# NSW Legislative Assembly Hansard

## Threatened Species Legislation Amendment Bill

Extract from NSW Legislative Assembly Hansard and Papers Wednesday 1 September 2004.

**Second Reading**

**Mr BOB DEBUS** (Blue Mountains—Attorney General, and Minister for the Environment) [10.01 a.m.]: I move:

That this bill be now read a second time.

The continuing loss of our native plants and animals is one of the greatest environmental challenges facing New South Wales today. More than 80 species that used to exist in New South Wales are now extinct and over 800 more are in danger of becoming extinct. It is a sad fact that in just over 200 years, Australia—a species-rich country—now has one of the world's worst records on extinction. This is precisely why the Government introduced the Threatened Species Conservation Act in 1995 after the Coalition dithered for the previous seven years. Similar amendments were made to the Fisheries Management Act soon after. Today I am introducing important reforms to this landmark legislation.

This Government is committed to passing on the State's natural heritage to future generations in the best shape possible. These reforms reflect our determination to do even better in slowing and reversing the trend of extinctions and species decline. These reforms will establish better procedures so that landholders, farmers, community groups, government agencies and those who develop land can more effectively contribute to protecting the State's biodiversity. The Government is proud of its significant environmental achievements.

In relation to biodiversity protection, our additions to the State's network of national parks are unmatched. Nearly 7.5 per cent of New South Wales—around six million hectares—is now preserved for the future. We have also created four marine parks, protecting more than 160,000 hectares of our pristine coastal marine environment. However, the obvious fact is that many species at risk do not live in national or marine parks. Many share the land on which we live, work, play sport and shop, and even the cemeteries in which we are buried. Many live in the seas or rivers where we swim or fish. There are often, and inevitably, conflicts about what should be the appropriate activities carried out on such lands or in such waters.

The reforms I am bringing forward today are designed to equip the entire community of New South Wales to better protect native plants, animals and fish in the challenging circumstances we face—where population growth, economic activity and recreational pursuits are increasing the pressures on our precious biodiversity. We have now had nearly 10 years experience of our threatened species laws. In 1995 the Act was at the forefront of biodiversity conservation in Australia. Economic, social and conservation pressures are, however, vastly different today than they were in 1995 and it is time to reform our threatened species framework to meet these many new challenges.

The major lesson of the past decade is that too often a threatened species decision involves the winner taking all—only one side of a dispute usually wins. From time to time, costly disputes arise which pit a particular development against a particular threatened species. The current Act no longer provides the best mechanism to resolve this kind of dispute in which one side or the other prevails—either the development has to be substantially reconfigured or the threatened species has to be sacrificed to social or economic needs. It is possible to have good development that provides our community with housing, jobs and amenities and to also protect biodiversity. The Government believes that these essential conservation and socio-economic objectives should not automatically be in conflict. A sound decision-making process can bring them into harmony. The provisions of this bill will establish a robust framework to resolve

conflicts in a way that will better protect threatened species.

As things stand at the moment the system operates at the micro-level and at the very end of the planning process—disputes can be fought out golden-bell-frog by golden-bell-frog, endangered orchid by orchid. There is a much too narrow focus on individual threatened species or isolated populations and far too little focus on the protection of wider habitat on which the threatened species depend. The issues also tend to be considered in detail only after land has been bought and a development application has been submitted—rather than at the very beginning of the planning process when the planning rules are being written. In this situation, decision-makers can easily lose sight of the bigger and more important picture. The reformed Act will provide the direction and the opportunities for the Government, local councils, catchment management authorities and the broader community to focus on achieving landscape-wide conservation within their local areas.

Last year the Government significantly reformed the State's natural resource management system. These historic reforms arose from the Wentworth agreement between the Government, conservationists and farmers. I am pleased to report that the agreement has achieved something that a National Party-dominated Government could never have done—we have ended broad-scale land clearing in New South Wales and established catchment management authorities [CMAs] to make resource management decisions at the local level. The CMAs now have the ability to better help farmers repair the landscape and protect the environment, while allowing them to get on with the vital business of growing our food and many other basic necessities. This historic decision to end broad-scale land clearing will, of itself, result in significantly improved protection of threatened species on private land.

