

# Biodiversity Conservation (Savings and Transitional) Regulation 2017

[2017-433]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

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

### Notes—

- **Staged repeal status**

This legislation is currently due to be automatically repealed under the [Subordinate Legislation Act 1989](#) on 1 September 2025

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Biodiversity Conservation (Savings and Transitional) Regulation 2017



New South Wales

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# Biodiversity Conservation (Savings and Transitional) Regulation 2017



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Biodiversity Conservation (Savings and Transitional) Regulation 2017*.

### 2 Commencement

This Regulation commences on 25 August 2017 and is required to be published on the NSW legislation website.

### 3 Definitions

(1) In this Regulation—

**the new Act** means the *Biodiversity Conservation Act 2016*.

**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(d) that part of the *National Parks and Wildlife Act 1974* that is repealed by this Act.

#### Note—

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

(2) Notes included in this Regulation do not form part of this Regulation.

## **Part 2 Provisions relating to the protection of animals and plants**

### **4 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* (including a licence the terms of which are set out in an integrated forestry operations approval and that is taken to be a licence granted under that Act to a person carrying out forestry operations covered by the approval, as provided by Part 5B of the *Forestry Act 2012*),
  - (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 the new Act is taken to be a biodiversity conservation licence under Part 2 of the new Act and has effect according to its tenor (subject to the new Act) for the balance of the period for which it was granted.
- (3) An application for an existing licence that had not been determined on the commencement of the new Act is taken to be an application for a biodiversity conservation licence under Part 2 of the new Act and may be determined accordingly.
- (4) Any right of appeal under a former Act to a court, body or person in relation to an application for an existing licence that was determined before the commencement of the new Act is not affected by the repeal of the former Act.
- (5) A reference in any Act or statutory or other instrument, or in any contract or agreement, to an existing licence is to be read as including a reference to a biodiversity conservation licence under Part 2 of the new Act. This subclause does not apply to any such reference in the new Act or a regulation under the new Act and is subject to any contrary intention in the provision in which the relevant reference occurs.

### **5 Existing certificate under section 95 of TSC Act as to significant effect**

A certificate under section 95 (2) of the *Threatened Species Conservation Act 1995* in force on the commencement of the new Act that certifies that a specified action is not likely to significantly affect threatened species or ecological communities (or their habitats) continues to have effect according to its tenor for the purposes of the new Act.



## **6 Existing joint management agreement under TSC Act**

A joint management agreement under Division 2 of Part 7 of the *Threatened Species Conservation Act 1995* in force on the commencement of the new Act is taken to be a joint management agreement entered into in accordance with the regulations under the new Act, as referred to in section 2.8 (1) (n) of the new Act.

## **7 Existing plan of management under NPW Act**

A plan of management under section 115A of the *National Parks and Wildlife Act 1974* that is in force on the repeal of that section by the new Act is taken to be a management plan under Division 2.4 of the *Biodiversity Conservation Regulation 2017*, but is subject to amendment, replacement or repeal under that Division.

## **Part 3 Provisions relating to areas of outstanding biodiversity value**

### **8 Existing critical habitat continued as declared areas of outstanding biodiversity value**

Any area that was, immediately before the commencement of the new 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 the new 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.

## **Part 4 Provisions relating to threatened species and ecological communities**

### **9 Saving provision relating to existing Scientific Committee**

- (1) The Scientific Committee established under the new 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 (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 the new 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, respectively, of the Scientific Committee established under the new Act.

### **10 Existing strategies for species or ecological communities in Priorities Action Statement**

### **continued as strategies of Biodiversity Conservation Program**

A strategy for species or ecological communities set out in accordance with the Threatened Species Priorities Action Statement under section 90A of the *Threatened Species Conservation Act 1995* immediately before the repeal of that Act is taken to be a strategy included in the Biodiversity Conservation Program under Part 4 of the new Act.

### **11 Pending requests or nominations for listing**

(1) In this clause—

**listing** means listing as a threatened species, population or ecological community or as a key threatening process, and includes a provisional listing of an endangered or critically endangered species.

- (2) The Scientific Committee established by Division 7 of Part 4 of the new Act is to continue to deal with a request or nomination for a listing under the *Threatened Species Conservation Act 1995* that had not been determined under that Act before the repeal of that Act.
- (3) The request or nomination is to continue to be dealt with as if it had been made under Part 4 of the new Act and as if anything done under the *Threatened Species Conservation Act 1995* in relation to the request or nomination (including any preliminary determination) had been done under Part 4 of the new Act.
- (4) For the purposes of this clause, a request or nomination under the *Threatened Species Conservation Act 1995* for the listing of a population of a species as an endangered population is to continue to be dealt with as a request or nomination for the listing of that population as an endangered species.

### **12 Existing provisional listings**

Any species that, on the repeal of the *Threatened Species Conservation Act 1995*, was provisionally listed under that Act is taken, on the commencement of the new Act, to have been provisionally listed under the new Act.

## **Part 5 Provisions relating to private land conservation agreements**

### **13 Continuation of biobanking agreements under TSC Act as biodiversity stewardship agreements under new Act**

- (1) A biobanking agreement that was made under Part 7A of the *Threatened Species Conservation Act 1995* and that was in force on the repeal of that Act is taken to be a biodiversity stewardship agreement entered into under Division 2 of Part 5 of the new Act.
- (2) Any such agreement that was registered by the Registrar-General under section 127I of the *Threatened Species Conservation Act 1995* is taken to have been registered

under section 5.12 of the new Act.

#### **14 Biobanking agreements under TSC Act—pending or interim applications**

- (1) This clause applies to an application to the Minister to enter into a biobanking agreement—
  - (a) that was made under Part 7A of the *Threatened Species Conservation Act 1995* and that had not been determined on the repeal of that Act, or
  - (b) that is made under Part 7A of the *Threatened Species Conservation Act 1995* within 6 months after the repeal of that Act (as if that Act had not been repealed), but only if the Minister is satisfied that relevant information was collected before that repeal, or
  - (c) that is made under Part 7A of the *Threatened Species Conservation Act 1995* within 3 years after the repeal of that Act (as if that Act had not been repealed) in connection with a requirement of a biodiversity certification under Part 7AA of that Act (being a biodiversity certification conferred before the repeal of that Act or conferred after that repeal in accordance with clause 36 or 37), or
  - (d) that is made under Part 7A of the *Threatened Species Conservation Act 1995* within 3 years after the repeal of that Act (as if that Act had not been repealed) in connection with the Upper Hunter Biodiversity Plan (within the meaning of clause 33 (1)).
- (2) The Minister may, within the following time period that applies to the application, determine the application and enter into a biobanking agreement under Part 7A of the *Threatened Species Conservation Act 1995* (as if that Act had not been repealed) if satisfied that the application substantially complies with Part 7A of that Act—
  - (a) in the case of an application made under subclause (1) (a) or (b)—within 21 months after the commencement of the new Act,
  - (b) in the case of an application made under subclause (1) (c) or (d)—within 4 years after the commencement of the new Act.
- (3) If the Minister enters into a biobanking agreement as a result of the determination of the application, it is taken to be a biodiversity stewardship agreement entered into under Division 2 of Part 5 of the new Act.

