NSW Legislative Council Hansard

THREATENED SPECIES LEGISLATION AMENDMENT BILL

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Second Reading

The Hon. IAN MACDONALD (Minister for Primary Industries) [6.09 p.m.]: I move:

That this bill be now read a second time.

I seek leave to incorporate the second reading speech in *Hansard*.

Leave granted.

The continuing loss of our native plants and animals is one of the greatest environmental challenges facing NSW today.

More than 80 species that used to exist in NSW are now extinct and over 800 more are in danger of becoming extinct. It's 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'm 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 percent of NSW—around six million hectares—is now preserved for the future.

We've also created four marine parks, protecting more than 160,000 hectares of our pristine coastal marine environment.

The obvious fact is, however, that many species at risk do not live in national or marine parks. Many share the land on which we live, work, play sport, shop and even the cemeteries in which we're 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'm bringing forward today are designed to equip the entire community of NSW 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've now had nearly ten 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's 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 socioeconomic objectives shouldn't 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, in fact, 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, 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'm pleased to report that the agreement has achieved something that a National Party-dominated Government could never have done—we've ended broad-scale land clearing in NSW 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 won't 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 procedures will be significant. Indeed, without such integration, it's 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 can 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 NSW Farmers Association, the Urban Taskforce, the Urban Development Institute of Australia, the NSW 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, of course, be further opportunities over the coming days to discuss any specific issues that are identified during that period.

I turn now to the provisions of the bill itself.

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 doesn't 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 doesn't systematically build in the conservation of threatened species at the earliest stage of the planning process, when the rules that actually decide the future uses of the land are written.

Rather, threatened species are too often considered very late in the process—often 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's 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.

In consequence, the system is often crisis driven. In too many cases, the debate has been reduced to a black and white decision—it's either the shopping centre or the orchid, the Grevillia or the school hall, threatened species "X" or development proposal "Y".

The bill I'm introducing today 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 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 won't 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 percent 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 area 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 Comprehensive Regional Assessments [CRAs]. 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 already have been protected 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, the Lower Hunter, the South Coast-Illawarra and the Sydney-Canberra corridor. An amount of $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 the request were not complied with, certification may be withdrawn. That would not be done, however, in a manner that would inappropriately undermine the need for certainty for landowners.

As I've said, biodiversity certification requires comprehensive assessment and isn't appropriate for 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 which 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 which 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's 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.

This will help achieve a "win-win" outcome from development.

Agriculture and natural resource management

I now turn to the operation of the new system in rural areas and in particular the ways in which the bill 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 this problem.

The cornerstone of the new approach to repairing the landscape in rural NSW 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 doesn't prevent farmers from undertaking routine activities. To the contrary, under the new system, routine agricultural management activities—such as fencing, farm roads, 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. 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 NSW Government for biodiversity incentives to help farmers conserve threatened species, in addition to another $400 million provided by the State and federal governments.
• And be free to undertake activities in accordance with a PVP without the need for a separate threatened species licence.
Under this bill, this would 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, protecting 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.

This bill provides for a new way of doing business in rural NSW. If we work together and make this system effective, we'll be able to channel millions of dollars onto farms to improve the condition of native vegetation and revegetate over-cleared landscapes, thereby protecting our many threatened species.

Scientific Committee and listing of 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 the 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 its operations.

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 take 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 Commission or the relevant Minister as to what investigations should be undertaken to identify threatened species in specific regions of the State.

This new process is in addition to the existing nomination process under which anyone 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.

Better recovery and threat abatement

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 less than 60 recovery plans and two threat abatement plans have been approved.

This indicates that this process has become an ineffective way of achieving recovery for threatened species.

Under the bill, it's proposed that relative priorities for action would be identified in the 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 seeking input from the Natural Resources Commission, the Scientific Committee, the Social and Economic Advisory Council and the Biological Diversity Advisory Council, government agencies and the community.

The 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.

• 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.

Other provisions

The bill also provides for a statutory Social and Economic Advisory Council.

Membership of the council 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 council.

The Council'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 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.

Amendments to the Fisheries Management Act

The benefits of the threatened species reforms will also extend to aquatic biodiversity.
Fourteen NSW fish species and two populations are threatened, including icon species such as the grey nurse shark, silver perch, and eastern freshwater cod. Many of these species were once abundant over wide areas, but without our concerted efforts they face extinction.

Schedule 2 of 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 aligning of the legislation provides further evidence of the NSW Government's commitment to ensure 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.

Conclusion

This bill gives full effect to the reforms embodied in the Native Vegetation Act and will complete our response to the historic Wentworth Group's Report.

It will also ensure NSW does a better job in 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. This bill fulfils our duty to future generations. I commend it to the House.

The Hon. DON HARWIN [6.10 p.m.]: The Threatened Species Legislation Amendment Bill resembles an exposure draft. The Government and the Greens have foreshadowed many amendments, but none has been officially shown to the Opposition. The final legislation may bear little resemblance to the bill as it presently stands, and that is a problem. I asked the Clerks whether any amendments were available and I was told they could not provide any. Of course, the Opposition put its cards on the table by moving amendments in the other place. People know our concerns, but the Government's position is a moveable feast. Important stakeholders in regional New South Wales must realise that even the good aspects of the bill—there are some that should be acknowledged and I will do so later—are potentially being traded away by the Government in consultation with the Greens. This second reading debate is being conducted almost in a vacuum because we do not know what the final form of the bill will be, and that is particularly unsatisfactory.

This bill represents an admission by the Government that its Threatened Species Conservation Act 1995, which was passed during its first months in power, is long overdue for reform. That legislation has been the subject of criticism from all sides and it has proved inadequate in managing species and their habitats in the context of the community's need for more land. The Act has failed to co-ordinate satisfactory outcomes for both development and conservation. In his second reading speech in another place the Minister said:

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.

He then conceded:

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.

That is quite an admission. Major factors in these unbalanced results have been a piecemeal, case-by-case approach that has ignored the context of the broader geographical area and a failure to consider threatened species issues until the latter stages of the development assessment processes. The key provisions seek to address these flaws by amending the legislation such that consideration of threatened species issues can be undertaken on a regional or catchment basis rather than at the micro level, and earlier rather than later during the planning process. The legislation aims to replace the single area focus approach with a more co-ordinated, big picture approach by integrating threatened species conservation with New South Wales natural resource management and land use planning systems consistent with the Native Vegetation Act, the Catchment Management Authorities Act and the Natural Resources Commission Act.

The legislation provides for biodiversity certification for 10 years of environmental planning instruments and the native vegetation reform package by the Minister for the Environment. During the period of certification third party appeals and further assessment will be precluded so long as development applications are in accordance with the approved plan. That is very welcome. The consequence of this more contextualised approach is that land users who have had a property vegetation plan approved by their local catchment management authority, which in turn has had its plan approved by the Minister, will not require threatened species licensees to carry out routine agricultural management activities. Nor will they be required to prepare a species impact statement to be granted permission to clear native vegetation. Should the catchment management authority fail in its job of protecting threatened species, the bill allows for the Minister to withdraw biodiversity certification. The bill is not only an attempt to rectify the shortcomings in the legislation with regard to the development planning and consent process. The provisions in the Act dealing with threatened species recovery plans and threat abatement strategies are also underperforming. These failures are dealt with by the amendments outlined in the bill. Of the 900 threatened species identified, recovery plans have been approved in relation to only 60. That demonstrates the overwhelming amount of work confronting the Scientific Committee.

The bill requires the Director-General of National Parks and Wildlife to prepare a threatened species priorities action statement designed to identify priorities in the development of recovery and threat abatement plans. In the context of this requirement, the Natural Resources Commission and the Minister for the Environment will be able to recommend investigations into threatened species in specific regions of the State. Concurrent with this statement of action priorities, the bill introduces new categories of critically endangered species and ecological communities. Identifying priorities and categorising species and habitats on the basis of the threat level they face will ensure that conservation and management of threatened species is more effective.

Despite many positive elements the bill is not entirely satisfactory, and the Opposition has key reservations about the manner in which it is to be implemented. Its passage through the other place and the fact that it has been introduced in this place under the shadow of such a large number of Government amendments indicates that consideration has been inadequate and rushed. The Opposition moved a series of amendments in the other place. The first five were designed to obtain a second opinion from the Biological Diversity Advisory Council about the determinations of the Scientific Committee. Further amendments related to the biodiversity certification of catchment action plans. A number of consequential amendments were then moved, including one concerning the Fisheries Management Act. Another amendment proposed a five-year review, which is important, and other amendments dealt with fisheries. I am sure my colleague the Deputy Leader of the Opposition will want to expand on the amendments, so I will not deal with them in detail. In fact, I am reluctant to speak for long about the amendments because of the comments I made earlier and the fact that there is likely to be some movement. We understand that when the second reading debate concludes it is likely the matter will be adjourned, so the Committee stage may be some way off yet.

As I will be commenting extensively on each of the Opposition's amendments in Committee I think it is appropriate that I not elaborate on them at this stage. I would indicate that a number of my colleagues will be supporting me in this debate because the Opposition has a keen interest in the Threatened Species Legislation Amendment Bill. As I noted earlier there are certainly some strong arguments for the bill but it needs work, and I hope that at the end of the day the result will be an improvement. Certainly at this early stage we see some positive provisions in the bill; we can only trust that the Government will not butcher it in Committee.

