, Skills and Regional Development.

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

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

- (2) For the purposes of this Division, development or an activity is **likely to significantly affect threatened species** if:

- (a) it is likely to significantly affect threatened species, populations or ecological communities, or their habitats, or
- (b) it is carried out in critical habitat.

## **221ZV Determination of whether proposed development or activity likely to significantly affect threatened species, population or ecological community**

The following is to be taken into account for the purposes of determining under this Division whether a proposed development or activity is likely to significantly affect threatened species, populations or ecological communities (unless it is carried out in critical habitat):

- (a) in the case of a threatened species, whether the proposed development or activity is likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction,
- (b) in the case of an endangered population, whether the proposed development or activity is likely to have an adverse effect on the life cycle of the species that constitutes the endangered population such that a viable local population of the species is likely to be placed at risk of extinction,
- (c) in the case of an endangered ecological community or critically endangered ecological community, whether the proposed development or activity:
- (i) is likely to have an adverse effect on the extent of the ecological community

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

The assessment guidelines under section 220ZZA apply to the determination of whether any such proposed development or activity is likely to significantly affect threatened species.

**221ZW When species impact statement required for development consent under Part 4 of Planning Act**

- (1) If proposed development is likely to significantly affect threatened species, populations or ecological communities, an application for development consent under Part 4 of the Planning Act is to be accompanied by a species impact statement.
- (2) This section does not apply to State significant development.

**Note—**

Section 78A (8) (formerly section 78A (8A)) of the Planning Act requires an application for State significant development to be accompanied by an environmental impact statement.

**221ZX Significant effect on environment requiring EIS includes significant effect on threatened species, populations and ecological communities for purposes of Part 5 of Planning Act**

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

**221ZY Consultation with Minister for Primary Industries if a Minister is consent authority under Part 4 or determining authority under Part 5 of Planning Act**

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

**221ZZ Concurrence of or consultation with Fisheries Agency Head if a Minister is not consent authority under Part 4 or determining authority under Part 5 of Planning Act**

- (1) This section applies to the following:
  - (a) development (not being State significant development or complying development) that requires development consent under Part 4 of the



Planning Act when a Minister is not the consent authority,

- (b) an activity that requires environmental impact assessment under Part 5 of the Planning Act when a Minister is not the determining authority.
- (2) The consent authority is not to grant development consent if the development is likely to significantly affect threatened species, populations or ecological communities, unless the consent authority has obtained the concurrence of the Fisheries Agency Head.
- (3) The determining authority is not to carry out the activity, or grant an approval to carry out the activity, if the activity is likely to significantly affect threatened species, populations or ecological communities, unless the determining authority has obtained the concurrence of the Fisheries Agency Head.
- (4) However, if the Minister for Primary Industries considers that it is appropriate, that Minister may elect to act in the place of the Fisheries Agency Head. The Minister for Primary Industries is required, in giving any concurrence, to consult that Agency Head, to provide the consent authority or the determining authority with any recommendations made by that Agency Head and to give public notice of any such recommendation that the Minister for Primary Industries has not accepted.
- (5) In determining whether to give a concurrence under this section, the Fisheries Agency Head or Minister for Primary Industries (as the case requires) is to have regard to the following:
- (a) any species impact statement prepared for the development or activity and submissions made in response to it,
  - (b) any assessment report prepared by or on behalf of the proponent,
  - (c) any Priorities Action Statement,
  - (d) whether the development or activity is likely to reduce the long-term viability of the threatened species, populations or ecological communities in the bioregion,
  - (e) the facilitation of ecologically sustainable development.
- (6) A concurrence under this section may be conditional on the taking of action that the Fisheries Agency Head or Minister for Primary Industries (as the case requires) considers will significantly benefit threatened species, populations or ecological communities and to which the person required to take the action has agreed. Any such action may (without limitation) include the provision of biodiversity offsets.

- (7) The terms of a concurrence under this section may be varied by the person who gave the concurrence at the request of the consent authority or determining authority concerned.
- (8) A consent authority that grants consent, or a determining authority that grants approval, to the carrying out of development or an activity for which a concurrence under this section has been granted must grant the consent or approval subject to any conditions of the concurrence. This does not affect the right of the consent authority or determining authority to impose other conditions not inconsistent with the conditions of the concurrence or to refuse consent or approval.

### **221ZZA Regulations relating to amendments of threatened species etc lists**

The regulations may make provision for or with respect to the effect of amendments to the lists of threatened species, populations and ecological communities during an environmental assessment to which this Division applies.