#### **15 Enforcement of biobanking agreements under TSC Act**

- (1) Any proceedings under section 127L of the *Threatened Species Conservation Act 1995* that had not been determined on the repeal of that Act are taken to be proceedings under section 13.15 of the new Act.
- (2) Proceedings may be instituted under section 13.15 of the new Act to remedy or

restrain a breach of a biobanking agreement under Part 7A of the *Threatened Species Conservation Act 1995* that occurred before the repeal of that Act in addition to any such breach that occurs after that repeal.

- (3) An order that was made under section 127N of the *Threatened Species Conservation Act 1995* before the repeal of that Act and that has not been complied with on that repeal is taken to be an order under section 11.26 of the new Act.
- (4) An order may be made under section 11.26 of the new Act (and action may be taken under that section by the Minister) in relation to the rectification of a breach of a biobanking agreement under Part 7A of the *Threatened Species Conservation Act 1995* that occurred before the repeal of that Act in addition to any such breach that occurs after that repeal.

#### **16 Proposals by public authorities affecting (and prospecting and mining on) biobank sites under TSC Act**

- (1) A notice granting consent to development (and any direction or approval) under section 127Q of the *Threatened Species Conservation Act 1995* given before the repeal of that Act and having effect on that repeal is taken to be a notice (or direction or approval) under section 5.16 of the new Act. Section 5.16 of the new Act applies to any variation or termination of the agreement under section 127Q of the *Threatened Species Conservation Act 1995* in the same way as it applies to a variation or termination under section 5.16 of the new Act.
- (2) A direction under section 127S (2) of the *Threatened Species Conservation Act 1995* given before the repeal of that Act and having effect on that repeal is taken to be a direction under section 5.16 of the new Act.

#### **17 Wildlife refuges and conservation agreements under NPW Act**

- (1) After the commencement of the new Act, a wildlife refuge cannot be declared under section 68 of the *National Parks and Wildlife Act 1974*.
- (2) After the commencement of the new Act, a conservation agreement cannot be entered into under section 69B of the *National Parks and Wildlife Act 1974* if the agreement is for a purpose referred to in section 69C (1) (e) or (e2) of that Act (or in section 69C (1) (e3) in relation to a purpose referred to in section 69C (1) (e) or (e2)). However, the Minister may enter into any such conservation agreement after the commencement of the new Act if satisfied that the proposed agreement was in preparation on the commencement of the new Act.
- (3) Division 13 of Part 4 of the *National Parks and Wildlife Act 1974* (Offences relating to wildlife refuges and conservation areas) does not apply to offences committed after the commencement of the new Act within a wildlife refuge or land subject to a conservation agreement under that Act.

### **17A New Act applies to variation and termination of certain conservation agreements under NPW Act**

- (1) This clause applies to a conservation agreement entered into—
  - (a) before the commencement of the new Act, or
  - (b) by the Minister, pursuant to clause 17(2), after the commencement of the new Act.
- (2) A conservation agreement to which this clause applies may be varied or terminated in accordance with section 5.23 of the new Act as if it were an agreement made on or after the commencement of the new Act between the Biodiversity Conservation Trust and the owner of the land.
- (3) In this clause—

**conservation agreement** means an agreement under section 69B of the *National Parks and Wildlife Act 1974* for a purpose referred to in section 69C(1)(e) or (e2) of that Act (or in section 69C(1)(e3) in relation to a purpose referred to in section 69C(1)(e) or (e2)), as those provisions were in force immediately before the commencement of the new Act.

### **18 References to biobanking agreement etc in other Acts or instruments**

- (1) A reference in any Act or statutory or other instrument, or in any contract or agreement—
  - (a) to a biobanking agreement under Part 7A of the *Threatened Species Conservation Act 1995* is to be read as a reference to a biodiversity stewardship agreement under Division 2 of Part 5 of the new Act, and
  - (b) to a wildlife refuge under section 68 of the *National Parks and Wildlife Act 1974* is to be read as a reference to land to which a wildlife refuge agreement under Division 4 of Part 5 of the new Act applies, and
  - (c) to a conservation agreement under section 69B of the *National Parks and Wildlife Act 1974* of a kind referred to in clause 17 (2) is to be read as a reference to a conservation agreement under Division 3 of Part 5 of the new Act.
- (2) This clause does not apply to any such reference in the new Act or a regulation under the new Act and is subject to any contrary intention in the provision in which the relevant reference occurs.

## **Part 6 Provisions relating to biodiversity offsets scheme**

### **19 Preservation of existing biodiversity credits under TSC Act**

- (1) Biodiversity credits created under the *Threatened Species Conservation Act 1995* and

not retired or cancelled before the repeal of that Act are taken to be biodiversity credits under Part 6 of the new Act, being biodiversity credits that the Environment Agency Head determines are reasonably equivalent to the biodiversity credits so created under the *Threatened Species Conservation Act 1995*.

- (2) If biodiversity credits have not been created under the *Threatened Species Conservation Act 1995* following the entry into a biobanking agreement before or after the repeal of that Act, section 127W of that Act continues to apply for the purposes of the creation of the biodiversity credits, but those biodiversity credits are to be created in accordance with the new Act and without the need for the site to be registered as a biobank site under that Act.
- (3) An order under section 127ZI of the *Threatened Species Conservation Act 1995* that continues to have effect on the repeal of that Act is taken to be an order under section 6.29 of the new Act.

## **20 Biobanking statements issued under TSC Act**

- (1) The repeal of the *Threatened Species Conservation Act 1995* does not affect a biobanking statement issued under Division 6 of Part 7A of that Act before the repeal of that Act.
- (2) Any such biobanking statement continues to have the effect it has under Division 6 of Part 7A of the *Threatened Species Conservation Act 1995*. The statement also has the same effect in relation to any development or activity to which it applies as Part 8 of the new Act has in relation to biodiversity certified land under that Part.
- (3) Any such biobanking statement that has not been acted on ceases to have effect 2 years after the repeal of the *Threatened Species Conservation Act 1995* despite anything to the contrary in that Act.
- (4) Any such biobanking statement cannot be modified under Division 6 of Part 7A of the *Threatened Species Conservation Act 1995*, but may be modified by the Environment Agency Head on the application of the person to whom it was issued to bring the credit retirement condition of the statement into line with the equivalent biodiversity credits under the new Act.
- (5) An order under section 127ZR of the *Threatened Species Conservation Act 1995* that continues to have effect on the repeal of that Act is taken to be an order under section 6.29 of the new Act.
- (6) Section 127ZS of the *Threatened Species Conservation Act 1995* continues to have effect in relation to a biobanking statement under that Act.

## **21 Pending applications for biobanking statements under the TSC Act**

- (1) This clause applies to an application for a biobanking statement that was made under

Part 7A of the *Threatened Species Conservation Act 1995* and that had not been determined on the repeal of that Act.