Biodiversity and threatened species conservation are, of course, a central part of the protection of our unique environment. The reforms in this bill will integrate the State's natural resource management and land-use planning systems with our biodiversity conservation laws. Conservationists, landowners, farmers, industry and those who wish to develop land will not end up having to deal with two unco-ordinated or potentially conflicting systems of approval. The benefits for conservation of this better integrated, balanced and transparent decision-making procedure will be significant. Indeed, without such integration, it is difficult to see how we can make long-term conservation gains on private land other than in an ad hoc manner.

Before outlining the key elements of the bill, I advise the House that these reforms are the product of an extensive consultation process involving all key interest groups. First, a discussion paper was released and widely circulated. It outlined the Government's proposed framework for reform and a series of specific proposals. Submissions received in response were used to draft the bill before the House. The views of key groups are therefore reflected in the bill's provisions. Second, a series of consultative meetings have been held with a range of key groups, including peak environment and industry organisations. They have included the Total Environment Centre, the Wilderness Society and the Nature Conservation Council, the New South Wales Farmers' Association, the Urban Taskforce, the Urban Development Institute of Australia, the New South Wales Minerals Council and the Local Government and Shires Associations.

The Scientific Committee, which carries out the critical work of assessing and listing our species, has also been involved in detailed discussions on the shape of these reforms. The bill will now lie on the table of the House until the next sitting week and there will be further opportunities over the coming days to discuss any specific issues that are identified during that period. I now turn to the provisions of the bill itself. First is urban and coastal development. Our spectacular coastline, world famous beaches and vibrant cities draw people from around the world who want to visit and even settle here permanently, and understandably so. But the consequence is that we are experiencing unprecedented development pressure in these areas. We must ensure that this pressure does not result in bad planning and development decisions that contribute to the decline of our biodiversity.

We need to ensure that the areas that draw tourists and new residents are properly protected and that we preserve the very values that make our land so attractive, especially the habitat for many of our most threatened species. One of the most effective ways to achieve long-term protection for threatened species

is through strategic planning that ensures conservation while providing new residential areas to house future generations and new economic zones in which new industries can develop and create sustainable new jobs for our children and grandchildren. As I have said, the present law does not systematically build in the conservation of threatened species at the earliest stage of the planning process, when the rules that decide the future uses of the land are written. Rather, threatened species are too often considered very late in the process, only after an individual development application has been submitted and sometimes even after it has obtained all the other consents required to proceed.

Indeed it is not uncommon for some development consents to contain a condition requiring the applicant to obtain a separate threatened species approval from the Department of Environment and Conservation before work can begin. Consequently, the system is often crisis driven. In too many cases debate has been reduced to a black and white decision: it is either the shopping centre or the orchid; the Grevillia or the school hall; threatened species X or development proposal Y. The bill will improve this situation by allowing the Minister for the Environment, or the Minister for Primary Industries in the case of the Fisheries Management Act, to certify an environmental planning instrument that promotes conservation of threatened species and biodiversity more generally. In other words, threatened species conservation will be considered, and even more importantly satisfactorily resolved, at the beginning of the planning process when the local environmental plan, regional environmental plan or other planning instrument is being prepared.

The bill requires the Minister to consider a specified set of criteria before making a decision to certify a particular planning instrument. These are the likely social and economic consequences of the plan, the most efficient and effective use of available resources for conservation, the principles of ecologically sustainable development, and conservation outcomes resulting from reservation of land or through a conservation agreement. Certification is a critical part of the new process. For example, a certified Local Environmental Plan [LEP] could include a special zone within its area to protect high conservation value habitat for threatened species or endangered ecological communities. The LEP could specify that the permissible uses within that zone will be only those that will not harm those conservation values, that is, the zones in the LEP will ensure that habitat for threatened species is conserved and that development proposals will not harm those threatened species.

Of course, it is expected that such an LEP will also have land appropriately zoned for various development purposes. Under this new system, any subsequent proposals for development will not require a separate site-specific assessment for threatened species as is currently required under the Environmental Planning and Assessment Act or a further approval from the Department of Environment and Conservation. In other words, duplication would be eliminated. The Hunter Economic Zone illustrates how the new system will work. Established near Kurri Kurri, the zone sets aside a large area of land for job creating investments. However, the conservation values of the land were also central to this decision. The developer, the local council and relevant government agencies have developed an LEP that achieves two outcomes. First, it zones land that will protect around 70 per cent of the area for conservation. This area is predominantly threatened species habitat, containing 16 species of threatened animals, two species of threatened plants and two endangered ecological communities.