## **11.3 Forestry Act 2012 No 96**

### **[1] Section 38 Unlawful taking of timber**

Omit section 38 (3) (a) (ii). Insert instead:

- (ii) Part 5A of (or Schedule 5A to) the *Local Land Services Act 2013* (including any instrument under that Part or Schedule),

### **[2] Section 44 Restrictions on issuing licences**

Omit section 44 (2) (e)-(h). Insert instead:

- (e) in respect of land in which the Biodiversity Conservation Trust holds an interest, or
- (f) in respect of land that is subject to a private land conservation agreement under the *Biodiversity Conservation Act 2016*, or
- (g) in respect of land that is category 2-vulnerable regulated land under Part 5A of the *Local Land Services Act 2013*, or
- (h) to clear native vegetation within the meaning of Part 5A of the *Local Land Services Act 2013*, or

### **[3] Section 44 (7) and (8)**

Insert at the end of section 44:

- (7) **Protected plants and threatened species of plants** A licence may not be issued under this Act for the removal from any State forest, flora reserve or other Crown-timber land of any protected plant (or any plant of, or part of, a threatened species or threatened ecological community) within the meaning of the *Biodiversity Conservation Act 2016*. A licence is not operative to the extent that it relates to any such plant.
- (8) However, the Corporation may, in accordance with this Act, issue a licence that authorises the removal from any State forest, flora reserve or other Crown-timber land of any such plant if:
- (a) the authorisation is subject to a condition that the removal is to be undertaken in accordance with any relevant plant plan of management in force under the regulations made under the *Biodiversity Conservation Act 2016*, or
  - (b) the Corporation is of the opinion that the plant would be damaged or destroyed in the taking of timber, forest products or forest materials under, or in the carrying out of any activity authorised by, this Act.

**[4] Section 69T Licences to which Division applies**

Omit section 69T (1) (b). Insert instead:

- (b) a biodiversity conservation licence under the *Biodiversity Conservation Act 2016*, or

**[5] Section 69V Enforcement of relevant licence**

Omit the note to section 69V (1). Insert instead:

**Note—**

A contravention of the terms of a relevant licence makes the person carrying out the forestry operations liable for offences for which the licence provides a defence (eg damage to habitat of threatened species under the *Biodiversity Conservation Act 2016*; offence of polluting waters under the *Protection of the Environment Operations Act 1997*).

**[6] Section 69X**

Omit the section. Insert instead:

**69X Application of *Biodiversity Conservation Act 2016*—stop work and interim protection orders**

Divisions 2 and 3 of Part 11 of the *Biodiversity Conservation Act 2016* do not apply to the carrying out of forestry operations during any period that an integrated forestry operations approval applies to those operations.

**[7] Part 5C**

Insert after Part 5B:

**Part 5C Private native forestry**

**69ZB Definitions: Part 5C**

(1) In this Part:

***private native forestry code of practice***, in relation to forestry operations, means the code prescribed by the regulations in relation to those operations.

***private native forestry plan*** means a private native forestry plan approved under this Part and in force.

***regulatory authority*** means:

- (a) the Minister (unless paragraph (b) applies), or
- (b) a NSW Government agency or officer designated by the Minister by order published in the Gazette as the regulatory authority for the purposes of this Part.

(2) Words and expressions used in this Part have (subject to this Part) the same meanings as in Part 5A of the [Local Land Services Act 2013](#).

(3) Until the regulations otherwise provide, the following component document that applies to any forestry operations is, for the purposes of this Part, the ***private native forestry code of practice*** in relation to those forestry operations:

- (a) the *Private Native Forestry Code of Practice for Northern NSW* published in the Gazette on 16 August 2013,
- (b) the *Private Native Forestry Code of Practice for Southern NSW* published in the Gazette on 8 February 2008,
- (c) the *Private Native Forestry Code of Practice for the River Red Gum Forests* published in the Gazette on 8 February 2008,
- (d) the *Private Native Forestry Code of Practice for Cypress and Western Hardwood Forests* published in the Gazette on 8 February 2008.

**69ZC Object of Part**

The object of this Part is to enable landholders to carry out forestry operations in a sustainable manner in areas of the State to which this Part applies.

### **69ZD Application of Part**

This Part applies to any area of the State other than:

- (a) Crown-timber land, or
- (b) a plantation within the meaning of the *Plantations and Reafforestation Act 1999* that is required to be authorised under that Act, or
- (c) national park estate and other conservation areas referred to in section 60A (b) of the *Local Land Services Act 2013*.