The Hon. RICK COLLESS [6.20 p.m.]: It is fair to say that since its introduction in 1995 the Threatened Species Conservation Act has been spectacular. But it has been spectacular not for its achievements, but, rather, for its failure to protect species that the Scientific Committee continues to place on various endangered lists. The only spectacular performance for which this Act can be said to be responsible for is that there are now 928 species listed under the various endangered categories, up from 730 species listed in 1998. The key performance indicator of the Act should be the number of species that have recovered from their endangered status. Some 59 final recovery plans have been prepared for endangered species and 13 for vulnerable species—that is, 72 recovery plans for a total of 928 species listed. Of that 928 species, 77 are presumed extinct, for which recovery plans will not be prepared—which leaves 851 recovery plans to be completed. And if one subtracts the 72 that have been finalised, there are still 779 recovery plans to be completed.

All this has occurred in just nine years, since the gazettal of the Threatened Species Conservation Act, and is a result of the unfettered power of the Scientific Committee to continue to add only new species to the lists without accountability and, in many cases, without proper scientific rigour. I have been concerned about this matter since the legislation was

introduced in 1995, long before I was elected to this place in 2000. Many species on the lists are clearly not endangered, and it is extremely difficult to remove species from the lists once they have been placed on them. The best-known example of this is a species of red grass bothriochloa biloba, which was listed as the Act came into effect in January 1996. It was finally delisted in April 2004 following numerous submissions to the Scientific Committee. This example is comprehensive proof that the science used at the time of the listing was deficient.

Much more scientific rigour is bestowed on the process to reject a final determination than is used for listing purposes at the first instance. Only eight determinations for removal have been made in the nine years since the introduction of the Act, and no determinations have been rejected as a result of a successful recovery plan. The Nationals have long been concerned about the impact of this Act on the security of farmers and their ability to farm their land. People in the extreme environmental organisations and city-centric members of the Australian Labor Party [ALP] know nothing except the concrete jungles of inner-city suburbs, and they need to understand that the agricultural and mining industries create the wealth upon which our society relies and survives.

The vast majority of farmers have long been recognised as dedicated and genuine conservationists who care for their environment, their soils, their vegetation resources and native animals. They differ from armchair commentator conservationists because they know that natural resources must be managed and maintained to keep them in good working order. They know that soil needs proper fertiliser to maintain fertility levels and production, they know that forests rely on animals to keep down fuel levels for fire mitigation, and they know that fire mitigation conserves threatened species. Farmers do all this while performing the most important function in our society: producing the three fundamentals upon which we depend on for survival—food, fibre and building materials. This important function must be allowed to continue unfettered by restrictive and ineffective legislation, which is failing species that are being put under pressure by everincreasing human population.

Farmers have a sense of responsibility to look after their natural resources and they do so willingly. But they do not respond positively to threatened prosecution or to being considered guilty until they have proved their own innocence—which is a requirement of the Threatened Species Conservation Act. The bill will amend the Threatened Species Conservation Act to, according to the propaganda promoted by the Minister, enable the Minister to provide biodiversity certification in order to supposedly streamline the activities of the productive sectors of our society. It also introduces the additional categories of "critically endangered species" and "critically endangered ecological communities". The impact of that, in light of the burden of 928 species listed at present, can mean only that some species will be moved up the list with little or no chance of a recovery plan being prepared for them, let alone a recovery plan being successfully implemented.

The bill attempts to interpret agricultural activities, but misses the point completely, and farmers will be further confused about what they can and cannot do without the threat of prosecution under this Act. This will be further exacerbated by increased emphasis on regulation for just about everything and removing the opportunity for proper parliamentary scrutiny of the issues that regulations will attempt to address. I will speak more about that later.

Items [1] to [15] of schedule 1 amend the introductory notes and main body of the Act and the definitions provided in it to allow for changes to the Biological Diversity Advisory Council, the Social and Economic Advisory Council and the Department of Environment and Conservation. Item [16] provides for a listing of nationally threatened species and ecological communities. Item [17] inserts a new division 2, which provides for the new classifications of "critically endangered species" and "critically endangered ecological communities". It also changes the definitions of other classifications other than that for species presumed extinct, which remains unchanged from that referred to in the parent Act.

The listings for both species and ecological communities now include the classifications of "critically endangered", "endangered species" and "vulnerable species", which all relate to the degree of risk of extinction sometime in the future. "Critically endangered" means an extremely high risk of extension in the immediate future, "endangered" means a very high risk of extension in the near future and "vulnerable" means a high risk of extinction in the medium-term future. There is a serious inconsistency in the bill with regard to the listing of populations as there is only one population classification: "endangered populations", which relates to a high risk of extinction in the near future. Is this an unfathomable oversight or is there some scientific reason that populations cannot be critically endangered or vulnerable? The subjective terms "extremely high", "very high" and "high risk", and "immediate", "near future" and "medium-term future" are not defined in the bill and are only partly clarified by the meaningless bureaucratic statement "As determined with criteria prescribed by the regulations". All that will succeed in doing is remove the capacity of this Parliament to properly scrutinise the legislation.

There is much less scrutiny of the gazettal of regulations than the gazettal of an Act of Parliament, and this bill has been deliberately prepared to remove the key components of the legislation, that is, the degree of risk and the time frame in which it may operate, from being subject to debate in this Parliament. The definition of a key threatening process is also amended, giving power back to the regulations to determine whether a process or activity is a key threatening process. Item [23] of schedule 1 allows the Natural Resources Commission [NRC] to initiate a listing, which is of some concern, as I do not want catchment management authorities to be lobbied by environmentalists to put pressure on the NRC to initiate a listing That is not the role of the NRC. Those with environmental interests have plenty of opportunity to put their requests to the Scientific Committee without taking up the time of community-based organisations and representatives loaded up with the huge responsibilities already.

Item [26] removes the requirement for the Scientific Committee to consider nominations as soon as possible and allows the Scientific Committee to set its own priorities for consideration of nominations. It does allow the Minister and the NRC to have input into the priority-setting process, but the advice of the Minister or the NRC is not binding on the Scientific Committee and, as such, this clause will prove to be a toothless tiger. The need for this clause does raise the question of how many nominations are currently before the committee. In addition to the 928 listings, do they also have so many

nominations that they cannot handle them all? The reasons given for a preliminary determination being made suggest that one reason is "to refer to the criteria prescribed by the regulations". I have already expressed my concern about the extensive use of this phrase in the bill.

[*The Deputy-President (The Hon. Eric Roozendaal) left the chair at 6.31 p.m. The House resumed at 8.15 p.m.*]

The Hon. RICK COLLESS [8.15 p.m.]: The Scientific Committee will be required to give notice to the Minister of the proposed final determination and two months in which to respond. That is hardly long enough. The Minister would need to confer and consult with affected parties. Two months would be long enough if no changes were made to the preliminary determination. However, if significant changes are to be made to the preliminary determination, two months is not sufficient as the amended preliminary determination should be published, and submissions called for, as allowed for under the original preliminary determination. If the Minister is unable to respond within two months, the Scientific Committee will make the final determination anyway, so this clause is really another toothless tiger.

If the Minister does refer back to the Scientific Committee, the committee is not bound by the Minister's reference so it can still go ahead and make the final determination, with reasons for the final determination to include that reference again "to the criteria prescribed by the regulations". The inclusion of this clause is irrelevant and is a toothless tiger that will in no way curb the ridiculous power of the Scientific Committee. Item [33], relating to new section 23 (6), and item [34], relating to new section 23 (4), allows for the complete mismanagement of the Scientific Committee and the Minister in that the final determination can still be made. If the committee and the Minister fail to properly discharge their responsibilities, the determination should not proceed.

Item [34] provides that the Minister can only refer a matter back to the Scientific Committee on scientific grounds rather than on social and economic grounds. Item [37] provides for a legal challenge to the validity of the final determination but only within three months of publication in the gazette. This is a problem because there is no legislative time requirement on the public advertisement of the final determination other than to be as soon as practicable. The time is too short for a proper legal challenge to be mounted. In fact, many rural communities may not even be aware of the final determination being made until well after the three months have passed.

Item [39] reinstates in section 25 the need for a two-year review of the lists following the removal by item [22] of this requirement from section 17 of the Act. It allows the NRC and the Minister to give the Scientific Committee advice on the priorities within the lists. It further allows for the NRC and the Minister to give directions to the Scientific Committee to identify potentially threatened species populations and communities but the same option was not granted to either the Minister or the NRC in item [33] with respect to the refusal to make the final determination or to direct the Scientific Committee to remove a species population or community from the lists.

Item [47] removes the requirement to publish in the press a notice outlining the determination by the Scientific Committee to make a minor change to the listing within the schedules. Although this amendment to the Act seems to be somewhat innocuous in the first instance, one must wonder why the architects of the bill want it removed. The information is still to be sent to the director-general and the Minister, published in the gazette and put on the Internet site of the National Parks and Wildlife Service. Therefore, it would seem far more logical to also publish the change in statewide and local newspapers. Items [50] to [53] insert the "critically endangered" classification into the heading of part 3, the introductory note to part 3, and sections 37, 38, 40, 41, 43 and 47.

This is confusing and contradictory to clause 17 of the bill as it causes the Act to read "endangered or critically endangered species, populations or ecological community", which on my interpretation means "endangered or critically endangered species, endangered or critically endangered populations, or endangered or critically endangered ecological communities". The contradiction and confusion exist as there is no clause in the bill or section in the Act that allows for or constitutes the classification of "critically endangered populations" as I outlined earlier.

Is this a simple but incompetent oversight by the Minister and his architects of the bill? Were these two clauses of the bill composed by different authors, and did they read each other's work? Does the right hand know what the left hand is up to? I think not! To my mind, all these clauses should read "endangered population, endangered or critically endangered species or ecological community" to remove the confusion and contradiction. The same issue applies to many instances in further clauses of the bill, and they should also be amended to read, "endangered population, endangered or critically endangered species or ecological community".