Second, the LEP zones the rest of the land as being suitable for job-creating development, subject, of course, to the normal environmental assessment process contained in the Environmental Planning and Assessment Act 1979. The Hunter Employment Zone is a relatively small-scale example of how the new system would work. In the case of larger priority areas, the bill will establish new processes to be known as Regional Biodiversity Agreements. These agreements will draw on the substantial conservation information databases created through previous comprehensive regional assessments [CRA]. As the House would be aware, these CRAs have successfully resolved longstanding forestry conflicts in a balanced manner and provided certainty for the timber industry while achieving significant positive conservation outcomes. Regional biodiversity agreements will be central to the Government's strategic planning for areas of high population growth. Each regional biodiversity agreement process will commence with the collection of all current knowledge about the biodiversity values of the area under assessment.

Areas where fieldwork might be needed to complete gaps in existing data will be identified. Such work will be done in an open way, involving local government councils, key stakeholders and local communities, and will identify the key biodiversity assets needed for long-term conservation of threatened species and biodiversity. This bill will provide the mechanism for the relevant Minister to certify new environmental planning instruments that give effect to the outcomes of regional biodiversity assessments. Approvals for development in some areas will be quicker because high conservation value assets will have been protected already in other areas. Work on these assessments will commence on the Far North Coast and extend to other high growth areas, including parts of the greater metropolitan area, Lower Hunter, South Coast-Illawarra and the Sydney-Canberra corridor. Some $700,000 will be made available for this purpose.

Other areas may be identified in the future as high priorities for biodiversity certification, either by a local council or as a result of Government recognition of the area as a State priority. The departments of Environment and Conservation, Infrastructure Planning and Natural Resources and Primary Industries will provide expertise, tools and resources for these regional assessments, working in close collaboration with the councils in each area. Assistance in biodiversity planning will be provided to councils to ensure sound science is used in the process, giving the public greater confidence in subsequent decisions. Guidelines to help councils in preparing their local environmental plans for biodiversity certification will also be made available. Appropriate safeguards are also being put in place to ensure that certified plans are given effect on the ground. The Minister may suspend or revoke certification if in future the environmental planning instrument fails to make appropriate provision for the conservation of threatened species.

Furthermore, if new discoveries are made about threatened species in the area covered by the instrument, the Minister may also request a review of the plan. If that request is not complied with, certification may be withdrawn. However, that would not be done in a manner that would inappropriately undermine the need for certainty for landowners. As I have said, biodiversity certification requires comprehensive assessment and is not appropriate in all areas. If development pressures or biodiversity values are low, then the local council may choose not to seek certification of its LEP. This bill also contains a number of other reforms that will assist in resolving problems that have been identified with the current threatened species laws. These include the lack of comprehensive and consistent guidelines about threatened species assessments and surveys.

New guidelines will be published to assist local government, consultants, developers, the conservation movement and the public in understanding the requirements. The bill will allow the regulations to identify minor developments that will not have a significant effect on threatened species, thereby avoiding trivial and costly assessment and licensing processes. They will cover the majority of applications. Another issue concerns dual assessments under which proponents have to apply a so-called test of significance and then later a species impact statement. The new regulations will identify developments that will have a significant effect on threatened species so that a species impact statement can immediately be prepared, thereby eliminating a two-stage assessment process.

Most applicants for development need to employ specialised consultants to prepare threatened species assessments. Threatened species assessment reports are used to make important decisions, and there is a real need for unbiased and objective information. An accreditation scheme is therefore proposed to improve the quality of information provided by such consultants. Initial accreditation will be based on knowledge and experience, with ongoing accreditation based on performance. A point-score system is now being investigated as a way to manage any poor performance by consultants. The bill also allows for greater flexibility in the granting of concurrence by encouraging the reservation of land, entering into conservation agreements, and restoring threatened species habitat. That will help achieve a "win-win" outcome from development.

I now turn to the operation of the new system in rural areas, in particular, the ways in which it complements the Government's recent reforms of natural resource management. In common with the planning and development system, consideration of threatened species issues on farms and in rural areas tends to occur very late in the process. Farmers may have already gained approval to undertake a

particular agricultural activity, only to be told they need to obtain a separate threatened species licence. The new system introduced by this bill will resolve that problem. The cornerstone of the new approach to repairing the landscape in rural New South Wales is a partnership between farmers, conservationists and the Government. This is based on simpler rules and financial incentives for conservation and restoration. The reforms contained in the bill mirror those for native vegetation and are specifically designed to allow farmers to get on with the job of sustainably managing their farms while significantly improving conservation outcomes.

