

Legislative Council

THREATENED SPECIES LEGISLATION AMENDMENT BILL 2004

Schedule of the amendments agreed to in Committee of the Whole
on Wednesday 10 November 2004.

- Grns** No. 1 Page 8, Schedule 1. Insert after line 18:
- 14 Regulations prescribing criteria under this Part**
- A regulation that prescribes criteria for the purposes of section 10, 11, 12 or 13 is not to be made unless the Minister certifies in writing that:
- (a) the criteria are based on scientific principles only, and
 - (b) any criteria for listing under the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth were given due consideration before the regulation was made.
- Grns** No. 2 Page 9, Schedule 1 [26], line 17. Insert “every 12 months” after “nominations”.
- Grns** No. 3 Page 12, Schedule 1. Insert after line 23:
- [37] Section 24 (3) (a)**
- Omit “National Parks and Wildlife Service”.
- Insert instead “Department”.
- Oppn** No. 4 Page 12, Schedule 1 [37], line 28. Omit “3 months”. Insert instead “6 months”.
- Oppn** No. 5 Page 14, Schedule 1 [50], lines 15-17. Omit “and critically endangered species, populations and ecological communities”. Insert instead “species, populations and ecological communities and critically endangered species and ecological communities”.
- Oppn** No. 6 Page 14, Schedule 1 [51], lines 22-23. Omit “or critically endangered species, populations and ecological communities”. Insert instead “species, populations and ecological communities, or critically endangered species and ecological communities”.
- Oppn** No. 7 Page 14, Schedule 1 [52], line 26. Omit all words on that line. Insert instead:
- Omit “of endangered populations and ecological communities”.
- Oppn** No. 8 Page 15, Schedule 1 [53], lines 1-2. Omit all words on those lines. Insert instead:
- [53] Sections 37 (1), 40 (1), 41 (1), 43 (a) and 47 (3)**
- Insert “or critically endangered species or ecological community” after “endangered species, population or ecological community” wherever occurring.
- [54] Section 38 Director-General responsible for identifying critical habitat**
- Insert “or critically endangered species or ecological community” after “ecological community”.
- Oppn** No. 9 Page 15, Schedule 1 [54], lines 5-6. Omit all words on those lines. Insert instead:
- Insert “, for critically endangered species and ecological communities,” before “and for vulnerable species” in the Introductory note to Part 4.
- Oppn** No. 10 Page 15, Schedule 1 [56], line 11. Omit all words on that line. Insert instead:

Insert “and each critically endangered species and ecological community” after “and ecological community” in section 56 (1).

- Grns** No. 11 Page 16, Schedule 1 [64], proposed section 90A, line 26. Omit all words on that line. Insert instead:
- (d) and threat abatement strategies and their effectiveness, and contains a status report on each threatened species, where information is available, and
 - (e) sets out clear timetables for recovery and threat abatement planning and achievement.
- Grns** No. 12 Page 16, Schedule 1 [64], proposed section 90B, lines 29-30. Omit “As soon as practicable after the commencement of this section, the”. Insert instead “The”.
- Grns** No. 13 Page 16, Schedule 1 [64], proposed section 90B. Insert after line 31:
- (2) The Priorities Action Statement must be completed as soon as practicable and no later than 12 months after the date of assent to the *Threatened Species Legislation Amendment Act 2004*.
- Grns** No. 14 Page 17, Schedule 1 [64], proposed section 90C, line 30. Insert “(being a date that is not less than 30 days after the date of publication of the notice under subsection (1) (a))” after “made”.
- Grns** No. 15 Page 18, Schedule 1 [64], proposed section 90D, lines 1-2. Omit all words on those lines. Insert instead:
- (3) The Director-General must adopt the Priorities Action Statement or amendment (with or without alterations) within 4 months after the end of the period allowed for the making of submissions about the draft statement or amendment.
- Grns** No. 16 Page 18, Schedule 1 [65], proposed section 113A. Insert after line 25:
- (3) A regulation that provides that development or an activity of a specified type does not constitute development that is likely to significantly affect threatened species, populations or ecological communities, or their habitats, is not to be made unless the Minister has certified in writing that the development or activity is of minimal environmental impact on threatened species, populations and ecological communities, and their habitats.
- Govt** No. 17 Page 18, Schedule 1 [66], lines 28-32. Omit all words on those lines. Insert instead:
- (a1) clearing of native vegetation as authorised by a property vegetation plan approved under the *Native Vegetation Act 2003*, being clearing that had the benefit of biodiversity certification of the native vegetation reform package under Division 4 of Part 7 when the plan was approved, or
- Govt** No. 18 Page 19, Schedule 1 [67] (proposed section 126C). Insert after line 24:
- (2) The Minister may confer biodiversity certification even if the native vegetation reform package does not comprise all the elements of the package.
 - (3) The Minister may, by order published in the Gazette, suspend biodiversity certification of the native vegetation reform package if the composition of the package changes after its certification (for instance by any amendment of the *Native Vegetation Act 2003* or regulations under that Act, or by the approval or amendment of a State-wide standard or target or of a catchment action plan). The Minister may by order published in the Gazette lift any suspension under this subsection.