Items [55] and [58] remove the need for the director-general to prepare recovery plans. Now he may prepare recovery plans, which has a significantly different meaning to "is required to and must". That signifies the failure of the whole Act as there are now so many species listed that the Government has conceded that we will never recover them all and it is simply unable to put the financial resources into the preparation and implementation of recovery plans. As I said in my opening comments, this is an indication that the Act is a spectacular failure in its objective of trying to conserve and protect threatened species.

[*Quorum formed.*]

Item [57] also relates to this issue; there is now no requirement for the director-general to prepare recovery plans as soon as practicable after the listing. We will end up with an extensive list of species, populations and ecological communities with no hope of recovery and no action from the director-general or the Minister. So much for the performance indicators in the Act! Get a species listed, prepare a recovery plan, save the species, remove it from the list—that is how the Act should work. But it simply will not happen. The list will continue to grow and no species will be saved. This problem outlines the inherent problems with both the bill and the Act. There are too many species being listed and not enough

thought and resources going into the recovery mechanisms.

Item [60] removes the requirement for recovery plans to be prepared within a certain time frame after the listing is first inserted into schedule 1 or schedule 2. Again, this is an admission by the Government that the Act is a spectacular failure, and that there are many more additions to the schedules than there is capacity for the Government to fund the recovery plan process. Items [61] and [63] remove the legislative description of how priorities for the preparation of recovery plans and threat abatement plans should be considered and replaces that process with an extraordinarily bureaucratic process called a "priority action statement", which must go through a complicated procedure involving the Scientific Committee, the NRC, the Biological Diversity Advisory Committee, the Social and Economic Advisory Committee, other government agencies and a public consultation phase. And it sets the performance indicators.

The scientific officers within the department should have the skills to make those decisions, and the removal of section 58 allows for that, by taking into account the likelihood of extinction, the likelihood of recovery and whether the species were keystone indicators. That approach makes sense and this is the type of work that professionally trained biologically competent ecologists should be able to do on their ear. The proposed bureaucratic process opens the door for more influence by third parties and will not contribute to the overall efficiency and timeliness of the process of setting priorities. Item [65] of schedule 1 removes section 113A, which provides for exceptions to licensing requirements for routine agricultural activities, and provides that proof of such activities is a defence to a prosecution under the National Parks and Wildlife Act.

Item [7] of schedule 3 replaces section 113A with a more highly bureaucratic regulatory process by inserting a new section 118G into the National Parks and Wildlife Act. This amendment effectively removes the concept of routine agricultural activities being exempt from the licensing requirements of the Threatened Species Conservation Act and makes all agricultural activity open to prosecution, to which the farmer then has to mount his own defence by proving the activity was a routine agricultural management activity. The farmer is guilty until he can prove his innocence. That is a problem The Nationals have repeatedly pointed out with this legislation, and with the native vegetation legislation that was introduced by the Government, that it is a fundamental tenet of our legal system that a person is presumed innocent until proved guilty. If the same farmer were charged with murder, he would be innocent of that crime until the prosecution can prove he is guilty.

The Hon. Duncan Gay: That is common justice.

The Hon. RICK COLLESS: That is common justice, as my colleague points out. If the prosecution cannot prove guilt, the accused goes free. Under this legislation the farmer is guilty until he proves his innocence. Under this Act, if he cannot prove his innocence, he is prosecuted. That is fundamentally wrong and not within the spirit of our legal system.

The Hon. Duncan Gay: It is the reverse onus of proof.

The Hon. RICK COLLESS: It is absolutely the reverse onus of proof. This measure is applicable to freehold agricultural land. A farmer holds the title to this land for the purpose of producing agricultural commodities. The Act should be worded to provide for the prosecution to prove that an activity is not an agricultural activity. Section 118G (2) has been lifted directly from the Native Vegetation Act as the definition of routine agricultural management activities [RAMAs], and while there is some logic to having a consistent definition of such activities across various legislative instruments, the inherent flaws with RAMAs will mean that many legitimate farm activities will not be a defence to prosecution, much less exempt from the need to license the activity.

As an example, let us consider the installation of electric fencing systems, low-cost fencing systems for intensive livestock management programs, where a fence may consist of a single electric wire with steel posts up to 40 metres apart. Many traditionalist graziers would certainly consider such a fence to be a temporary fence and therefore it would not be classified as a routine agricultural management activity. However, graziers who are embracing the developing management practices of holistic management and time-control grazing would consider such a fence to be a permanent fence. Has the Government decided on a definition of permanent fence?

The construction, operation and maintenance of bores is listed as a RAMA, but the same does not apply to wells. One may say that wells are not used today to the same extent as they were some years ago. That may be true, but it is also well known that many wells on properties throughout all parts of New South Wales still provide a valuable source of water for the farm, but they are no longer regarded as a routine agricultural management activity.

Airstrips in the Western Division are listed as a RAMA but not in the rest of the State. Why? I hope somebody on the Government side of the House can explain to me why airstrips in the central and eastern divisions of the State, and the maintenance of those airstrips, are not regarded as routine agricultural management activity but in the Western Division they are. The inconsistency is there. Why? I cannot fathom it. I remember quizzing the Minister about the very same issue when we debated the Native Vegetation Act, and I could not get an answer from the Minister, from the bureaucrats or from anybody. Again I ask why are management and maintenance of an airstrip in the Western Division considered to be routine agricultural management activities but east of Dubbo they are not? Airstrips are just as important in the central and eastern divisions as they are in the Western Division. Why the inconsistency?

The Hon. Duncan Gay: Good question.

The Hon. RICK COLLESS: It is a very good question. I turn now to the construction, operation and maintenance of soil conservation works, of irrigation canals, of land planing for irrigation and the installation of private on-farm pipelines. They are not considered to be routine agricultural management activities, yet they are all activities that are routinely carried out

on farms all over New South Wales on a day-to-day basis. The removal and control of weeds and pests that are classified under the various schedules to the Noxious Weeds Act and the Rural Lands Protection Act are listed as routine agricultural management activities, but the management of weeds and pests of crops and pastures which are not listed is not considered to be a RAMA.

As the Deputy Leader of the Opposition and the Hon. Tony Catanzariti would know, many weeds and pests that farmers have to control on a day-to-day basis are not listed in various legislation. But when we want to control them they are no longer considered as routine agricultural management activities. Why? It is a fact of life that weeds and pests are things farmers have to manage on a day-to-day basis? The way this Act is worded we will not be allowed to continue to do that because it is not listed as a routine agricultural management activity.

Harvesting of planted native vegetation is allowable if the native vegetation was planted for commercial purposes. That is fine, but harvesting should be allowed for any planted native vegetation except for those plantings funded by public funds through Landcare programs and other land rehabilitation programs. If I planted 1,000 trees on my property because I want to plant them, I should have the right to harvest those trees for fencing and shed-building materials, but unless they are listed as being planted for commercial purposes—in other words, if I want to harvest them and sell them—I am not allowed to. I have no problem with plantings through Landcare programs, where public funds have been put into it, but when I want to plant trees for future years on the farm and they are not necessary for any commercial gain, it is a management activity and should be allowed to be harvested as a routine agricultural management activity.

Another section refers to risk management and imminent risk management. I believe the word "imminent" should be removed as only allowing an activity to be classified as a routine agricultural management activity if it provides for an imminent risk. Anybody who knows anything about risk management knows we do not manage risks just because they are imminent. Let us look at what happened in the Domain at the back of Parliament House. Was the risk of a branch falling off a Moreton Bay fig tree an imminent risk? Did they hear it creak and about to fall? Was it a potential risk? Something might happen 10, 15, 30, 50, 100 years down the track.

Mr Ian Cohen: More space to make money.

The Hon. RICK COLLESS: I think Mr Ian Cohen has got to the nub of the problem. The definition of "imminent" means it will happen in the next few seconds, the next 10 minutes, the next day. It means it will happen shortly. My argument is that if we are going to subscribe to that definition, we are failing the people of New South Wales because risk management is about removing a risk before it becomes an imminent risk.

The Hon. Duncan Gay: You would not be able to work against drought or floods.

The Hon. RICK COLLESS: That is probably right, but it is even more critical than that. Good risk management is about removing or reducing a risk before it becomes an imminent risk. Obviously, some serious WorkCover and occupational health and safety issues are raised by the term "risk management". As if the restrictions arising out of these amendments are not serious enough, new section 220ZFA (5) (a) says that the regulations may further limit the activities referred to in new section 220ZFA (1) and may also exclude any land that the bureaucrats see fit to exclude. Item [66], which inserts new section 114, exempts the director-general from making a stop work order for a clearing program so long as the clearing is authorised by an approved property vegetation plan. But—and this is the sting in the tail, as often occurs in this legislation—it is conditional on approval being granted while biodiversity certification is in force. It is this conditional approval that is of concern to the rural communities. The approval of the property vegetation plan under the Native Vegetation Act should be the pinnacle of the approval process for farmers attempting to get on with the business of producing agricultural products from their land.

The Hon. Duncan Gay: If you get it right once—

The Hon. RICK COLLESS: You get it right once and there is no challenge. New section 114 should be amended to remove that condition relating to biodiversity certification. Item [67], which inserts new part 7, divisions 4 and 5, attempts to bring together the concept of biodiversity certification. Unfortunately, it brings it together in a highly bureaucratic and, I believe, flawed process. I refer to division 4 of the bill. It is logical to roll all the processes from the various pieces of natural resource legislation into one and to have a single approval under the legislation mentioned in this division. However, I am concerned that it will, in effect, embrace regulations under the Native Vegetation Act, standards and targets under the Natural Resources Commission Act and catchment action plans under the Catchment Management Authorities Act. I am concerned that the various guidelines and protocols made under all three Acts will become part of the Threatened Species Conservation Act.