- (2) The Environment Agency Head may, within 12 months after the commencement of the new Act, determine the application (and issue a biobanking statement) under Part 7A of the *Threatened Species Conservation Act 1995* (as if that Act had not been repealed) if satisfied that the application substantially complies with Part 7A of that Act. The relevant provisions of that Act and the regulations under that Act continue to have effect for that purpose.
- (3) If the Environment Agency Head issues the biobanking statement, clause 20 applies to the statement as if it had been issued before the repeal of the *Threatened Species Conservation Act 1995*. In that case, a reference in clause 20 to a statement that has not been acted on ceasing to have effect 2 years after the repeal of that Act is to be construed as a reference to the period of 2 years after the issue of the statement.
- (4) A deferred retirement arrangement cannot be approved under Part 7A of the *Threatened Species Conservation Act 1995* in relation to a biobanking statement issued in accordance with this clause.

## **22 Existing statutory obligations requiring retirement of biodiversity credits**

- (1) This clause applies to an obligation to retire credits under the *Threatened Species Conservation Act 1995* under the following that have not been retired on the repeal of that Act—
  - (a) a condition of a development consent under Part 4 of the *Environmental Planning and Assessment Act 1979*,
  - (b) a condition of a State significant infrastructure approval under Part 5.1 of the *Environmental Planning and Assessment Act 1979*,
  - (c) a decision of a determining authority to carry out an activity, or approve the carrying out of an activity, under Part 5 of the *Environmental Planning and Assessment Act 1979*,
  - (d) a requirement of biodiversity certification, or of a biodiversity certification agreement, under Part 7AA of the *Threatened Species Conservation Act 1995*,
  - (e) any other obligation imposed by a provision of or made under an Act or statutory instrument or an agreement.
- (2) If biodiversity credits that are required to be retired under any such obligation have not been retired on the commencement of the new Act, the obligation is to be construed as requiring the retirement of biodiversity credits under the new Act that remain to be retired.

- (3) The Environment Agency Head may, for the purposes of this clause, determine the biodiversity credits under the new Act that are reasonably equivalent to the remaining biodiversity credits under the *Threatened Species Conservation Act 1995* that remain to be retired.

### **23 Preservation of appeals under Part 7A of TSC Act**

The repeal of the *Threatened Species Conservation Act 1995* does not affect an appeal made under section 127ZZG of that Act before that repeal.

### **24 Biobanking Trust Fund under TSC Act 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 repeal of that Act.
- (2) On the abolition of the Biobanking Trust Fund, money standing to the credit of the Fund and its other assets and liabilities become money standing to the credit of the Biodiversity Stewardship Payments Fund established by section 6.34 of the new Act and the other assets and liabilities of that Fund.

### **25 Biodiversity Banking Account under TSC Act to become Biodiversity Stewardship Operations Account**

- (1) The Biodiversity Banking Account established by section 127ZZA of the *Threatened Species Conservation Act 1995* is abolished on the repeal of that Act.
- (2) On the abolition of the Biodiversity Banking Account, money standing to the credit of the Account becomes money standing to the credit of the Biodiversity Stewardship Operations Account established by section 6.39 of the new Act.
- (3) The repeal of section 127ZZ of the *Threatened Species Conservation Act 1995* does not affect the liability of a person to pay a contribution to the Minister (or the Minister's ability to recover the contribution) under that section.

### **26 References to abolished Fund or Account in other Acts or instruments**

- (1) A reference in any Act or statutory or other instrument, or in any contract or agreement—
  - (a) to the Biobanking Trust Fund is to be read as a reference to the Biodiversity Stewardship Payments Fund, and
  - (b) to the Biodiversity Banking Account is to be read as a reference to the Biodiversity Stewardship Operations Account.
- (2) This clause does not apply to any such reference in the new Act or a regulation under the new Act and is subject to any contrary intention in the provision in which the relevant reference occurs.



## **Part 7 Provisions relating to biodiversity assessment and approvals under Planning Act**

### **27 Definitions: Part 7**

(1) In this Part—

**former planning provisions** means the provisions of the *Environmental Planning and Assessment Act 1979* that would be in force if that Act had not been amended by the new Act.

**pending Part 5 assessment** of an activity for which the proponent is also the determining authority, means—

- (a) if the activity is likely to significantly affect threatened species—an environmental impact assessment of the activity that began under Part 5 of the *Environmental Planning and Assessment Act 1979* before the commencement of the new Act if the proponent consulted (under section 112B of that Act) the Minister administering the *Threatened Species Conservation Act 1995* before the commencement of the new Act or obtained (under section 112C of that Act) the concurrence of the Chief Executive of the Office of Environment and Heritage before the commencement of the new Act, or
- (b) an environmental impact assessment of the activity that began under Part 5 of the *Environmental Planning and Assessment Act 1979* before the commencement of the new Act (but only if the proponent commences to carry out the activity within 18 months after the commencement of the new Act).

**pending Part 5 assessment** of an activity for which the proponent is not also the determining authority, means—

- (a) an environmental impact assessment of the activity under Part 5 of the *Environmental Planning and Assessment Act 1979* if the determining authority granted approval before the commencement of the new Act to the carrying out of the activity, or
- (b) an environmental impact assessment of the activity that began under Part 5 of the *Environmental Planning and Assessment Act 1979* before the commencement of the new Act (but only if the determining authority grants approval within 18 months of that commencement to the carrying out of the activity).

**pending or interim planning application** means any of the following—

- (a) an application for planning approval (or for the modification of a planning approval) made before the commencement of the new Act but not finally determined immediately before that commencement,

- (b) an application for planning approval (or for the modification of a planning approval) made within 18 months after the commencement of the new Act if an environmental impact statement is to be submitted in connection with the application and the Secretary of the Department of Planning and Environment issued, before the commencement of the new Act, environmental assessment requirements for the preparation of the statement,
- (c) an application for planning approval (or for the modification of a planning approval) made within 12 months after the commencement of the new Act if a species impact statement is to be submitted in connection with the application and the Environment Agency Head issued, before the commencement of the new Act, requirements for the preparation of the statement,
- (d) an application for planning approval (or for the modification of a planning approval) made after the commencement of the new Act if an environmental impact statement is to be submitted in connection with the application and the Secretary of the Department of Planning and Environment determines in writing that the proponent had undertaken substantial environmental assessment in connection with the statement before the commencement of the new Act (but only if the application is made within 18 months after that determination),
- (e) except in the case of State significant development—an application for development consent under Part 4 of the *Environmental Planning and Assessment Act 1979* (or for the modification of such a development consent) made within 6 months after the commencement of the new Act (but only if any species impact statement that is to be submitted in connection with the application is submitted within 12 months after the commencement of the new Act),
- (f) in the case of development (except State significant development) within a Western Sydney interim designated area under subclause (3)—an application for development consent under Part 4 of the *Environmental Planning and Assessment Act 1979* (or for the modification of such a development consent) made on or before 24 November 2019 (but only if any species impact statement that is to be submitted in connection with the application is submitted on or before 24 May 2020),
- (f1) in the case of development (except State significant development) within an expired interim designated area under subclause (3)—an application for development consent under Part 4 of the *Environmental Planning and Assessment Act 1979* (or for the modification of such a development consent) made on or before 24 November 2018 (but only if any species impact statement that is to be submitted in connection with the application is submitted on or before 24 May 2019),
- (g) in the case of development for the purposes of mining—an application for

development consent under Part 4 of the *Environmental Planning and Assessment Act 1979* (or for the modification of such a development consent) made within 2 years after the commencement of the new Act if the Secretary of the Department of Planning and Environment determines in writing (within 3 months after the commencement of the new Act) that the proponent had submitted before that commencement the conceptual project development plan for the mining project that is required by departmental policy before an application for development consent is made.