- (4) The Minister may, in an order conferring biodiversity certification or in another order published in the Gazette, exclude from the certification of the native vegetation reform package any specified class of activity.
- (5) In deciding on any action under this section, the Minister is to have regard to the likely impact of the native vegetation reform package (or any relevant aspect of its operation) on the achievement of the objects of this Act.

Govt No. 19 Pages 19 and 20, Schedule 1 [67], line 25 on page 19 to line 5 on page 20. Omit all words on those lines. Insert instead:

126D Effect of biodiversity certification

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

Note. Biodiversity certification has the following effects:

- (a) the clearing of native vegetation as authorised by a property vegetation plan that is approved while the clearing has the benefit of biodiversity certification is a defence to a prosecution for certain offences under Part 8A of the NPW Act, and
- (b) development consent to clearing of native vegetation that has the benefit of biodiversity certification does not require the preparation of a species impact statement or consultation between Ministers. (See section 14 (4) of the *Native Vegetation Act 2003*.)

Govt No. 20 Page 20, Schedule 1 [67], line 6. Omit all words on that line. Insert instead:

126E Suspension of certification in connection with implementation of package

Govt No. 21 Page 20, Schedule 1 [67] (proposed section 126E), lines 7-12. Omit all words on those lines.

Govt No. 22 Page 20, Schedule 1 [67], line 14. Omit “or revoke”.

Govt No. 23 Page 20, Schedule 1 [67], line 23. Omit “or following the revocation”.

Govt No. 24 Page 21, Schedule 1 [67] (proposed section 126F), line 4. Omit “or revocation”.

Grns No. 25 Page 21, Schedule 1 [67], proposed section 126F, line 5. Insert “within 14 days” after “given”.

Grns No. 26 Page 21, Schedule 1 [67], proposed section 126F. Insert after line 9:

- (2) The Minister is to keep a register containing copies of each notice of the grant of biodiversity certification under this Division and of any suspension or revocation of that certification.
- (3) The register is to be open for public inspection, without charge, during ordinary business hours, and copies of or extracts from the register are to be made available to the public on request, on payment of the fee fixed by the Minister.

Grns No. 27 Page 21, Schedule 1 [67], proposed section 126G, lines 13-16. Omit all words on those lines. Insert instead:

- (1) The Minister may by order published in the Gazette confer biodiversity certification on an EPI if satisfied that the EPI, in addition to any other relevant measures to be taken, will lead to the overall improvement or maintenance of biodiversity values. Biodiversity values include threatened species, populations and ecological communities, and their habitats.

Grns No. 28 Page 21, Schedule 1 [67], proposed section 126G. Insert after line 35:

- (3) In deciding any matter under this section the Minister is to have regard to the objects of this Act.

Grns No. 29 Page 23, Schedule 1 [67], proposed section 126J. Insert after line 17:

- (3) The Minister must not extend the period of biodiversity certification of an EPI unless, prior to granting the extension, the Minister:
- (a) by notice published in a newspaper circulating generally throughout the State, invites persons to make written submissions to the Minister on the proposed extension, and
 - (b) considers any written submissions received before the closing date specified in the notice for the making of submissions (being a date that is not less than 30 days after the date the notice is first published under this subsection).