As these regulations, guidelines and protocols are not part of their parent legislation, it would be dangerous to incorporate them as part of this legislation. It is simply incomprehensible that a regulation can be made, for example, under the Native Vegetation Act without proper parliamentary scrutiny. However, that regulation automatically becomes part of the Threatened Species Conservation Act without any scrutiny at all. It does not make sense. If the Government were serious about making the approval process easier for the beleaguered farmers of this State it would have constructed this new division so that approval of a property vegetation plan would exempt the farmer from prosecution under this Act so long as the farmer was not operating outside the provisions of the plan. If the farmer sticks to the plan he can go ahead and do his job. Instead, the new division has been constructed so that a farmer may still be prosecuted while operating within his property vegetation plan. This so-called biodiversity certification is only a defence to a prosecution. The farmer must prove his innocence, rather than the prosecution prove his guilt. Section 27 (1) of the Native Vegetation Act states:

(1) Native vegetation must not be cleared except in accordance with:

(a) a development consent granted in accordance with this Act, or

(b) a property vegetation plan.

This, of course, means that the property vegetation plan was designed as the pinnacle of approval for land clearing and development consent is not required if an approved plan is in place and the plan is being adhered to. In that case the farmer should be protected from prosecution. Further, section 27 (2) of the Native Vegetation Act 2003 states:

In determining whether to approve a draft plan, the Minister is to have regard to any relevant provisions of catchment action plans of catchment management authorities and to the matters required by the regulations.

This section has the capacity, with some minor amendments, to provide the same degree of co-operation between the various pieces of legislation that are attempted in division 4 of the bill, without the ridiculous bureaucratic approach that is embedded within the division. A far better way to deal with this would be to place more emphasis on the property vegetation plan and amend section 27 (2) of the Native Vegetation Act to read:

In determining whether to approve a draft plan, the Minister is to have regard to:

(a) statewide standards and targets for natural resource management issues recommended under the Natural Resources Commission Act 2003,

(b) catchment action plans under the Catchment Management Authorities Act 2003, and

(c) protocols and guidelines adopted or made under the regulations under the Natural Resources Commission Act 2003 and the Catchment Management Authorities Act 2003.

Section 28 of the Native Vegetation Act would also need to be amended to ensure that all provisions of the Threatened Species Conservation Act are included in the property vegetation plan [PVP]. The mechanism to allow this to occur is to have the Minister for the Environment concur with the threatened species components of the PVP developer software, which is being hailed as the pinnacle of the planning process with respect to natural resource management planning. This concurrence would enable the PVP to be signed off by both Ministers and would then allow the farmer to continue his program unfettered by any further bureaucratic processes so long as he is abiding by the conditions of his PVP. That is all the farmers of New South Wales are asking for. If those amendments were included in the Native Vegetation Act, new division 4 could be deleted from the bill. The Coalition will move a series of amendments at the Committee stage that will provide the Chamber with the opportunity to allow that simplified and more practical process to become a reality for the farmers of New South Wales.

I refer to new division 5. Despite my concerns about new division 4, I am much more comfortable with new division 5 and the application of biodiversity certification in relation to environmental planning instruments. I have some concerns about new division 5, particularly in relation to the conditional certification, the ill-defined period of the certification and the fact that the certification can be revoked after the development is completed. The conditional certification can lead to the Minister not certifying a certain component of the proposed development, which may ultimately lead to the whole project becoming non-viable for the developer. If this conditional certification was to become a reality through the revocation of a specific component after the certification was originally granted, the whole project could become non-viable after it had commenced, with the developer undoubtedly left holding the financial loss.
The period of certification is at the Minister's discretion or 10 years, but it is unclear whether that is designed to cover the period of the development occurring or whether it includes the post-development management of the whole area. If the certification is revoked after the development is completed, what is the status of the area? Is it to be returned to its pre-development status? Can the developer or owners be prosecuted for failing to comply with the Act? New listing further complicates the issue, and the fact that that can occur during post development and that the certification can be revoked indicates that a lack of certainty for developers has been embedded in the legislation. Proposed section 126M provides for a voluntary action required by a condition. That statement is contradictory because an action that is required is not voluntary; in fact, it is tantamount to holding a gun to the developer's head.

The final proposed section in division 5 allows for the accreditation of persons to prepare threatened species assessments and surveys, but it does not expand on the qualifications required. What are the qualifications and experience required? Will those undertaking the work be required to have tertiary qualifications in the biological sciences? That is not spelt out. The bill does not contain a division 6, but the Opposition will move to include one to provide for biodiversity certification of catchment action plans. The amendment will add considerable weight to the removal of division 4 and place those provisions under the auspices of the property plans within the Native Vegetation Act. I look forward to moving that amendment and I trust that the Committee will support it.

Item [70] removes the description, provisions and functions of the Biological Diversity Advisory Council [BDAC]. Item [71] inserts new sections to provide for the new BDAC and the Social and Economic Advisory Council. The changes to the composition of the BDAC are worrying because there is no longer a reference to local government and industry representatives. The Minister has absolute power to appoint council members. Although the Opposition applauds the inclusion of social and economic assessments, the method of determining the membership of both councils leaves much to be desired. The legislation gives the Minister absolute power to stack the councils with single-issue nominees hiding behind a facade of scientific or economic expertise. I would prefer that the councils comprise community members as well as scientific and economic experts. Representatives of the rural sector, local government, the building industry, Aboriginal communities, the mining industry, the forestry industry and the environmental, scientific and economic sectors would give

the councils a far more balanced composition, rather than allow the Minister to stack them with his old mates.

Schedule 2 makes consequential amendments to the Fisheries Management Act 1994. The nomination and listing provisions of the legislation will be amended to provide greater consistency with the procedures included in the Threatened Species Conservation Act. In particular, the schedules of the Act will be amended by the Fisheries Scientific Committee rather than by the Minister, as is presently the case. Although the Opposition does not oppose the Fisheries Scientific Committee being able to make a listing of new species, populations, ecological community or threatening processes, it does have concerns that the committee's power will go unchecked. Before making a final decision, the committee must give the Minister notice in writing of the proposed determination. The Minister then has two months in which to decide whether to refer the proposed final determination for consideration under new section 220M of the Act.

That is exactly the same issue that I raised in respect of schedule 1. The Opposition believes that two months is insufficient time for the Minister to consult with the affected industry stakeholders and communities. The Opposition is also concerned that the Minister will have only one opportunity to refer a matter back to the committee before having to accept its decision. The power of the Fisheries Scientific Committee appears to be too great. That is the same concern I raised about the Scientific Committee under the Threatened Species Conservation Act. Given recent recommendations and decisions of the Fisheries Scientific Committee, the Opposition has reservations about whether it will take into account the social and economic implications a threatened species listing might have on local communities. For example, in August last year the future of recreational fishing in New South Wales was jeopardised following a committee recommendation to list as a key threatening process hook-and-line fishing in areas important for the survival of threatened species.

That recommendation could have severely restricted the use of fishing rods in New South Wales waters. I know that the Hon. Henry Tsang enjoys fishing and I would hate to think that his fishing activities could be restricted by such a silly recommendation. The Opposition is concerned that the committee will continue to make recommendations that could have a serious impact on all recreational and commercial anglers in the State and on the economic benefits associated with tourism that those anglers contribute to coastal communities. Although the Opposition supports the preservation of threatened species, it also supports the rights of anglers to wet a line. The continuation of our commercial fishing industry and the long-term viability of coastal communities depends on these industries. It is imperative that the Government take into account not only the scientific grounds but also the social and economic grounds when making a threatened species listing. If it does not, our fishing industries in coastal communities will be under threat.

I will refer to schedule 3 only briefly because I have mentioned those provisions previously. The schedule amends the other threatened species legislation, notably, section 118G of the National Parks and Wildlife Act, sections 27 and 28 of the Native Vegetation Act and the Natural Resources Commission Act. The Opposition supports the amendment of the Threatened Species Conservation Act in principle, but it has concerns about the way in which the Government has approached the issue. It is concerned that the New South Wales Farmers Association has provided the Government with a series of recommendations, but they have been severely watered down. I understand that the Government will move those amendments in Committee. The Opposition will also move a series of amendments designed to address the concerns I have expressed. I look forward to debating those amendments during the Committee stage.

Reverend the Hon. Dr GORDON MOYES [8.58 p.m.]: I thank the Hon. Rick Colless for his contribution. He has touched on many of the Christian Democratic Party's concerns. I thank him particularly for raising the concerns of our farmers. I intended to speak on that matter, but the honourable member has canvassed it so well that there is no need for me to do so. The Threatened Species Legislation Amendment Bill amends the threatened species legislation with a view to making further provision for the conservation of threatened species and to better integrating that legislation with natural resource management and land use planning laws and processes. The better integration of natural resource management and land use planning laws raises a range of issues. The Christian Democratic Party is keen to toughen the laws from the point of view of threatened species and wants to ensure that at the same time landholders, farmers, community groups, government agencies and the like, particularly those who develop land, can more effectively contribute to protecting the State's biodiversity.

The Government has done much and said much. In addition, I make mention of what Mr Ian Cohen has said over the years to ensure that we protect the State's biodiversity. There are many who have to share the land on which we live and work, on which we play, engage in sport, conduct commerce and business and, of course, building and rural developments. Many of the biodiversity issues that we face also concern creatures in the seas and rivers where we swim or fish. The current Act no longer provides the best mechanism to resolve the kinds of disputes in which we can imagine these conflicts. Therefore, we need the Threatened Species Legislation Amendment Bill.