**planning approval** means—

- (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.

**planning approval body** means—

- (a) in relation to an application for development consent under Part 4 of the *Environmental Planning and Assessment Act 1979* (or for the modification of such a consent)—the consent authority, or
  - (b) in relation to an application for State significant infrastructure approval under Part 5.1 of that Act (or for the modification of such an approval)—the Minister administering that Act.
- (2) For the purposes of paragraph (b) of the definition of **pending or interim planning application** in subclause (1), if the environmental assessment requirements referred to in that paragraph are re-issued, then the application is a pending planning application if the application is made within 18 months after the re-issue of the requirements (but only if the application is made within 3 years after the commencement of the new Act).
- (3) For the purposes of paragraph (f) of the definition of **pending or interim planning application** in subclause (1), the local government areas of Camden, City of Campbelltown, City of Fairfield, City of Hawkesbury, City of Liverpool, City of Penrith and Wollondilly are Western Sydney interim designated areas.
- (3A) For the purposes of paragraph (f1) of the definition of **pending or interim planning application** in subclause (1), the following are expired interim designated areas—
- (a) the local government areas of Central Coast, City of Cessnock, City of Coffs Harbour, City of Lake Macquarie, City of Maitland, City of Newcastle and Port Stephens,
  - (b) that part of the local government area of the City of Wollongong that comprises

the land to which the West Dapto Urban Release Area proposed application for biodiversity certification applies (as described in the *Proposed Applications for Biodiversity Certification Order 2017* published in the Government Gazette No 126 of 24 November 2017 at pages 7246–7255).

- (4) A reference in this Part to Part 7 of the new Act not applying to a matter includes a reference to Division 12 of Part 7A of the *Fisheries Management Act 1994* (as inserted by the new Act) not applying to that matter.

**28 Former planning provisions continue to apply to pending or interim planning applications**

- (1) The former planning provisions continue to apply (and Part 7 of the new Act does not apply) to the determination of a pending or interim planning application.
- (2) However, Part 7 of the new Act applies to the determination of a pending or interim planning application referred to in paragraph (b), (c) or (d) of the definition of ***pending or interim planning application*** in clause 27 (1) if the applicant or proponent and the planning approval body for the application agree in writing that Part 7 of the new Act is to apply to the determination of the application instead of the former planning provisions.

**29 Former planning provisions continue to apply to pending Part 5 assessment and certain modifications of activities**

- (1) The former planning provisions continue to apply (and Part 7 of the new Act does not apply) to—
- (a) an environmental impact assessment that is a pending Part 5 assessment, or
  - (b) an environmental impact assessment that relates to the modification of an activity if the proponent commences to carry out the modified activity within 18 months after the commencement of the new Act.
- (2) However, Part 7 of the new Act applies to an environmental impact assessment that is a pending Part 5 assessment (or that relates to the modification of an activity) instead of the former planning provisions if—
- (a) the proponent (being also the determining authority) elects to apply Part 7 of the new Act to the assessment, or
  - (b) the proponent and the determining authority agree in writing that Part 7 of the new Act is to apply to the assessment.

**30 New Act applies to modification of planning approvals granted before commencement of new Act**

The new Act applies to the modification of a planning approval even if the planning

approval was granted before the commencement of the new Act (unless the application for the modification of the planning approval is a pending or interim planning application).

**30A New Act applies to modifications of planning approvals granted or applied for before commencement of new Act**

- (1) The provisions of Division 4 of Part 7 of the new Act apply to applications for the modification of a planning approval—
  - (a) where the planning approval was granted before the commencement of the new Act, and
  - (b) where the planning approval was granted on or after the commencement of the new Act, as a result of the determination of a pending or interim planning application.
- (2) For that purpose—
  - (a) the provisions apply in relation to the original development as proposed to be modified, and
  - (b) a biodiversity development assessment report is required to be submitted and taken into consideration if Division 4 of Part 7 of the new Act would have applied to the original development (as proposed to be modified) if planning approval had been granted after the commencement of the new Act, and
  - (c) however a 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, and
  - (d) the biodiversity development assessment report submitted with the application for modification—
    - (i) is to take into account any measures already taken to avoid, minimise or offset the impact on biodiversity values in connection with the planning approval before the proposed modification, and
    - (ii) is to take into account only the additional impact on biodiversity values resulting from the modification of the development and not those associated with the development as approved, and
  - (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.

**31 New threatened species listings to apply to continued application of former planning**

### **provisions**

For the purposes of the application of the former planning provisions in accordance with this Part, any change under the new Act to the listings of threatened species and ecological communities is taken to be a corresponding change to the listings under the *Threatened Species Conservation Act 1995* referred to in the former planning provisions.

### **32 Data collected for BAM assessments before the commencement of the new Act**

- (1) For the purposes of Part 7 of the new Act, the use of data collected before the commencement of the new Act is taken to be collected in accordance with the Biodiversity Assessment Method if—
  - (a) the data was collected in a manner that is substantially consistent with the Biodiversity Assessment Method, and
  - (b) the data was collected by an accredited person.
- (2) An accredited person is—
  - (a) a person who was accredited under section 142B of the *Threatened Species Conservation Act 1995* when the data concerned was collected, or
  - (b) a person who is accredited under section 6.10 of the new Act.

### **33 Savings and transitional arrangements for coal mining—Upper Hunter Strategic Assessment Agreement**

- (1) In this clause—

**coal mining** means new coal mining operations or expansions of existing coal mining operations in the area to which the Upper Hunter Biodiversity Plan applies.

**development** includes an activity to which Part 5 of the *Environmental Planning and Assessment Act 1979* applies.

**Upper Hunter Biodiversity Plan** means the biodiversity plan relating to coal mining in the Upper Hunter Valley to which the Upper Hunter Strategic Assessment Agreement relates and that—

- (a) is a policy, plan or program under section 146 of the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth which identifies biodiversity values in the strategic assessment area, priorities for conservation and mechanisms to achieve desired conservation outcomes, and
- (b) is endorsed under that Act by the Commonwealth Minister responsible for administering that Act before or within 30 months after the commencement of the new Act.