Grns No. 30 Page 23, Schedule 1 [67]. Insert after line 19:

126K Reassessment of biodiversity certification

- (1) The Minister is to reassess the grant of biodiversity certification in respect of an EPI following any review of the EPI under the *Environmental Planning and Assessment Act 1979*, or any rezoning of land to which the EPI applies, to determine whether biodiversity certification should be maintained or modified.
- (2) If a local council undertakes a review of a biodiversity certified EPI that applies to land in its area, the council is to notify the Minister of the commencement of that review, and the outcome of that review, as soon as practicable.

Grns No. 31 Page 23, Schedule 1 [67], proposed section 126L, line 37. Insert “within 21 days” after “given”.

Grns No. 32 Page 24, Schedule 1 [67], proposed section 126L. Insert after line 6:

- (2) The Minister is to keep a register containing copies of each notice of the grant of biodiversity certification under this Division and of any extension, suspension or revocation of that certification.
- (3) The register is to be open for public inspection, without charge, during ordinary business hours, and copies of or extracts from the register are to be made available to the public on request, on payment of the fee fixed by the Minister.

Grns No. 33 Page 25, Schedule 1 [67], proposed section 126M, lines 5-7. Omit all words on those lines. Insert instead:

- (5) The annual report of the Department is to include an assessment of how any voluntary action taken pursuant to a condition imposed under this section has benefited or is likely to benefit the adversely affected threatened species, including details of how any land or money contributed pursuant to such a condition has benefited or is likely to benefit threatened species.

Grns No. 34 Page 25, Schedule 1 [67], proposed section 126N, line 24. Insert “(not exceeding 3 years)” after “period”.

Grns No. 35 Page 28, Schedule 1. Insert after line 30:

[74] Section 157

Omit the section. Insert instead:

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act are being fulfilled and whether the terms of the Act, and any environmental planning instruments granted biodiversity certification under Part 7, remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to the *Threatened Species Legislation Amendment Act 2004*.
- (3) The Minister is to make arrangements for public consultation with respect to the review.
- (4) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Grns No. 36 Page 36, Schedule 2 [11]. Insert after line 12:

220FD Regulations prescribing criteria under this Part

A regulation that prescribes criteria for the purposes of section 220F, 220FA, 220FB or 220FC is not to be made unless the Minister certifies in writing that:

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

Grns No. 37 Page 37, Schedule 2 [16], line 15. Insert “every 12 months” after “nominations”.

Oppn No. 38 Page 42, Schedule 2 [24], lines 11-13. Omit “and critically endangered species, populations and ecological communities”. Insert instead “species, populations and ecological communities and critically endangered species and ecological communities”.

Oppn No. 39 Page 42, Schedule 2 [25], lines 14-15. Omit all words on that line. Insert instead:

[25] Sections 220P (1), 220T (1), 220Y (2) (a)

Insert “or critically endangered species or ecological community” after “endangered species, population or ecological community” wherever occurring.

[26] Section 220Q Identification of critical habitat

Insert “and each critically endangered species and ecological community” after “ecological community” in section 220Q (1).

Govt No. 40 Page 43, Schedule 2 [27], lines 3-6. Omit all words on those lines. Insert instead:

- (b1) was authorised by a property vegetation plan approved under the *Native Vegetation Act 2003*, being an act that had the benefit of biodiversity certification of the native vegetation reform package under Division 10 when the plan was approved, or

Govt No. 41 Page 43, Schedule 2 [29], lines 15-21. Omit all words on those lines. Insert instead:

- (a) clearing of native vegetation that constitutes a routine agricultural management activity,
- (b) a routine farming practice activity (other than clearing of native vegetation),

Govt as amended by **Grns** No. 42 Page 44, Schedule 2 [29], lines 29-32. Omit all words on those lines. Insert instead:

- (3) This section does not authorise the doing of an act:

- (a) if it exceeds the minimum extent reasonably necessary for carrying out a routine agricultural management activity or routine farming practice activity, or

Grns No. 43 Page 47, Schedule 2 [38], proposed section 220ZVA, line 8. Omit all words on that line. Insert instead:

- and threat abatement strategies and their effectiveness, and
- (d) contains a status report on each threatened species, where information is available, and
 - (e) sets out clear timetables for recovery and threat abatement planning and achievement.