On behalf of the Christian Democratic Party, I will point out the most salient issues in the bill. However, I do not believe that the bill should be supported in its entirety. Judging from what has been said previously, we will look very closely at the amendments that come from both the Government and the Opposition over the next day or two.

Mr Ian Cohen: We have lots of amendments.

Reverend the Hon. Dr GORDON MOYES: I can imagine. As Mr Ian Cohen said, the Greens will have lots of amendments. I imagine that we will deal with them one at a time over a long period. We are looking at threatened species. Currently, a person is required to submit a threatened species impact statement. I shall give a broad-brush outline of what this bill is trying to achieve. A person is required to submit a threatened species impact statement after he has lodged a development application with his local council involving what might be called a back-end approach. This bill seeks to implement a front-end approach to a threatened species assessment. Thus, the status of threatened species will be factored into the development of local environmental plans [LEPs]. Local environmental plans set up frameworks for the land use structure for a local government area, setting up land use zones and detailed controls on development.

The LEPs establish what types of development may be permitted on a particular parcel of land with or without the consent of the council. On a theoretical basis it may be said that this approach is commendable because when a person wishes to build in an area there is clear information as to the status of threatened species in that area. I have sought advice from a number of organisations involved with threatened species. I discovered that there are at least 800 land-based threatened species and 400 water-based threatened species. Transparency is important if a person is wishing to develop land. Ordinary people—farmers, sportspersons, builders and the like—cannot be expected to know all the threatened species.

If land is appropriately rezoned to reflect the presence of threatened species it is likely to be easier for councils to deal with development applications. However, on a practical level, there are a number of concerns with this approach. Some concerns stem from apparent local resources at the local council level. At present, local councils are generally under-resourced and in many instances may not have the expertise or the willpower to effectively analyse a threatened species situation in an area. In a commentary on the involvement of local government in the implementation of the Threatened Species Conservation Act, which was published recently in the Australasian Journal of Natural Resources Law and Policy, an ecologist had the following to say on the resource base for local government:

It is the author's experience from working in this field as an ecological consultant for several years that most councils have not made appointments equivalent to the appointment of threatened species officers by the National Parks and Wildlife Service and that as a result many are not in a position to confidently meet their responsibilities under the Threatened Species Conservation Act, and thus many related parts of the Environmental Planning and Assessment Act. Nature conservation is barely on the political and administrative agenda.

In fact this particular author interviewed the general manager of a large council in Sydney which very firmly stated that environmental concerns were not core business to that council. The article states he made it quite clear that he will continue to refuse to provide the resources necessary to appoint the relevant staff unless forced to do otherwise by the councillors or the State Government as he felt that to do that would be fiscally irresponsible and unreasonably impede development.

That is a concern that many people would have about unreasonable impediment to development. It is also foreseeable that councils may implement a one-size-fits-all approach, given their lack of resources. It is envisaged that in some cases tailored measures will need to be created and implemented for the specific areas governed by the environmental planning instruments [EPIs]. For example, the broad headed snake, I believe, generally hides under rocks and is difficult to detect at the best of times. It is foreseeable that an assessment for threatened species under an environmental planning instrument may neglect to detect the presence of such a threatened species because of lack of resources, time or expertise. Development may go ahead in such areas, potentially leading to the extinction of such a species. Councils must have the necessary staff to accurately undertake assessment of threatened species in an area.

It is envisaged that new section 126N, providing for the accreditation of persons to prepare threatened species assessment and surveys, will set up a pool of prospective experts to undertake and prepare surveys and assessment for use in connection with biodiversity certification of EPIs. Again, funding for local councils to access these experts demands attention. In the aforementioned journal, on page 147, the author states:

Amendment of the Local Government Act 1993 is required to ensure that councils provide adequate staff positions and/or budget for the hiring of expertise needed to deal with Threatened Species Conservation Act, and related environmental matters. Such matters must, along with other environmental responsibilities, be clearly stated in the Act to be "core business" for councils.

The author has mentioned some worthy points relevant to us. The Local Government Act has a number of purposes, including "to require councils, councillors and council employees to have regard to the principles of ecologically sustainable development in carrying out their responsibilities". However, I believe that for the sake of clarity and emphasis, as suggested by this author, councils and council employees ought to be made aware that environmental responsibilities are part of their core business. Otherwise, if greater responsibility is placed on local councils in the identification and assessment of threatened species in their areas, legislation governing local councils ought to provide for a mandatory requirement that knowledgeable and experienced staff be appointed to oversee or be involved in the threatened species assessment process.

I note that the Government has pledged $700,000 to councils on the North Coast to assist with biodiversity certification. Minister Debus, the Minister for the Environment, and Minister Knowles, the Minister for Infrastructure and Planning, and Minister for Natural Resources, are working out funding for other areas across the State. It is not enough for them to be just working on this funding; we ought to know what it is. Though $700,000 seems a worthy amount for the North Coast councils, it may not be enough. Even if the amount is enough for supporting the certification process, is there any guarantee that the money will be used for the suggested purpose and utilised effectively? In addition, what sorts of educational programs will be spearheaded in this area to address the heightened responsibility placed on local councils regarding assessments of threatened species? These questions ought to be answered before this bill is brought before the House in its final state. I believe that many of these issues need to be dealt with in the next stage of this bill.

The Minister may give biodiversity certification to an environmental planning instrument. An EPI includes a State Government environmental planning policy, a regional environment plan or a local environmental plan. The effect of biodiversity certification is to provide that any development or activity for which the development consent is required under the provision of a biodiversity certified EPI is, for the purposes of the Environmental Planning and Assessment Act, taken to be a development or activity that is not likely to be significantly affecting any threatened species population or ecological community or its habitat.

Thus, the Minister's certification is of great consequence, both to developers and, more important, to threatened species. The bill does not require the Minister to confer with any committee knowledgeable in scientific matters. Although the bill requires the Minister to consider a number of factors with respect to certification, that consideration is subjective. The bill does not delineate any objective test for biodiversity certification. Given that fact, and because of the immense power afforded the Minister in this context, I hesitate to commend this aspect of the bill. Quite often Government members do not have expertise in the portfolios they have been appointed to administer as Ministers.

Moreover, given the discretion of biodiversity certification and the fact that the exercise of discretion may not lead to the certification of an EPI, two systems will be at play in New South Wales—EPIs certified by the Minister and those not certified by the Minister. The latter category may not fulfil the Minister's certification standards, or financial or political reasons may exist for exercising existing controls for threatened species legislation. Under the current modus operandi farmers wishing to clear native vegetation from their property must abide by two approval systems. This is a vexed issue for many people on the land, who, for various other reasons, are doing it tough. First, approval is required under the Native Vegetation Act, and we have heard much about that in recent years. Second, if the clearing of native vegetation has the potential to affect threatened species, a licence is required under the National Parks and Wildlife Act. The bill seeks to eliminate the two systems and amalgamate them into one process.

Under the bill farmers seeking to clear native vegetation that does not pose any harm to threatened species authorised by a property vegetation plan will not need a licence for this purpose under the National Parks and Wildlife Act. Instead, there will be a native vegetation reform package, which may be certified by the Minister. This package will comprise the Native Vegetation Act 2003; statewide standards and targets for natural resource management issues recommended under the Natural Resources Commission Act 2003, catchment action plans under the Catchment Management Authorities Act 2003, and protocols and guidelines adopted or made according to the regulations under the abovementioned legislation.

Once certification has occurred through this jungle of various Acts, clearing of native vegetation authorised by a property vegetation plan that has been approved by the local catchment authority will not need to be separately licensed under the National Parks and Wildlife Act in cases where threatened species may be affected. If honourable members think that is a tangled approach, they are right. How can farmers be expected to comply with the requirements for clearing vegetation? The local catchment management authority will become responsible for the day-to-day administration of threatened species laws as they apply to farmers. All land within the operation of a catchment authority will have the benefit of the Minister's biodiversity certification. Thus, if native vegetation is cleared in an area that has the benefit of biodiversity certification, the fact that the land has such a benefit is a defence to a prosecution under the National Parks and Wildlife Act.

The bill provides that the Biological Diversity Advisory Council, which is responsible to the State's biodiversity protection strategy, will comprise members with expertise in biological diversity, biological science and/or environmental science. There is insufficient grassroots input, as it were, from ordinary persons, particularly stakeholders, who might be landholders, farmers or people interested in development of areas. At the same time the bill establishes the Social and Economic Advisory Council, which will assess the likely social and economic impacts of actions to be taken under the Act following the listing of threatened species, populations, ecological communities or key threatening processes. Again, the membership of this council will comprise only experts. Stakeholders should be included in the membership of both councils because they, too, are often expert in the management of their own land. Although I accept the necessity for scientific information, the representative views of those affected by the decisions made by the councils should play an integral part in the process. Therefore, the Government should broaden the composition of council membership.

[*Interruption*]

I note the interjection of the Hon. Rick Colless that those who work with the land know and understand the land and that as real stakeholders they are able to provide advisory councils with important information. The bill extends from six months to two years the time in which the Scientific Committee must make a determination on the status of a nominated species. It is human nature that if the time frame of a goal is extended, the person charged with achieving the goal will accomplish it within the extended time frame. Extending the time for such a determination to two years may delay the listing of a threatened species, and that may result in the extinction of a species.