**Upper Hunter Strategic Assessment Agreement** means the agreement made on 20 September 2012 between the Commonwealth of Australia and the State of New South Wales in relation to the strategic assessment of a biodiversity plan for coal mining in the Upper Hunter Valley of New South Wales.

- (2) The Ministers administering the new Act and the *Environmental Planning and Assessment Act 1979* may, by a joint notice published in the Gazette, approve of biodiversity assessment of a specified development, or class of development, relating to coal mining being undertaken in accordance with the Upper Hunter Biodiversity Plan.
- (3) Biodiversity assessment of proposed development is undertaken in accordance with the Upper Hunter Biodiversity Plan if—
  - (a) that Plan has assessed the impact on biodiversity values of development of the class concerned, and
  - (b) the terms and conditions of the planning approval for the proposed development, or for carrying out the proposed development, reflect the measures to avoid or mitigate those impacts, or to offset any residual impacts, that are required by that Plan.
- (4) If biodiversity assessment of proposed development is undertaken in accordance with the Upper Hunter Biodiversity Plan—
  - (a) the proposed development is not likely to significantly affect threatened species for the purposes of Part 7 of the new Act, and
  - (b) an assessment of the impact of the proposed development on biodiversity is not required for the purposes of Part 7 of the new Act or the *Environmental Planning and Assessment Act 1979*, and
  - (c) a planning approval body or a determining authority is not required to take into consideration the likely impact on biodiversity of the proposed development.
- (5) This clause does not prevent the biodiversity assessment of proposed development to which this clause applies being undertaken in accordance with Part 7 of the new Act instead of the Upper Hunter Biodiversity Plan.
- (6) This clause applies whether or not the development concerned is also an approved action under the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth.

**Note—**

The above savings and transitional provision was foreshadowed in Schedule 9 to the new Act when the Bill for the new Act was enacted.

**34 BOS threshold—interim arrangement pending publication of Biodiversity Values Map**

- (1) This clause applies during the period (if any) after the commencement of the Act and before the first publication of the *Biodiversity Values Map* under clause 7.3 of the *Biodiversity Conservation Regulation 2017*.
- (2) During that period, the land referred to in clause 7.3 (3) (a)–(c) of that Regulation is taken, for the purposes of that Regulation, to have been included in a *Biodiversity Values Map*.

**34A Part 3A concept plan approvals, or other planning arrangements, subject to previous assessment and offsetting**

- (1) This clause applies to a development application that is made under the *Environmental Planning and Assessment Act 1979* in respect of proposed development that is certified under this clause.
- (2) Part 7 of the Act does not apply to the determination of a development application to which this clause applies but the former planning provisions apply instead.
- (3) The Secretary of the Department of Planning and Environment may certify, by order in writing—
  - (a) that the proposed development the subject of a development application is part of a concept plan approval and the biodiversity impacts of the proposed development were satisfactorily assessed before the commencement of the Act as part of the concept plan approval, and
  - (b) that conservation measures have been secured into the future (by a planning agreement, a land reservation or otherwise) to offset the residual impact of the proposed development on biodiversity values after the measures required to be taken to avoid or minimise those impacts.
- (4) The Environment Agency Head may certify, by order in writing—
  - (a) that the proposed development the subject of a development application is part of a relevant planning arrangement and the biodiversity impacts of the proposed development were satisfactorily assessed before the commencement of the Act as part of the relevant planning arrangement, and
  - (b) that conservation measures have been secured into the future (by a planning agreement, a land reservation or otherwise) to offset the residual impact of the proposed development on biodiversity values after the measures required to be taken to avoid or minimise those impacts.
- (5) Proposed development the subject of a specified development application, or proposed development the subject of all or any pending or future development applications that are part of a specified concept plan approval or relevant planning



arrangement, may be certified under this clause.

(6) This clause applies in addition to any other provision of this Part that applies the former planning provisions to the determination of a development application.

(7) In this clause—

**concept plan approval** means an approved concept plan (whether approved before or after the repeal of Part 3A of the *Environmental Planning and Assessment Act 1979*) in respect of a transitional Part 3A project within the meaning of Schedule 6A to that Act.

**development application** includes an application for the modification of a development consent.

**relevant planning arrangement** means an arrangement associated with the making of an environmental planning instrument or development control plan under the *Environmental Planning and Assessment Act 1979*, the grant of concurrence under that Act or the making of any other application or request under that Act.

## **Part 8 Provisions relating to biodiversity certification of land**

### **35 Biodiversity certification of land under TSC Act taken to be biodiversity certification under new Act**

Biodiversity certification that was conferred on land under Part 7AA of the *Threatened Species Conservation Act 1995* and that was in force on the repeal of that Act is taken to be biodiversity certification conferred on the land under Part 8 of the new Act.

### **36 Biodiversity certification proposals under TSC Act—pending applications**

- (1) This clause applies to an application for biodiversity certification that was made under Part 7AA of the *Threatened Species Conservation Act 1995* and that had not been determined on the repeal of that Act.
- (2) The Minister may determine the application under Part 7AA of the *Threatened Species Conservation Act 1995* (as if that Act had not been repealed) if satisfied that the application substantially complies with Part 7AA of that Act. Section 142B and other relevant provisions of that Act and the regulations under that Act continue to have effect for that purpose.
- (3) If the Minister confers biodiversity certification on land as a result of the determination of the application, it is taken to be biodiversity certification conferred on the land under Part 8 of the new Act.

### **37 Biodiversity certification proposals under TSC Act—applications not yet made**

- (1) This clause applies to a proposed application for biodiversity certification under Part

7AA of the *Threatened Species Conservation Act 1995* that had been in the course of preparation, but had not been made, before the repeal of that Act.

- (2) The Minister may, by order published in the Gazette within 3 months after the commencement of the new Act, declare that any such proposed application may be made under Part 7AA of the *Threatened Species Conservation Act 1995* and determined under this clause. The order is to specify the period (not exceeding 2 years after the commencement of the new Act) within which the application must be made.
- (3) The Minister may determine any such application that is duly made under Part 7AA of the *Threatened Species Conservation Act 1995* (as if that Act had not been repealed). Section 142B and other relevant provisions of that Act and the regulations under that Act continue to have effect for that purpose.
- (4) If the Minister confers biodiversity certification on land as a result of the determination of the application, it is taken to be biodiversity certification conferred on the land under Part 8 of the new Act.
- (5) This clause does not prevent the applicant for biodiversity certification deciding not to proceed with biodiversity certification under Part 7AA of the *Threatened Species Conservation Act 1995* and making an application instead for biodiversity certification under the new Act.