Grns No. 44 Page 47, Schedule 2 [38], proposed section 220ZVB, lines 11-12. Omit “As soon as practicable after the commencement of this section, the”. Insert instead “The”.

Grns No. 45 Page 47, Schedule 2 [38], proposed section 220ZVB. Insert after line 13:

- (2) The Priorities Action Statement must be completed as soon as practicable and no later than 12 months after the date of assent to the *Threatened Species Legislation Amendment Act 2004*.

Grns No. 46 Page 48, Schedule 2 [38], proposed section 220ZVD, lines 1-2. Omit all words on those lines. Insert instead:

- (3) The Director-General must adopt the Priorities Action Statement or amendment (with or without alterations) within 4 months after the end of the period allowed for the public comment on the draft statement or amendment.

Grns No. 47 Page 48, Schedule 2 [39], proposed section 221NA. Insert after line 25:

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

Govt No. 48 Page 49, Schedule 2 [42] (proposed section 221ZG). Insert after line 24:

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

Govt No. 49 Page 49, Schedule 2 [42], lines 25-39. Omit all words on those lines. Insert instead:

221ZH Effect of biodiversity certification

While biodiversity certification of the native vegetation reform package is in force, any activity on land within the area of operations of each catchment management authority has the benefit of that biodiversity certification (except any activity excluded from certification under section 221ZG (4)).

Note. Biodiversity certification has the following effects:

- (a) the clearing of native vegetation as authorised by a property vegetation plan that is approved while the clearing has the benefit of biodiversity certification is a defence to a prosecution for certain offences under Part 8A of the NPW Act, and
- (b) development consent to clearing of native vegetation that has the benefit of biodiversity certification does not require the preparation of a species impact statement or consultation between Ministers. (See section 14 (4) of the *Native Vegetation Act 2003*.)

- Govt** No. 50 Page 50, Schedule 2 [42], line 1. Omit all words on that line. Insert instead:
- 221ZI Suspension of certification in connection with implementation of package**
- Govt** No. 51 Page 50, Schedule 2 [42] (proposed section 221ZI), lines 2-7. Omit all words on those lines.
- Govt** No. 52 Page 50, Schedule 2 [42], line 9. Omit “or revoke”.
- Govt** No. 53 Page 50, Schedule 2 [42], line 18. Omit “or following the revocation”.
- Govt** No. 54 Page 50, Schedule 2 [42] (proposed section 221ZJ), line 36. Omit “or revocation”.
- Grns** No. 55 Page 50, Schedule 2 [42], proposed section 221ZJ, line 37. Insert “within 14 days” after “given”.
- Grns** No. 56 Page 51, Schedule 2 [42], proposed section 221ZJ. Insert after line 3:
- (2) The Minister is to keep a register containing copies of each notice of the grant of biodiversity certification under this Division and of any suspension or revocation of that certification.
 - (3) The register is to be open for public inspection, without charge, during ordinary business hours, and copies of or extracts from the register are to be made available to the public on request, on payment of the fee fixed by the Minister.
- Grns** No. 57 Page 51, Schedule 2 [42], proposed section 221ZK, lines 7-10. Omit all words on those lines. Insert instead:
- (1) The Minister may by order published in the Gazette confer biodiversity certification on an EPI if satisfied that the EPI, in addition to any other relevant measures to be taken, will lead to the overall improvement or maintenance of biodiversity values. Biodiversity values include threatened species, populations and ecological communities and their habitats.
- Grns** No. 58 Page 51, Schedule 2 [42], proposed section 221ZK. Insert after line 29:
- (3) In deciding any matter under this section the Minister is to have regard to the objects of this Part.
- Grns** No. 59 Page 53, Schedule 2 [42], proposed section 221ZN. Insert after line 8:
- (3) The Minister must not extend the period of biodiversity certification of an EPI unless, prior to granting the extension, the Minister:
 - (a) by notice published in a newspaper circulating generally throughout the State, invites persons to make written submissions to the Minister on the proposed extension, and
 - (b) considers any written submissions received before the closing date

specified in the notice for the making of submissions (being a date that is not less than 30 days after the date the notice is first published under this subsection).