The bill omits the requirement that the Scientific Committee must, as soon as practicable, publish notice of the determination in a newspaper circulating generally throughout the State or other relevant newspapers. I fail to see why people affected by the determination, such as farmers, should not be informed of the nature of the determination. The bill also compromises the independence of the Scientific Committee.

Currently, the Director-General of National Parks and Wildlife is required to prepare a recovery plan within three years for endangered species and within five years for vulnerable species listed in the schedules to the Act. The bill abolishes the mandatory preparation of recovery plans by stating that the director-general "may prepare" recovery plans. Thus, recovery planning for threatened species is no longer mandatory and there is no process in place to ensure that all listed species, populations and communities are saved from extinction. The Christian Democratic Party believes that the wording "may prepare recovery programs" is not strong enough; it should be mandatory in order to avoid the extinction of species. Moreover, the bill no longer requires the director-general to establish priorities for recovery plans in consultation with the Scientific Committee. Such priorities will now be determined in accordance with those for recovery established by the relevant priorities action statement. It seems that such a statement would have an overarching application. It could be envisaged that certain species may require a more tailored recovery plan and that certain scientific information may be necessary to tailor a recovery plan suitable for such species.

Currently, the director-general may prepare threat abatement plans for key threatening processes, but these plans must

be prepared within specific time limits. The bill eliminates those time limits. The director-general therefore has complete discretion as to whether he or she wants to prepare a threat abatement plan. The preparation of threat abatement plans is integral to the preservation of threatened species. The bill provides that species, populations and ecological communities are to be prescribed by the regulations. In addition, the regulations may prescribe criteria for the determination of matters relating to key threatening processes. A key threatening process is a process that adversely affects threatened species, populations or ecological communities or could cause species, populations or ecological communities that are not threatened to become threatened.

When a matter is dealt with by way of regulation rather than by amendment to an Act, more often than not the content of the regulation will go unchecked and the substance of the regulation unnoticed. It is imperative that the definition of matters relating to "key threatening processes" is dealt with by way of amendments to the Act to heighten accountability and transparency. The Government should look at changing the definition in the amendments it proposes to move in Committee. The Legislation Review Committee, in paragraph 70 of its response to the bill, pointed out:

These regulation-making powers go to the core of the legislative scheme. Arguably, as matters central to the effective and fair operation of the Bill, they should not be left to regulation, but should be clearly enunciated in the body of the legislation given the importance of such plans to the effective operation of the legislative scheme of which the Bill is part.

The Government must listen to the Legislation Review Committee as it points out the defect in this particular bill. The bill introduces amendments to the National Parks and Wildlife Act to provide that a person is not to be convicted of an offence for harming protected fauna other than threatened species, endangered populations or endangered ecological communities if the person proves that a defence applies to the activity. Such activity includes routine agricultural management activities, but only to the extent that the activity is reasonably necessary for the purposes of the agricultural activities carried out on the land concerned. One can imagine the many exemptions that could be brought up under this provision.

Finally, the bill provides that the director-general may appoint any person to be an authorised officer. Authorised officers are responsible for determining such things as whether there has been compliance with or contravention of the national parks legislation. As pointed out by the Legislation Review Committee, there is a void in the definition of the qualifications requisite to the position of authorised officer, and they ought to be addressed by the Government, especially having regard to the functions and powers given to these officers. In general, the Christian Democratic Party supports this bill, but we believe it has come to the House in a very hurried manner. Many issues must be sorted out, and I am sure that other speakers will indicate some of the issues they believe the House must deal with.

The Hon. JON JENKINS [9.22 p.m.]: This is an extremely difficult bill for me to vote on. Let me say at the outset that I am now and always have been a conservationist. However, rather than believe in pantheistic ideology, I see the role of humans as one of engagement and as caretakers and managers, rather than one of abject subservience. Indeed, like many other scientists, I am convinced that should we fail to actively manage the threats to our environment we will lose many of our endangered species. It is common knowledge that many of our species continue towards extinction. This is despite the National Parks and Wildlife Service owning and managing nearly half the coastline. What is it that the National Parks and Wildlife Service does not understand? Its management practices are simply not working. It continues to espouse habitat loss as the single threat. On the coastline, this is obviously a demonstrable falsehood.
Anyone who has walked through the bush after an intense crowning bushfire will tell you that the single greatest threat to both our native wildlife and native flora is fire. It simply kills everything in its path. The second greatest threat to native animals are the carnivorous feral animals that infest our bushland areas. Based on both science and on simple anecdotal evidence, we know that even minimal baiting and trapping programs have a dramatic effect on the number of native animals present. Just recently I witnessed the extremes of both sides of the argument.

In the first example I saw the abject greed of developers, although they do not see their want as greed. In this instance they want to develop a small piece of beachfront land into a tavern, 40 units and associated shops. When a town meeting was called almost the whole adult population turned out to oppose the development, and I hold in my office 700 signatures requesting a stop to the development. This would be far and away the overwhelming majority of the population of the local area. Yet the council and the developers continue regardless and oblivious to the desires of the community. It is not that they are evil; rather, they are just driven by a blind ideology that development is good and profitable for the community, and overrides the community desire to keep the last bit of beachfront open space as exactly that—open beachfront space.

Ironically, at almost the same time I was faced with the other extreme. As many honourable members will have seen on the news, we have had some serious fires on the North Coast recently. In fact, I, along with many others in our street, came as close to losing my home as is possible. For years I have harangued the local National Parks and Wildlife Service and the council to carry out proper fuel reduction burning and fire trail maintenance. But just as the blind, unreasoning developer ideologue wishes to destroy the last bit of open space, the blind unreasoning pantheistic ideologues ignore all commonsense and basic science. Apart from the danger to life and property caused by the mismanagement of the national park estate, there is the toll on our native wildlife. Instead of carrying out low-intensity mosaic fuel load reductions in winter, the local nature reserve was allowed to build up very high fuel loads. This habitat is one of the northern most reaches for several endangered species in New South Wales.

Like many conservationists, after a fire we picked up a few pillow slips and a pair of gloves and wandered around the bush looking for injured animals. Unfortunately, those that we found were dead: quolls, possums, swamp wallabies, koalas and a few goannas. Instead of being protected, they were left to fend for themselves on their own devices. Now, certainly, a large proportion of them are dead and the genetic biodiversity is lost forever. Thankfully, not all the reserve was burnt and some of the habitat is left. Let us hope that some of the land-based animals managed to outrun the fire and

find respite because most of the arboreal animals did not. So in this bill we have this clash of ideologies: unbridled development on one hand and blind unreasoning pantheism on the other. Before I go much further I shall separate the farming and agricultural side of the debate. I am reasonably satisfied that under the property vegetation plan arrangements and the catchment management authority legislation people will still have to satisfy a thorough set of environmentally sensitive standards. However, they will only have to do this once under the new legislation, rather than twice under the legislation as it currently stands.

The Hon. Duncan Gay: That's not right. You've been conned.

The Hon. JON JENKINS: I particularly like the offset trading scheme, which will encourage the agricultural sector to create and maintain the essential wildlife corridors between the existing islands of bushland, whether it be private or national park. I shall now turn to the other part of the legislation, which relates to developer-based activities. Under the current system, as each development application is received it must be accompanied by the relevant threatened species assessment and abatement studies. In effect, what this legislation tends to do is to make threatened species in the habitat the first consideration in all development applications.

The Hon. Duncan Gay: You're reading the briefing note, not the legislation.

The Hon. JON JENKINS: I acknowledge what the Deputy Leader of the Opposition is saying but I am now speaking about development applications, not agricultural activities. The existing legislation will still remain and will always be a fallback position for both the local council and the developer. However, this legislation intends to entice councils into a much broader ranging and in-depth assessment of their whole environment and threatened species contained therein. So rather than have a hodgepodge of development applications and associated threatened species plans, this legislation will try to integrate region-wide threatened species and abatement plans. So the question I must decide is: Does this legislation strike a balance that protects the environment from the greed of developers on one hand and the blind unreasoning ideology of extreme ego fundamentalism on the other?
I will be listening for pragmatic science-based solutions wherever possible and for a negotiated compromise when that is impossible. I will be listening intently to the Minister's speech in reply with regard to the Scientific Committee's power and how it will interact with the Minister. I would find it hard to support this legislation if the Minister could override the Scientific Committee with no recourse. I will be particularly interested to hear about any offset trading scheme that encourages developers and the community to engage in projects that enhance the environment. I acknowledge what some have said about local community input—again, I emphasise this to the Minister—into the Scientific Committee. Even the doyen of environmental conservation, Dr David Suzuki, said that if we want to understand the local environment we must talk to the people who live in it and take their advice. I will be listening in particular to debate regarding the farming community. I will be listening intently to debate as I decide whether to support this legislation.

Mr IAN COHEN [9.29 p.m.]: Madam Acting President—

The Hon. Duncan Gay: One is only Madam Acting President if the President is overseas.

Mr IAN COHEN: I thank the honourable member for clarifying the situation. I certainly do not mean to be insulting to the Deputy-President.

The Hon. Duncan Gay: You are forgiven. Buy her a coffee to make amends.

The Hon. Ian Macdonald: No, a glass of wine.

Mr IAN COHEN: It seems we are getting to the comedy part of the night: when the Greens get up to speak!

[*Interruption.*]

I am pleased that I bring a certain light-heartedness to the debate after such erudite speakers. Reverend the Hon. Dr Gordon Moyes shed significant light on the issue. I only hope that he practices what he preaches.

Reverend the Hon. Dr Gordon Moyes: I do not hunt, I do not shoot and I do not fish.

The Hon. Duncan Gay: The Hon. Rick Colless made an excellent contribution.