### **38 Conservation measures under TSC Act biodiversity certification**

- (1) The following applies to conservation measures imposed by a biodiversity certification under Part 7AA of the *Threatened Species Conservation Act 1995* that remain to be complied with on the repeal of the Act—
  - (a) an obligation to enter into a biodiversity certification agreement under Part 7AA of the *Threatened Species Conservation Act 1995* may also be satisfied by entering into a biodiversity certification agreement under Part 8 of the new Act,
  - (b) an obligation to enter into a conservation agreement under the *National Parks and Wildlife Act 1974* may be satisfied by entering into a conservation agreement under Part 5 of the new Act,
  - (c) an obligation to enter into a trust agreement under the *Nature Conservation Trust Act 2001* may be satisfied by entering into a biodiversity stewardship agreement under Part 5 of the new Act,
  - (d) an obligation to enter into biobanking agreement under Part 7A of the *Threatened Species Conservation Act 1995* may also be satisfied by entering into a biodiversity stewardship agreement under Part 5 of the new Act,
  - (e) an obligation to acquire or retire biodiversity credits under Part 7A of the

*Threatened Species Conservation Act 1995* may also be satisfied by the acquisition or retirement of biodiversity credits under the new Act.

### **39 Compliance with approved measures under TSC Act biodiversity certification**

- (1) An order that was made under section 126ZD (1) or (2) of the *Threatened Species Conservation Act 1995* before the repeal of that Act and that has not been complied with on that repeal is taken to be an order under section 8.13 (1) or (2), respectively, of the new Act.
- (2) An order may be made under section 8.13 of the new Act in relation to a failure to comply with the approved measures under a biodiversity certification under Part 7AA of the *Threatened Species Conservation Act 1995* that occurred before the repeal of that Act in addition to any such failure that occurs after that repeal.

### **40 Biodiversity certification agreements under TSC Act taken to be biodiversity certification agreements under new Act**

- (1) A biodiversity certification agreement that was entered into under Part 7AA of the *Threatened Species Conservation Act 1995* and that was in force on the repeal of that Act (or that is entered into in connection with biodiversity certification conferred under clause 36 or 37) is taken to be a biodiversity certification agreement entered into under Part 8 of the new Act.
- (2) Any such agreement registered by the Registrar-General under section 126ZJ of the *Threatened Species Conservation Act 1995* is taken to have been registered under section 8.17 of the new Act.

### **41 Enforcement of biodiversity certification agreements under TSC Act**

- (1) Any proceedings under section 126ZK of the *Threatened Species Conservation Act 1995* that had not been determined on the repeal of that Act are taken to be proceedings under section 13.16 of the new Act.
- (2) Proceedings may be instituted under section 13.16 of the new Act to remedy or restrain a breach of a biodiversity certification agreement under Part 7AA of the *Threatened Species Conservation Act 1995* that occurred before the repeal of that Act in addition to any such breach that occurs after that repeal.
- (3) An order that was made under section 126ZL of the *Threatened Species Conservation Act 1995* before the repeal of that Act and that has not been complied with on that repeal is taken to be an order under section 8.18 of the new Act.
- (4) An order may be made under section 8.18 of the new Act (and action may be taken under that section by the Minister) in relation to the rectification of a contravention of a biodiversity certification agreement under Part 7AA of the *Threatened Species Conservation Act 1995* that occurred before the repeal of that Act in addition to any

such contravention that occurs after that repeal.

#### **42 Preservation of appeals under Part 7AA of TSC Act**

The repeal of the *Threatened Species Conservation Act 1995* does not affect an appeal made under section 126ZF or 126ZS of that Act before that repeal.

#### **43 Preservation of biocertification of Sydney Region Growth Centres SEPP, EPIs etc**

- (1) The repeal of the *Threatened Species Conservation Act 1995* does not affect the operation of Part 7 or 8 of Schedule 7 to that Act.
- (2) The Minister may, by order published in the Gazette, limit the area of land to which the biodiversity certification under Part 8 of Schedule 7 applies if the Minister is satisfied that it is necessary to do so to preserve the general effect of the biodiversity certification under that Part because of the changes made by the new Act and the legislation relating to the clearing of native vegetation.

#### **44 References to biodiversity certification and biodiversity certification agreement under TSC Act in other Acts or instruments**

- (1) A reference in any Act or statutory or other instrument, or in any contract or agreement—
  - (a) to biodiversity certification under Part 7AA of the *Threatened Species Conservation Act 1995* is to be read as a reference to a biodiversity certification under Part 8 of the new Act, and
  - (b) to a biodiversity certification agreement under Part 7AA of the *Threatened Species Conservation Act 1995* is to be read as a reference to a biodiversity certification agreement under Part 8 of the new Act.
- (2) This clause does not apply to any such reference in the new Act or a regulation under the new Act and is subject to any contrary intention in the provision in which the relevant reference occurs.

### **Part 9 Provisions relating to public consultation and public registers**

#### **45 Public consultation and making of instruments before Act commences**

To avoid doubt, section 26 of the *Interpretation Act 1987* applies to the making of a public consultation document to which Division 1 of Part 9 of the new Act applies (and to public consultation under that Division or any other requirement under that Act in relation to a proposed document) before the commencement of the new Act.

**Note—**

Section 26 provides that the document concerned has effect on the commencement of the new Act.

#### **46 Preservation of register of biobanking statements under TSC Act**

On the repeal of the *Threatened Species Conservation Act 1995*, the register of biobanking statements under section 127ZZD of that Act becomes a public register to which Division 2 of Part 9 of the new Act applies, and that section continues to have effect accordingly.

### **Part 10 Provisions relating to Biodiversity Conservation Trust**

#### **Note—**

Section 10.15 of the new Act provides that the Biodiversity Conservation Trust established under Division 1 of Part 10 of the new Act 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.

#### **47 Members of Board of Nature Conservation Trust cease to hold office**

A person who, immediately before the repeal of the *Nature Conservation Trust Act 2001*, held office as a member of the Board of the Nature Conservation Trust under that Act—

- (a) ceases to hold that office, and
- (b) is not entitled to any remuneration or compensation because of the loss of that office, and
- (c) is entitled, if otherwise qualified, to be appointed as a member of the Board of the Biodiversity Conservation Trust.

#### **48 First annual report of Biodiversity Conservation Trust to include Nature Conservation Trust**

The first annual report of the Biodiversity Conservation Trust under the *Annual Reports (Statutory Bodies) Act 1984* is to include a report on the Nature Conservation Trust in respect of any period for which an annual report of the Nature Conservation Trust had not been made under section 16 of the *Nature Conservation Trust Act 2001*.

#### **49 Operating accounts of Nature Conservation Trust to become part of Biodiversity Conservation Fund**

On the repeal of the *Nature Conservation Trust Act 2001*, money standing to the credit of an operating account under section 28 of that Act is taken to be money standing to the credit of the Biodiversity Conservation Fund established by section 10.16 of the *Biodiversity Conservation Act 2016*.

#### **50 Continuation of existing Trust agreements etc**

- (1) A Trust agreement in force under the *Nature Conservation Trust Act 2001* immediately before the repeal of that Act continues to have effect in accordance with its terms as if that Act had not been repealed. The Biodiversity Conservation Trust is taken to be a party to any such Trust agreement in place of the Nature Conservation Trust.