Threatened species and biodiversity conservation does not prevent farmers from undertaking routine activities. To the contrary, under the new system routine agricultural management activities— such as fencing, establishment of farm roads, and control of noxious plants and animals—can occur without the need for a threatened species assessment or licence. The definition of routine agricultural management activities will be consistent with that in the Native Vegetation Act 2003, ensuring the maximum alignment between native vegetation and biodiversity regulation. The Government is also introducing a new approach to property vegetation plans [PVPs], which are the interface between the landholder and the legislation. The PVPs create a simple and fair way to provide incentives to help farmers restore landscapes and conserve native vegetation and biodiversity.

Property vegetation plans are the vehicle by which farmers will access funding to manage native vegetation and biodiversity, including $30 million being made available by the New South Wales Government for biodiversity incentives to help the conservation of threatened species. That is in addition to another $400 million provided by the State and Federal governments in connection with the native vegetation reforms overall. Further, farmers will be free to undertake activities in accordance with a PVP without the need for a separate threatened species licence. Under this bill, that will be possible once the Minister for the Environment has given "biodiversity certification" to the native vegetation reform package as a whole. Those applying for development consents under the Native Vegetation Act will also obtain similar benefits.

Under the current threatened species laws, a farmer may need a threatened species licence and a property vegetation plan. Unless this bill is enacted, this undesirable situation will continue. This bill will, therefore, provide for the Minister for the Environment to give biodiversity certification to the "native vegetation reform package", which is defined as: the Native Vegetation Act 2003 and the regulations under that Act; statewide standards and targets for natural resource management issues adopted by the Government under the Natural Resources Commission Act 2003; catchment action plans under the Catchment Management Authorities Act 2003; protocols and guidelines adopted or made under the regulations of the Native Vegetation Act 2003; the Catchment Management Authorities Act 2003; and the Natural Resources Commission Act 2003.

In deciding whether to give biodiversity certification to the native vegetation reform package, the Minister will ensure that threatened species and biodiversity are appropriately addressed under the package. This will empower catchment management authorities as the single interface with farmers who enter into and comply with the terms of property vegetation plans. The framework to support catchment management authorities and farmers to develop these PVPs has used world-class science to focus on protecting landscapes, rather than individual plants and animals. This is underpinned by the Government's policy to end broadscale clearing.

Under this bill, the protection of threatened species will become important in the delivery of financial incentives to farmers. At present, many farmers consider threatened species to be liabilities. The new system will make them central to their everyday work. Under this bill and the native vegetation reform package, the catchment management authorities will have clear standards, targets and guidelines that address threatened species conservation. Development consents and property vegetation plans will incorporate the protection of threatened species. Farmers can then go ahead and farm in accordance with the consent or the PVP without obtaining further threatened species approvals.

To ensure that the new system is implemented reliably, the bill provides that the Minister for the Environment may withdraw biodiversity certification in relation to specific areas if, for example, the

catchment management authority fails to act consistently with the native vegetation reforms or otherwise fails to protect threatened species through its core activities. This may emerge as a result of an audit by the Natural Resources Commission, or through other means. Withdrawal of certification would not affect property vegetation plans already issued. The bill provides for a new way of doing business in rural New South Wales. If we work together and make this system effective, we will be able to channel millions of dollars onto farms to improve the condition of native vegetation and revegetate over-cleared landscapes, thereby also protecting our many threatened species.

The Government is committed to retaining a scientifically robust and credible process to list threatened species. The Government believes that listing decisions should continue to be made by an independent scientific body. Whether a species is threatened with extinction or not is a matter of scientific fact, not an arbitrary opinion. The bill more clearly separates two key stages in threatened species conservation: The first is identifying the threats, which is a role of science and the relevant scientific committee; and the second is to motivate the community as a whole to implement effective recovery plans. The Government acknowledges the difficult work that the scientific committee has to do and the very high levels of commitment shown by committee members over the years. The bill provides for significant improvements to the operations of the committee.

First, the relevant Minister will have the ability to refer a draft determination back to the scientific committees for further consideration if additional scientific assessment is warranted as a result of fresh information being provided to the Minister. This will improve the accountability of the committees and provide an opportunity for affected industries or members of the public to present to the Ministers extra information they believe is relevant so that it can be considered by the committees before they make final determinations. The relevant scientific committee will also be required to publish its reasons for decisions against criteria modelled on those prescribed under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999. This will provide a standardised framework for decision-making.