### **69ZE Landholders may submit draft private native forestry plans**

- (1) A landholder or group of landholders may submit a draft private native forestry plan to the regulatory authority for approval under this Part.
- (2) A draft plan cannot be submitted for approval without the consent in writing of:
  - (a) all landholders of land to which the plan applies, and
  - (b) all persons who have a forestry right (within the meaning of section 87A of the *Conveyancing Act 1919*) in the land to which the plan applies, and
  - (c) any other person who has an interest in the land prescribed by the regulations.
- (3) A draft plan must:
  - (a) identify the land to which the plan applies and on which forestry operations are to be carried out (including the address of and particulars of title to that land), and
  - (b) specify the kinds of forestry operations to be carried out, and
  - (c) specify the period for which the plan is to have effect, and
  - (d) be in the form approved by the regulatory authority and contain or be accompanied by the information required by that form.

### **69ZF Private native forestry plans require approval of regulatory authority**

- (1) A private native forestry plan has effect only if it is approved by the regulatory authority.
- (2) In determining whether to approve a draft plan (with or without modification), the regulatory authority is to have regard to the following:
  - (a) principles of ecologically sustainable forest management,

- (b) any relevant provisions of local strategic plans under the *Local Land Services Act 2013*,
  - (c) any other matters required by the regulations.
- (3) An approval under this Part is not an approval of an activity for the purposes of Part 5 of the *Environmental Planning and Assessment Act 1979*.
- (4) A property vegetation plan that was approved under the *Native Vegetation Act 2003* before that Act's repeal and that was in force on that repeal is taken to be a private native forestry plan approved under this Part if the plan authorised the clearing of native vegetation for the purposes of forestry operations.

### **69ZG Duration, variation and termination of private native forestry plans**

- (1) A private native forestry plan has effect for such period (not exceeding 15 years) as is specified in the plan.
- (2) A private native forestry plan:
- (a) may be varied by the landholder with the approval of the regulatory authority, and
  - (b) may be terminated by the regulatory authority, by notice to the landholder, for the reasons stated in the notice (being reasons relating to a contravention by the landholder of the plan).

### **69ZH Forestry operations to be carried out in accordance with plan and code of practice**

Forestry operations are authorised by this Part if:

- (a) they are forestry operations to which a private native forestry plan applies, and
- (b) they are carried out in accordance with that plan and the private native forestry code of practice that applies (with any variations authorised by the regulations) to those operations.

#### **Note—**

Section 600 of the *Local Land Services Act 2013* provides that it is a defence to the offence of clearing native vegetation in a rural area of the State under section 60N of that Act if (among other things) the clearing comprises forestry operations authorised by this Part.

### **69ZI Registered plan to run with land**

- (1) The landholders and other persons having a prescribed interest in land to which a private native forestry plan applies (the **parties to the plan**) may consent to the registration of the plan in accordance with this section.

- (2) On being notified by the regulatory authority that the parties to a private native forestry plan have consented to the registration of the plan, the Registrar-General is required:
- (a) to register the plan in the General Register of Deeds, and
  - (b) if appropriate, make an entry:
    - (i) in the Register kept under the *Real Property Act 1900*, or
    - (ii) in any official record relating to Crown land,that relates to the land to which the plan applies.
- (3) A private native forestry plan that has been registered by the Registrar-General in accordance with this section is binding on, and is enforceable by and against, the successors in title to the parties to the plan. Those successors in title are taken to have notice of the plan.
- (4) A private native forestry plan relating to land under the *Real Property Act 1900* about which an entry is made in a folio is an interest recorded in the folio for the purposes of section 42 of that Act.
- (5) A reference in this section to a private native forestry plan includes a reference to any part of the plan or to any variation or termination of the plan.
- (6) In this section:
- successors in title** includes a mortgagee, chargee, covenant chargee or other person, in possession of land to which a private native forestry plan applies pursuant to a mortgage, charge, positive covenant or other encumbrance entered into before the registration of the plan.

## **11.4 Land and Environment Court Act 1979 No 204**

### **[1] Section 17 Class 1—environmental planning and protection appeals**

Omit section 17 (ea), (eb) and (g). Insert in appropriate order:

- (ea) appeals to the Court under the *Biodiversity Conservation Act 2016*,
- (eb) appeals to the Court under Part 5A of the *Local Land Services Act 2013*,

### **[2] Section 20 Class 4—environmental planning and protection and development contract civil enforcement**

Omit section 20 (1) (cga). Insert instead:

(cga) proceedings under Division 2 of Part 13 of the *Biodiversity Conservation Act 2016*,

**[3] Section 20 (1) (ck), (de) and (dg)**

Omit the paragraphs.