- Grns** No. 60 Page 53, Schedule 2 [42]. Insert after line 10:
- 221ZO Reassessment of biodiversity certification**
- (1) The Minister is to reassess the grant of biodiversity certification in respect of an EPI following any review of the EPI under the *Environmental Planning and Assessment Act 1979*, or any rezoning of land to which the EPI applies, to determine whether biodiversity certification should be maintained or modified.
 - (2) If a local council undertakes a review of a biodiversity certified EPI that applies to land in its area, the council is to notify the Minister of the commencement of that review, and the outcome of that review, as soon as practicable.
- Grns** No. 61 Page 53, Schedule 2 [42], proposed section 221ZP, line 28. Insert “within 21 days” after “given”.
- Grns** No. 62 Page 53, Schedule 2 [42], proposed section 221ZP. Insert after line 34:
- (2) The Minister is to keep a register containing copies of each notice of the grant of biodiversity certification under this Division and of any extension, suspension or revocation of that certification.
 - (3) The register is to be open for public inspection, without charge, during ordinary business hours, and copies of or extracts from the register are to be made available to the public on request, on payment of the fee fixed by the Minister.
- Grns** No. 63 Page 54, Schedule 2 [42], proposed section 221ZQ, lines 36-38. Omit all words on those lines. Insert instead:
- (5) The annual report of the Department is to include an assessment of how any voluntary action taken pursuant to a condition imposed under this section has benefited or is likely to benefit the adversely affected threatened species, including details of how any land or money contributed pursuant to such a condition has benefited or is likely to benefit threatened species.
- Grns** No. 64 Page 55, Schedule 2 [42], proposed section 221ZR, line 17. Insert “(not exceeding 3 years)” after “period”.
- Oppn** No. 65 Page 55, Schedule 2. Insert after line 36:
- [45] Section 290**
- Omit the section. Insert instead:
- 290 Review of Act**
- (1) The Minister is to review this Act to determine whether the policy objectives of the Act are being fulfilled and whether the terms of the Act, and any environmental planning instruments granted biodiversity certification under Division 11 of Part 7A, remain appropriate for securing those objectives.
 - (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to the *Threatened Species Legislation Amendment Act 2004*.

- (3) The Minister is to make arrangements for public consultation with respect to the review.
- (4) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Govt No. 66 Page 59, Schedule 3.1 [4], lines 4-8. Omit all words on those lines. Insert instead:

- (a2) was authorised by a property vegetation plan approved under the *Native Vegetation Act 2003*, being an act that had the benefit of biodiversity certification of the native vegetation reform package under Division 4 of Part 7 of the *Threatened Species Conservation Act 1995* when the plan was approved, or

Govt No. 67 Page 59, Schedule 3.1 [5], lines 13-18. Omit all words on those lines. Insert instead:

- (a2) was authorised by a property vegetation plan approved under the *Native Vegetation Act 2003*, being an act that had the benefit of biodiversity certification of the native vegetation reform package under Division 4 of Part 7 of the *Threatened Species Conservation Act 1995* when the plan was approved, or

Govt No. 68 Page 60, Schedule 3.1 [7], lines 7-13. Omit all words on those lines. Insert instead:

- (a) clearing of native vegetation that constitutes a routine agricultural management activity,
- (b) a routine farming practice activity (other than clearing of native vegetation),

Govt No. 69 Page 61, Schedule 3.1 [7], lines 19-22. Omit all words on those lines. Insert instead:

- (3) This section does not authorise the doing of an act:
 - (a) if it exceeds the minimum extent reasonably necessary for carrying out a routine agricultural management activity or routine farming practice activity, or

Govt No. 70 Page 66, Schedule 3.3, lines 4-14. Omit all words on those lines. Insert instead:

- (4) If the clearing of any native vegetation has the benefit of biodiversity certification under Division 4 of Part 7 of the *Threatened Species Conservation Act 1995* and also the benefit of biodiversity certification under Part 7A of the *Fisheries Management Act 1994*:
 - (a) an application for development consent for clearing is not required to be accompanied by a species impact statement or statements (as would otherwise be required under section 78A of the EPA Act), and
 - (b) the Minister is not required to consult with the Minister administering the *Threatened Species Conservation Act 1995* and the Minister administering the *Fisheries Management Act 1994* (as would otherwise be required under section 79B of the EPA Act).