- (2) The Biodiversity Conservation Trust may enter into a Trust agreement under the *Nature Conservation Trust Act 2001* (as if that Act had not been repealed) if the Trust is satisfied that the proposed agreement was in preparation on the repeal of that Act.
- (3) For the purposes of this clause—
  - (a) the *Nature Conservation Trust Act 2001* (other than sections 34(1)(b) and (2) and 35) continues to apply to and in respect of a Trust agreement to which this clause applies as if that Act had not been repealed and as if references to the Nature Conservation Trust were references to the Biodiversity Conservation Trust, and
  - (b) section 5.23 of the new Act applies to and in respect of the variation or termination of a Trust agreement to which this clause applies.

#### **51 References to Nature Conservation Trust in other Acts or instruments**

A reference in any Act or statutory or other instrument, or in any contract or agreement, to the Nature Conservation Trust is to be read as a reference to Biodiversity Conservation Trust. This clause does not apply to any such reference in the new Act or a regulation under the new Act and is subject to any contrary intention in the provision in which the relevant reference occurs.

### **Part 11 Provisions relating to regulatory compliance mechanisms**

#### **52 Existing stop work order under TSC Act**

- (1) A stop work order under the *Threatened Species Conservation Act 1995* that is in force on the repeal of that Act is taken to be a stop work order under Division 2 of Part 11 of the new Act.
- (2) Any such stop work order is taken to have been made in relation to a contravention of the new Act for the purposes of section 11.8 of the new Act.

#### **53 Remediation orders and directions in relation to previous offences under NPW Act**

- (1) A remediation order may be made under Division 4 of Part 11 of the new Act in relation to damage in or as a result of the commission of an offence under the *National Parks and Wildlife Act 1974* before the commencement of the new Act.
- (2) The repeal of section 102 of the *National Parks and Wildlife Act 1974* does not affect the continued operation of a direction in force under that section on that repeal, and that section continues to have effect in relation to such a direction.

#### **54 Remediation orders and directions in relation to previous offences under NV Act**

- (1) A remediation order may be made under Division 4 of Part 11 of the new Act in relation to damage in or as a result of the commission of an offence under the *Native Vegetation Act 2003* before the commencement of the new Act.

- (2) The repeal of section 38 of the *Native Vegetation Act 2003* does not affect the continued operation of a direction in force under that section on that repeal, and that section continues to have effect in relation to such a direction.

#### **54A Continuation of orders made under Part 11 of Act in relation to forestry operations**

The amendments made by Schedule 3.1 to the *Forestry Legislation Amendment Act 2018* do not affect the continued operation of any order made under Part 11 of the new Act in force on the commencement of those amendments and that was made in connection with the carrying out of forestry operations.

### **Part 12 Provisions relating to investigation powers**

#### **55 Use of investigation powers under new Act for enforcement of former Acts**

- (1) Powers may also be exercised under Part 12 of the new Act for the following purposes—
- (a) for determining whether there has been compliance with or a contravention of a former Act,
  - (b) for obtaining information or records for purposes connected with the enforcement of a former Act,
  - (c) generally for the enforcement of a former Act.
- (2) Division 7 of Part 12 of the new Act (Special provisions relating to native vegetation clearing enforcement) extends to the exercise of powers authorised by subclause (1) in relation to the *Native Vegetation Act 2003*.
- (3) In this clause—
- former Act** includes a statutory instrument, an agreement or other requirement made under a former Act.

#### **56 Continued authority of authorised officers appointed under former Act**

- (1) In this clause—
- existing authorised officer** means a person who was, immediately before the commencement of the new Act—
- (a) an authorised officer appointed under section 34 of the *Native Vegetation Act 2003*, or
  - (b) an authorised officer appointed as referred to in section 156B of the *National Parks and Wildlife Act 1974*.
- (2) An existing authorised officer is taken to have been appointed under section 12.4 of

the new Act as an authorised officer without limitation of the functions the person may exercise as an authorised officer under the new Act. The Environment Agency Head may, after the commencement of the new Act, terminate the operation of this subclause in relation to a person and may appoint the person as an authorised officer under and in accordance with section 12.4 of the new Act.

- (3) An identification issued to an existing authorised officer under section 34 of the *Native Vegetation Act 2003*, or in accordance with section 156B of the *National Parks and Wildlife Act 1974*, is taken to be an identification card issued to the authorised officer under section 12.6 of the new Act.

#### **57 Enforcement requirement under former Act in relation to information or records**

- (1) The repeal of a former Act does not affect any pending enforcement requirement. After that repeal, any such pending enforcement requirement is taken to be a requirement made under the corresponding provision of the new Act.
- (2) Information or records obtained with respect to the enforcement of a former Act may be used in connection with the enforcement of the new Act or Part 5A of the *Local Land Services Act 2013*.
- (3) In this clause—

**former Act** includes a statutory instrument, an agreement or other requirement made under a former Act.

**pending enforcement requirement** means a notice under section 36 of the *Native Vegetation Act 2003*, or any other requirement made with respect to information or records under a former Act for the purposes of the enforcement of the former Act, that has not been complied with on the repeal of the former Act.

### **Part 13 Provisions relating to criminal and civil proceedings**

#### **58 Offences under former Act not affected**

- (1) The repeal of a former Act does not affect any offence against the former Act (or the regulations under the former Act) that was committed before that repeal.
- (2) The provisions of the former Act (or the regulations under the former Act) relating to the following continue to apply—
  - (a) proceedings for any such offence (and evidentiary certificates or provisions relating to those proceedings),
  - (b) the issue of penalty notices for any such offence,
  - (c) the making of an order by a court in relation to any such offence.



(d) (Repealed)

- (2A) Without limiting subclause (2) (a), proceedings for an offence against the *Native Vegetation Act 2003* may be taken by the Environment Protection Authority or by the Environment Agency Head.
- (3) This clause extends to offences committed after the repeal of a former Act in relation to a provision of the former Act (or of the regulations under the former Act) that is continued in force by this Regulation.

#### **58A Proceedings for certain offences since repeal of former Acts**

Without limiting section 13.3 of the new Act, proceedings for an offence against the new Act arising from the carrying out of forestry operations and that has been committed since the repeal of the former Acts but before the commencement of Schedule 3.1 to the *Forestry Legislation Amendment Act 2018* may be taken by the Environment Protection Authority.

#### **59 Civil proceedings under former Act not affected**

- (1) The repeal of a former Act does not affect any civil proceedings that may be brought under the former Act in relation to a breach of the former Act or any instrument or agreement under a former Act that occurred before that repeal.
- (2) The provisions of the former Act relating to civil proceedings in relation to such a breach continue to apply to those proceedings.
- (3) This clause extends to breaches occurring after the repeal of a former Act in relation to a provision of the former Act (or of any instrument or agreement under a former Act) that is continued in force by this Regulation.