**[4] Section 20 (3) (a)**

Omit “*Native Vegetation Act 2003*” and “*Threatened Species Conservation Act 1995*”.

**[5] Section 20 (3) (a)**

Insert in alphabetical order of Acts:

*Biodiversity Conservation Act 2016*

Part 5A of, and Schedule 5A to, the *Local Land Services Act 2013*

**[6] Section 20 (3) (a)**

Insert “or 5C” after “5B” in relation to the *Forestry Act 2012*.

**[7] Section 21 Class 5—environmental planning and protection summary enforcement**

Omit section 21 (hb). Insert instead:

(hb) proceedings under Division 1 of Part 13 of the *Biodiversity Conservation Act 2016*,

## **11.5 National Parks and Wildlife Act 1974 No 80**

**[1] Long title**

Omit “fauna, native plants and”.

**[2] Section 5 (1), definitions of “critical habitat”, “critically endangered species”, “fauna dealer”, “game animal”, “game bird” and “threatened interstate fauna”**

Omit the definitions.

**[3] Section 5 (1), definition of “national parks legislation”**

Omit paragraph (b).

**[4] Section 5 (1), definition of “protected fauna”**

Omit the definition. Insert instead:

***protected fauna*** means a protected animal within the meaning of the *Biodiversity*



*Conservation Act 2016.*

**[5] Section 5 (3)**

Omit the subsection.

**[6] Section 5 (4)**

Omit the subsection.

**[7] Section 23 Functions and duties of Council**

Omit section 23 (1) (a) (v).

**[8] Section 91AA Chief Executive may make stop work order**

Insert after section 91AA (1):

(1A) After the commencement of Part 11 of the *Biodiversity Conservation Act 2016*, an order under this section may not be made in relation to protected fauna or native plants or their environment.

**[9] Section 91A Interim protection of areas having significant values**

Insert at the end of the section:

(2) After the commencement of Part 11 of the *Biodiversity Conservation Act 2016*, a recommendation for the making of an interim protection order may not be made except in relation to areas of cultural significance.

**[10] Section 91IA**

Insert before section 91J:

**91IA Cessation of operation of Division**

After the commencement of Part 11 of the *Biodiversity Conservation Act 2016*, a direction under this Division may not be given except in relation to any land reserved under this Act or acquired under Part 11 or any Aboriginal object or Aboriginal place.

**[11] Part 7 Fauna**

Omit the Part.

**[12] Part 7A Marine mammals—special provisions**

Omit the Part.

**[13] Part 8 Native plants**

Omit the Part.

**[14] Part 8A Threatened species, populations and ecological communities, and their habitats, and critical habitat**

Omit the Part.

**[15] Part 9 Licensing in respect of fauna, native plants and threatened species**

Omit the Part.

**[16] Section 154 Regulations**

Omit section 154 (c)-(j).

**[17] Schedule 8A Marine Mammals Advisory Committee**

Omit the Schedule.

**[18] Schedule 11 Unprotected fauna**

Omit the Schedule.

**[19] Schedule 12 Threatened interstate fauna**

Omit the Schedule.

**[20] Schedule 13 Protected native plants**

Omit the Schedule.

**11.6 Natural Resources Commission Act 2003 No 102**

**Section 3 Objects**

Omit section 3 (c).

**11.7 Protection of the Environment Administration Act 1991 No 60**

**Section 6 Objectives of the Authority**

Insert “social,” before “economic and environmental” in section 6 (2).

**11.8 Public Finance and Audit Act 1983 No 152**

**Schedule 2 Statutory bodies**

Insert in alphabetical order:

Biodiversity Conservation Trust

## **11.9 Rural Fires Act 1997 No 65**

### **[1] Section 124D**

Insert after section 124C:

#### **124D Application of Biodiversity Conservation Act 2016 and Part 5A of Local Land Services Act 2013**

- (1) Division 1 (Offences) of Part 2 of the *Biodiversity Conservation Act 2016* and section 60N (Unauthorised clearing of native vegetation in regulated rural areas—offence) of the *Local Land Services Act 2013* do not apply to any emergency fire fighting act or bush fire hazard reduction work (including emergency bush fire hazard reduction work) that is done or carried out by a fire fighting authority under this Act.
- (2) In this section, **fire fighting authority** includes the staff of a fire fighting authority and volunteer rural fire fighters acting in that capacity.

### **[2] Section 100C Carrying out of bush fire hazard reduction work**

Omit section 100C (5) (e). Insert instead:

- (e) Part 5A of the *Local Land Services Act 2013*,