Mr IAN COHEN: I am talking about practising and preaching. I feel as if I am a round peg in a square hole trying to make points when minds are made up on such issues. The Deputy Leader of the Opposition referred to what I would regard as a very constructive dissertation by the Hon. Rick Colless. He obviously has a good knowledge of the issues and is an able representative of his constituency, the farming community. I acknowledge his considerable scientific expertise, which he gained in his previous profession as a soil agronomist. His contribution was worth listening to. I am pleased the Minister is now in the Chamber; he was not present earlier. Once again we have this sort of legislation being introduced at the end of the year, or somewhat late in the year. It is almost a tradition in the House. It is almost like the running of the bulls. Every year the Government puts forward environmental legislation late in the year.

The Hon. Ian Macdonald: October is not late.

The Hon. Duncan Gay: We are still in October.

The Hon. Melinda Pavey: It is better than last year.

Mr IAN COHEN: Yes, it is better than last year. It depends on when the Government decides to pull up stumps and adjourn for the Christmas holidays. It depends when the Government decides to finish. The legislation has come before the House late and my office is still communicating with the Government, and vice versa, about amendments at the last moment, so one gets the feeling of a rush job yet again. The lack of substance is made up for by the rush at the end of the year—once again. I am now in my tenth year as a member of this Parliament. I remember the threatened species legislation of 1995. I seem to recall that it went through with a number of other pieces of environmental legislation. At the time the Greens and the Government shared a sense of optimism, working in concert to create a better environment and to protect threatened and endangered species.
The Hon. Duncan Gay: There were no Greens here in 1995.

Mr IAN COHEN: I was here in 1995. I remember the first threatened species legislation that was introduced by the first Carr Government in 1995, or it might have been 1996. Regardless, it is obvious that the Deputy Leader of the Opposition does not have the same feeling of intense joy that is felt by the Greens with the passing of the threatened species legislation. I can understand, therefore, why the legislation has passed out of the collective memory of members of The Nationals. Nevertheless, I regarded it as significant legislation, and this bill shows that in 10 years the policies of this Labor Government in this regard have radically turned around.

The Hon. Duncan Gay: You are still giving Labor your preferences.

Mr IAN COHEN: In response to the interjection of the Deputy Leader of the Opposition relating to preferences I have to say that The Nationals give us very little choice. Given that the most eloquent outburst in this House from the Deputy Leader of the Opposition each day is "God save the Queen", it is obvious that we have a long way to go before we can agree on many issues.

Reverend the Hon. Dr Gordon Moyes: She is not a threatened species.

Mr IAN COHEN: I do not know whether I agree with that. It is refreshing to be able to engage in some light-hearted banter. Despite all the rhetoric, despite the suggestion that the Carr Labor Government is some sort of green Labor Government with a green Premier—and some members have touched on the bill's anomalies and shortcomings—I want to call the bill for what it is: a massive and direct assault on threatened species protection in New South Wales. It will place the entire protection of threatened species throughout urban and rural New South Wales at the discretion of a single politician. It will exempt developments from the most basic threatened species surveys. It will remove the right of the community to take legal action to protect threatened species. It will politicise the threatened species listing process and undermine the recovery planning process. It will implement an effective social and economic veto of threatened species conservation.

The bill will give plenty of joy to all those who have been destroying threatened species. It will remove what little protection the Threatened Species Conservation Act provided so that vested interests can get on with their job of sending threatened species to extinction. Attempts by this Government to dress up the bill as a win for conservation are disgraceful. Even The Nationals, if they were introducing a bill with such a blatant anti-conservation agenda, would have the honesty to admit that was its purpose. But not this Government. It thinks it can introduce a bill that facilitates the widespread destruction of threatened species habitat and sell it as a win for conservation. Well, the buck stops here. This bill is a sham, an outrage and a great danger for conservation in this State. The real motivation for the bill was made abundantly clear in the draft discussion paper released by the Government on this issue. It states, "The aim of these reforms is to deliver programs and requirements that seem reasonable to farmers, developers and the community." What a noble and lofty aim and what an inspired vision for the future of threatened species, the environment and the very life systems we rely on for survival. It continues, " … to deliver programs … that seem reasonable to farmers [and] developers"—

The Hon. Ian Macdonald: And the community.

Mr IAN COHEN: I am quoting from the Carr Government's own material. In delivering outcomes for farmers and developers, the New South Wales Government has disfranchised the community and completely ignored the urgent scientific imperative for stronger environmental protection. This bill is a body blow for threatened species conservation in New South Wales. Long may we rue the day it was introduced in this House. The Minister's second reading speech is the usual tired old spin. It is a vacuous procession of anecdotes, half-truths and lies. Since the New South Wales Government no longer even bothers to consider the facts, I will take the liberty of introducing them into this debate. First, the Minister implies that the current Threatened Species Conservation Act has failed because it has been conducted orchid by orchid, and golden bell frog by golden bell frog. However, it is largely the implementation of the Act by this Government—

The Hon. Rick Colless: Blackbutt by blackbutt.

Mr IAN COHEN: Yes, I would agree, blackbutt by blackbutt. We have been asking for adequate protection in the Brigalow area for years. Whether it be a drought or an election, there is always a reason why the Carr Government cannot move on such an important threatened area, which demands immediate and adequate conservation. I know that the Hon. Rick Colless agrees with me. He may have a different interpretation of what conservation should be, but the fact is the Government has not moved. It puts it to the end of the line because it is out there out west and does not really matter. That leaves the agricultural and timber communities in a state of insecurity. As well, the Government has not followed through with the conservation strategies it promised a long time ago.

The Hon. Duncan Gay: Why do you give them your preferences?

Mr IAN COHEN: As I have said a number of times, the party the Deputy Leader of the Opposition represents has a long way to go.

The Hon. Rick Colless: Read that book.

Mr IAN COHEN: I need to do more than just read a book. We need a comparative balance. There is a growing tendency by the Greens New South Wales to look very seriously at the exhaustion option at the next election. It is largely the implementation of the Threatened Species Conservation Act by the Government, rather than the Act itself, that has resulted in this outcome. The Government has failed to apply the key provision for identification of critical habitat under the Act. Will the Hon. Rick Colless and the Deputy Leader of the Opposition do a mini-leapfrog—hardly an endangered amphibian—over this Government, which has betrayed us so many times on conservation issues? Just a tiny hop and they might find some degree of accord with the Greens New South Wales. No, they still say, "God Save the Queen" and give environmental awareness the boot.

The DEPUTY-PRESIDENT (The Hon. Patricia Forsythe): Order! There is too much interjection.

Mr IAN COHEN: Only two areas of critical habitat have ever been identified under the Threatened Species Conservation Act over the last nine years. What an absolute joke! Furthermore, the Government has failed miserably on recovery and threat abatement planning with only a small subset of threatened species having completed recovery plans. As the level of threatened species has been raised, I refer to a chart provided by the New South Wales Scientific Committee. I will move away from the rhetoric, of which I am guilty sometimes, and refer to the chart. It is reasonable to say that Australia has the highest rate of mammalian species extinction in the world—993—with 19 aquatic species and 202 species listed as endangered in the last four years. We have lost 26 mammal species, 12 bird species and 37 plant, reptile and invertebrate species in the last 100 years. According to the list, there are 11 endangered amphibians species and 14 vulnerable amphibian species. Also on the endangered species list are reptiles 17, birds 29, mammals 16, marine mammals 2, invertebrates 14, plants 333 and fungi 5—a total of 427 endangered species, according to the New South Wales Scientific Committee.

The Hon. Rick Colless: Their science is not always right.

Mr IAN COHEN: How much could it be out? How wrong is it? Are we talking about a total of 427 endangered species, maybe only 350, or perhaps 550? The fact is that the New South Wales Scientific Committee is prepared to list that 427 endangered species, 395 vulnerable species, 77 species presumed extinct and 29 endangered populations. We are talking about an extremely high level of species extinction in New South Wales.

The Hon. Rick Colless: If the science is right.

Mr IAN COHEN: If the science is wrong we may be a little off course. On what basis does the Hon. Rick Colless make his presumption? I have no objection to the claim by the Hon. Rick Colless that we should get the science right. But I am saying they are the figures published by the New South Wales Scientific Committee. I will be interested to see whether the Hon. Rick Colless provides information that diverges radically from those figures. Australia is an advanced western nation supposedly with adequate environmental protection procedures in place, yet we are still dealing with the highest rate of endangered mammalian species in the world. That is an indictment of this Government and all governments acting within the Australian constituency at present.

The Minister declares that the debate has been reduced to a black and white decision: either the shopping centre or the orchid. The facts suggest that the shopping centre rather than the orchid has been the winner. The North Coast Environmental Council recently conducted a review of the administration by the Department of the Environment and Conservation of the Threatened Species Conservation Act on the North Coast. The results showed that of the 185 applications to "harm or pick" threatened species submitted since 1996 only one was refused. When one takes into account the length of time the threatened species legislation has been in force in New South Wales, one realises that is a poor record.

The review concluded that across a whole range of provisions the administration by the Department of the Environment and Conservation of the Threatened Species Conservation Act was weak, inadequate and detrimental to threatened species conservation. In short, the operation of the Threatened Species Conservation Act over the last nine years has been sabotaged and derailed by the New South Wales Government. The Act has failed because the Government wanted it to fail. However, neither the big vested interests nor their ardent advocates in the New South Wales Government were taking any chances. They would not be content until the Threatened Species Conservation Act was made completely and wholly subservient to their political will. No pesky threatened species surveys and assessments and no interference from the dreaded community, hence the introduction of this bill.