#### **59A Undertakings in relation to previous offences under former Acts**

- (1) Section 13.27 of the new Act extends to matters arising under a former Act.
- (2) Accordingly, an undertaking may be accepted under section 13.27 of the new Act in connection with a matter in relation to which the Environment Agency Head has a function under the new Act in or as a result of the commission or the alleged commission of an offence under a former Act.
- (3) This clause extends to offences committed or alleged to have been committed after the repeal of a former Act in relation to a provision of the former Act (or of the regulations under the former Act) that is continued in force by this Regulation.

### **Part 14 Provisions consequent on repeal of *Native Vegetation Act***

## 2003

### 60 Property Vegetation Plans under NV Act continue in force

- (1) The repeal of the *Native Vegetation Act 2003* does not affect a property vegetation plan that was approved under the *Native Vegetation Act 2003* before the repeal of that Act and that was in force on that repeal.
- (2) For the purposes of section 60N of the *Local Land Services Act 2013* (and section 2.8 (1) (b) of the *Biodiversity Conservation Act 2016*), the clearing of native vegetation in accordance with any such property vegetation plan is taken to be clearing in accordance with a land management (native vegetation) code under that Act.
- (3) The following provisions of the *Native Vegetation Act 2003* and the regulations under that Act continue to have effect in relation to any such property vegetation plan (other than any such plan that is taken to be a private native forestry plan under Part 5B of the *Local Land Services Act 2013*)—
  - (a) provisions relating to the variation of the plan,
  - (b) provisions relating to the termination of the plan,
  - (c) provisions relating to the continued operation of the plan following a change in the ownership of the land concerned,
  - (d) provisions relating to the registration of the plan on the title to the land concerned,
  - (e) provisions relating to the making of information about the plan publicly available.

For that purpose, a reference in those provisions to the Minister administering that Act is to be construed as a reference to the Minister administering the *Biodiversity Conservation Act 2016*.

- (4) Any such property vegetation plan that authorises broadscale clearing may be terminated under those provisions by the Minister at the request of the landholder concerned if all the clearing authorised by the plan has not yet been carried out. The Minister is not to terminate the plan unless a mandatory code compliant certificate is issued under section 60Y of the *Local Land Services Act 2013* that provides for a set aside area under section 60ZC of that Act (in place of the offset obligation under the plan)—
  - (a) that is in the same location as the offset obligation under the plan, and
  - (b) whose size is the same proportion to the size of the offset obligation under the plan as the size of the area previously cleared under the plan bears to the total area authorised to be cleared under the plan (unless Local Land Services varies that size to reflect the biodiversity conservation outcomes under the plan).

- (5) This clause is subject to the provisions of any land management (native vegetation) code relating to the transition to Part 5A of the *Local Land Services Act 2013* of clearing and other requirements under property vegetation plans as referred to in section 60W (3) of that Act.

**61 Development consents under NV Act continue in force**

- (1) The repeal of the *Native Vegetation Act 2003* does not affect a development consent that was granted under that Act before the repeal of that Act.
- (2) For the purposes of sections 60N and 60O of the *Local Land Services Act 2013* (and section 2.8 (1) (a) of the *Biodiversity Conservation Act 2016*), the clearing of native vegetation in accordance with any such development consent is taken to be clearing in accordance with a development consent under Part 4 of the *Environmental Planning and Assessment Act 1979*.
- (3) The provisions of the *Native Vegetation Act 2003* and the regulations under that Act continue to have effect in relation to the clearing permitted to be carried out under any such development consent.

**62 Notified clearing under Ministerial orders (“self assessable codes”) under NV Act continues in force**

- (1) The repeal of the *Native Vegetation Act 2003* does not affect a notification given before the repeal of that Act by a landholder under clause 43 of the *Native Vegetation Regulation 2013* of proposed clearing in relation to a Ministerial order under that Regulation, but only if the proposed clearing is carried out within 18 months after the repeal of that Act.
- (2) For the purposes of section 60N of the *Local Land Services Act 2013* (and section 2.8 (1) (b) of the *Biodiversity Conservation Act 2016*), the clearing of native vegetation in accordance with any such notification is taken to be clearing in accordance with a land management (native vegetation) code under that Act.
- (3) The provisions of the *Native Vegetation Regulation 2013* continue to have effect in relation to the clearing concerned.

**63 Continuation of existing property agreements continued under NV Act**

- (1) A property agreement made under the *Native Vegetation Conservation Act 1997* before the repeal of that Act (and continued in force by clause 65 of the *Native Vegetation Regulation 2013*) continues to have effect in accordance with its terms as if that Regulation had not been repealed by the *Local Land Services Amendment Act 2016*.
- (2) For that purpose—
  - (a) Part 5 (other than section 43(2) and (3)) of the *Native Vegetation Conservation Act*

[1997](#) continues to have effect in relation to a property agreement referred to in subclause (1), and

- (b) section 5.23 of the new Act applies to and in respect of the variation or termination of the property agreement.

## **Part 15 Miscellaneous provisions**

### **64 Extension of delegation power to functions under former Acts**

- (1) Section 14.4 of the new Act extends to any functions of the Minister or the Environment Agency Head conferred by a former Act or any instrument or agreement under a former Act.
- (2) Section 16 of the [Local Land Services Act 2013](#) extends to any functions of Local Land Services conferred by a former Act or any instrument or agreement under a former Act.
- (3) Section 17 of the [Local Land Services Act 2013](#) extends to any functions of the Minister administering that Act conferred by a former Act or any instrument or agreement under a former Act.

### **65 Extension of exemption from liability in relation to former Acts**

Section 14.5 of the new Act extends to anything done or omitted to be done by a protected person in good faith for the purposes of exercising the functions of the protected person conferred by a former Act or any instrument or agreement under a former Act.

### **66 Amendment by Act of EPA objectives (relating to social objectives) not to affect environment protection licensing functions**

The amendment made by Schedule 11.7 to the new Act to section 6 (2) of the [Protection of the Environment Administration Act 1991](#) does not apply to the objectives of the EPA that are required by section 45 (b) of the [Protection of the Environment Operations Act 1997](#) to be taken into consideration by an appropriate regulatory authority when exercising its functions under Chapter 3 of that Act with respect to environment protection licences.

**Note—**

Schedule 11.7 amended section 6 (2), which relates to the objectives of the EPA, to add social considerations (in addition to economic and environmental considerations) in connection with the maintenance of ecologically sustainable development.

### **67 References to [Coastal Management Act 2016](#) before commencement of that Act**

A reference to land in the coastal wetlands or littoral rainforests area of the coastal zone referred to in the [Coastal Management Act 2016](#) in section 60I of the [Local Land Services Act 2013](#) or in clause 7.3 of the [Biodiversity Conservation Regulation 2017](#) is taken, until

the commencement of the *Coastal Management Act 2016*, to be a reference to—

- (a) land to which *State Environmental Planning Policy No 14—Coastal Wetlands* applies,  
or
- (b) land to which *State Environmental Planning Policy No 26—Littoral Rainforests* applies.

**Schedules 1, 2 (Repealed)**