To ensure that the relevant committee's resources are tightly focused on the areas of highest need, a new system will be instituted that will enable nominations to be given priorities and to determine what resources are required to examine each nomination. The bill also provides that this can be informed by recommendations of the Natural Resources Commission or the relevant Minister and takes into account statewide issues of concern in biodiversity conservation. The relevant committee will also have the additional function of providing advice to the Natural Resources Commission on matters of a scientific nature as they relate specifically to threatened species.

Under the bill's provisions, the scientific committees may also consider the recommendations of the Natural Resources Committee or the relevant Minister as to what investigations should be undertaken to identify threatened in specific regions of the State. This new process is in addition to the existing nomination process under which anybody can propose the listing of a species to the scientific committees. In addition, the Natural Resources Commission will now also be able to make such nominations. Finally, the bill introduces the new categories of critically endangered ecological communities and critically endangered species—that is, those which are at an extremely high risk of extinction in the immediate future.

Under the current system, a recovery plan must be prepared for every threatened species. For current listings alone, this could amount to over 900 plans. To date around 60 recovery plans and two threat abatement plans have been approved. Those figures indicate that this particular process has become an ineffective way of achieving recovery for threatened species. It was effective when we knew of 80 threatened species, but it cannot be effective when we know of 900 threatened species. Therefore, under the bill, it is proposed that relative priorities for action would be identified in a priorities action statement, including realistic performance indicators to ensure accountability. Public accountability will be increased through a public exhibition and consultation process.

The recovery priority statement will be reviewed and updated every three years, after input has been sought from the Natural Resources Commission, the Scientific Committee, the Social and Economic Advisory Council and the Biological Diversity Advisory Council as well as government agencies and the

community. The priority statement will include a description of the means to be adopted for achieving recovery of each listed species and for the abatement of each listed threat. These may include action to secure or repair habitat through the land-use planning system or the reformed natural resource management system, or additions to the reserve network, or private conservation agreements. In short, this bill will increase the effectiveness of threatened species recovery and conservation through a more realistic process of planning and by integration with mainstream planning and natural resources decision-making processes.

I mention some other provisions of the bill. The bill provides for a statutory Social and Economic Advisory Committee. Membership of the committee will be skills-based and require expertise in areas such as natural resource management, economics, social impact assessment or industry and agriculture. Key stakeholders will be asked to nominate members to this committee.The committee's functions will be to advise the Minister, the Director General of the Department of Environment and Conservation and the Natural Resources Commission on the likely social and economic impacts of listing decisions, and to inform subsequent government decisions such as the preparation of recovery or threat abatement plans. The bill also provides for the Biological Diversity Advisory Council to be retained. Its members will need to have expertise in biological diversity, biological science or environmental science. Its function will be to advise on the likely impacts on biological diversity of actions to be taken under the Act following a listing by the Scientific Committees.

The benefits of the threatened species reforms will also extend to aquatic biodiversity. Fourteen New South Wales fish species and two populations are threatened, including icon species such as the grey nurse shark, silver perch, and the eastern freshwater cod. Many of these species were once abundant over wide areas, but without our concerted efforts they face extinction. Schedule 2 to the bill amends the provisions of the Fisheries Management Act to introduce the reforms and to ensure consistency between the Threatened Species Conservation Act and the Fisheries Management Act.

The alignment of the legislation provides further evidence of the New South Wales Government's commitment to ensuring that farmers, conservationists and developers experience one consistent system. In addition to the reforms already discussed, key changes to the Fisheries Management Act involve making the Fisheries Scientific Committee responsible for amending the threatened species lists of the Fisheries Management Act. The ministerial order-making provisions that are unique to the Fisheries Management Act have been retained to allow the Minister to deal with specific issues relating to fishing activities.

I conclude by saying that this bill gives full effect to the reforms embodied in the Native Vegetation Act and will complete the Government's response to the historic Wentworth group's report. It will also ensure that New South Wales does a better job of protecting our unique plants, animals and marine species in areas like Western Sydney, the Hunter, Illawarra and the North Coast, where rapid population growth and development pressures demand balanced outcomes between biodiversity, housing, employment and community infrastructure. The community demands that we act more strongly to prevent extinctions and irretrievable loss of our natural heritage. The bill fulfils our duty in that respect to future generations. I commend it to the House.