This bill does nothing to address the weaknesses of the current Threatened Species Conservation Act in regard to protecting threatened species. It just makes it weaker. If the Government spin were even remotely valid it would have improved the best aspects of the current Act and implemented strong new measures to address the weaknesses of that Act. Instead, it has undermined or negated the best aspects of the current Act and introduced new measures that completely subjugate threatened species conservation to a political whim. The bill is nothing short of an elaborate fraud on a grand scale. It is like John Howard speaking on Tasmanian forests. It matches precisely with the true nature of this Government's other much-vaunted environment reforms. For example, the Minister blithely declares in his second reading speech that "we have ended broadscale land clearing". Unfortunately for him the facts, again, prove otherwise. The truth is that the New South Wales Government is known to have already issued permits to clear tens of thousands of hectares this year alone.

The Hunter Economic Zone [HZE] is another case in point. The Minister promotes it as the model on which the new biodiversity certification system will be based—a model that will deliver a win-win for conservationists and development. However, a closer inspection reveals yet another hoax. The Minister lauded the Hunter Economic Zone as an illustration of how well the new system of bio-certification of environmental planning and instruments will work. The Minister's use of this example is inappropriate. We may well be looking at an example of a Minister having shot himself in the foot. The 3,200 hectare HEZ site in the Cessnock area of the Hunter Valley is the perfect example of a biological hotspot that the amendments should be protecting. Instead, we can see how the Carr Labor Government is determined to allow development to proceed on this site, despite the Government's own departmental advice suggesting one-third of the 28 threatened species present on the site will be worse off under the rezoning.

After using this example of how the new threatened species conservation amendments will work, we can now call the Premier, who so likes to be called the green Premier, the brown Premier. It is a frightening example of how the Government will allow developers to have their way at the expense of the environment. What hope does our remaining precious bush land have when our now brown Premier is opening the door to a world in which extinction of 33 per cent of our threatened species has just become a lot closer? We can rightfully call them the new Ministers of Extinction. What possessed the Minister to use the example of Hunter Economic Zone [HEZ] and show how blatantly this legislation will destroy threatened species and send them closer to extinction?

During his second reading speech in the lower House the Minister had the audacity to simply repeat the developers' marketing rhetoric that 70 per cent of the HEZ has been set aside for conservation. That is supposed to be an example of an environmental trade-off—a trade-off that would allow development to proceed in certified areas without threatened species surveys. The reality is that most of the so-called trade-off land is either an existing national park or is land that can be sold for private rural properties. There can be no guarantee that land sold for private rural properties can provide long-term protection for species that are close to extinction. The reality is that there is no trade-off that comes anywhere near compensating for the massive impact this industrial estate will have on threatened species. The only place in the Hunter Valley that has more threatened species than the unique HEZ site is the Barrington Tops Wilderness area, yet the Minster still wants to allow open-slather industrial development with few checks and balances.

Of the 28 threatened species acknowledged by the Government as occurring in the industrial area of the HEZ site, nine are reported by the Department of Environment and Conservation as being worse off under the HEZ site rezoning. The species worse off under the HEZ rezoning for which our Premier and environment Minister are planning to remove any further protection are: the swift parrot; acacia bynoeana, a wattle, rutidosis heterogama, a herb; Callistemon linearifolius; Grevillea parviflora; the green-thighed frog; the brown tree creeper; the black-chinned honeyeater; and the now famous grey crowned babbler that we likened to the Treasurer in an earlier debate. Several are endangered on an Australia-wide scale. In addition to the koala and the yellow bellied glider, this site contains the incredibly endangered regent honeyeater, a bird that experts believe is literally on the edge of extinction. The bird has been observed in the exact area in which Bob Carr says no more threatened species surveys are necessary. What about the nationally endangered swift parrot? The multi-State recovery team charged with trying to prevent the remaining 2,000 birds from becoming extinct has said that the HEZ site is the most important spotted gum site in Australia for this species. They protect the wetter areas but not the drier swift parrot habitat.

What about woodland birds such as the brown tree creeper and black-chinned honeyeater, which have disappeared from almost all areas east of the Dividing Range because of their sensitivity to clearing and disturbance? These birds are found in a last stronghold in the woodlands of the HEZ in the Hunter Valley. However, according to the Government they are worth nothing because, despite his own department's concerns, our Minister for the Environment is willing to allow the clearing and development of their last habitat east of the Dividing Range with no further threatened species surveys or protection.

What about the green-thighed frog? The only known sighting of this threatened species in the Hunter Valley is at the HEZ industrial site. Bob Carr and Bob Debus are about to remove the little protection it has left. What about the two species of eucalypts that are so new that they have not been named? They may well turn out to be extremely rare and found in no other location in Australia. However, the Government is proposing that these totally new species will have no further protection in the huge 900 hectares of industrial land no matter how rare or threatened they might be. Why is the Minister proposing to release such important and critical areas for development without ongoing threatened species surveys? Are we entitled to ask whether the Minister is exercising very poor judgment? If in the future a Minister is incompetent or exercises poor judgment in regard to areas that are to be set aside for development without any protection for threatened species—as the Minister has indicated will happen with HEZ—there will be nothing the community can do about it. These amendments do not allow any third party appeal against the Minister's decision. New South Wales can expect to find one-third of its threatened species slipping closer to extinction and the Premier and his environment Minister will be remembered as the new Ministers of Extinction.

Any developer, planning consultant or community concerned about the environment knows that each subsequent eight-part test or species impact statement [SIS] paid for by the developer adds to the cumulative body of knowledge collected over time for a local area and provides a credible platform of data on which development and conservation decisions can be made. These new amendments shamefully destroy that system of accumulated knowledge and replace it with the most brief and tokenistic of surveys that have no set period of review. To add insult to injury, local councils will pay for these surveys not, as is the case now, the developers. Releasing developers from the responsibility of funding environmental studies adds a layer of corporate welfare to this sorry tale of environmental betrayal.

The Government has stopped governing for the whole community and has succumbed to the campaigns of industry and development. The rationale and yardstick of developers is profit and a return to their shareholders. However, the rationale

of this Government must be broader than the profit motive. Of course developers will complain when threatened species restrict their activities and any Government would expect no less. However, this Government should not sacrifice the health of the environment and the community for the profit motive. Decisions about which species need protection and which do not should be made on a scientific basis, not on the basis of profit, which is precisely what this proposed Social and Economic Advisory Council will do. It is clear from the Minister's second reading speech that this legislation is designed to enable development to proceed almost unhindered. In return the Government will ostensibly protect areas that are not wanted or even available for development in the first place.

I will now deal with the specifics of this bill. The fundamental provision of the legislation is the replacement of site-specific threatened species assessments with a biodiversity certification process. In rural areas that biodiversity certification will apply to the native vegetation reform package and in urban areas to environmental planning instruments. Biodiversity certification is nothing less than a very broad discretion vested in the Minister for the Environment to approve the destruction of threatened species and their habitat over large areas.

Currently for each site on which clearing or development is proposed there is an objective test of environmental impact. It must be determined whether the clearing will significantly affect threatened species, populations, ecological communities or their habitats. The legislation replaces that subjective test on a site-by-site basis with a broad subjective discretion across large areas of land. In relation to the native vegetation reform package, there are no criteria that the Minister must consider in granting certification. It is a completely unfettered discretion to approve the destruction of threatened species and their habitats. Furthermore, that approval will apply to the entire State outside urban areas and will extend indefinitely. There is no end to the approval and no systemic review of the impact on threatened species.

In relation to environmental planning instruments there is a small set of inadequate, subjective criteria to which the Minister must have regard when using his or her discretion to approve the destruction of threatened species and their habitats. The Minister must be satisfied that an environmental planning instrument seeks to promote the conservation of threatened species. That could mean anything the Minister choses it to mean; it is pure discretion. Then there is a series of factors the Minister is to consider. There is no requirement to protect threatened species habitat, no minimum levels of information, and no real recovery of threatened species or genuine threat abatement. The approval may apply to an area as large as an entire local government region. The period of the approval is at the Minister's discretion and there is no systematic review process. Therefore, biodiversity certification enables the destruction of threatened species to be approved indefinitely at the whim of a Minister across the length and breadth of regional New South Wales.

In urban areas the whim of the Minister will determine the fate of entire local government areas for as long as the Minister sees fit. It is an extravagantly and outrageously wide power that is clearly designed to promote and facilitate the destruction of threatened species. If biodiversity certification were genuinely intended to be used for environmental good, then it would be subject to a rigorous and objective test of environmental impact. It would be constrained to a meaningful time period and would be subject to a systematic review of its impacts on an annual or biannual basis.

Regarding site-specific surveys and landscape planning, one of the Government's stated reasons for introducing biodiversity certification is to change the emphasis from individual species conservation to landscape conservation. The Government claims to have implemented this by replacing site-specific assessments of environmental impact with strategic planning in the form of biodiversity certification. Once biodiversity certification has been granted to an area, any proposed clearing or development in that area will no longer be subject to site-specific assessments or the requirement to conduct a test of significance or develop a species impact statement. There will be no requirement to conduct even the most basic threatened species survey.

Therefore, this bill effectively seeks to trade off some of the core provisions of the current Threatened Species Conservation Act with regard to site-specific assessments and surveys in return for new provisions on so-called strategic planning. However, no amount of strategic planning or regional survey can obviate the need for site-specific fauna and flora and surveys. Site-specific assessment is essential because of the cryptic nature of many threatened species, the paucity of existing biological data in even the most apparently well-surveyed areas and the very large areas of education that are at issue.

Debate adjourned on motion by Mr Ian Cohen.

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