



New South Wales

# Threatened Species Conservation Amendment (Biodiversity Banking) Bill 2006

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to establish a biodiversity banking and offsets scheme (the *biobanking scheme*).

The biobanking scheme has the following key elements:

- (a) the establishment of biobank sites on land by means of biobanking agreements entered into between the Minister for the Environment and the owners of the land concerned,
- (b) the creation of biodiversity credits in respect of management actions carried out or proposed to be carried out on or in respect of biobank sites that improve biodiversity values,
- (c) a system that enables those biodiversity credits, once created and registered, to be traded (including by being purchased by developers) and used as an offset against the impact of proposed development on biodiversity values,
- (d) the establishment of a biobanking assessment methodology, by order of the Minister published in the Gazette, for the purpose of determining both the number of biodiversity credits that may be created in respect of management actions or proposed management actions and the number of biodiversity

credits that must be retired in connection with a development to offset the impact of the development and ensure that it improves or maintains biodiversity values.

The Bill provides for a procedure under which a person may apply to the Director-General of the Department of Environment and Conservation (*the Director-General*) for a biobanking statement in respect of a development proposal.

If a biobanking statement is issued, it will not be necessary for the development to be assessed in accordance with the threatened species protection measures provided for by Parts 4 and 5 of the *Environmental Planning and Assessment Act 1979*. However, the developer may be required to purchase and retire sufficient biodiversity credits to ensure that the impact of the development on biodiversity values is offset and to take other onsite measures to minimise any negative impact on biodiversity values.

Biobanking statements may also be issued in respect of development approved under Part 3A of the *Environmental Planning and Assessment Act 1979*.

Initially, participation by developers in the biobanking scheme is optional. However, the Bill allows a State environmental planning policy to contain provisions that declare specified development or classes of development to be development for which biobanking is compulsory after an initial trial period for the scheme has elapsed.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent.

**Clause 3** is a formal provision that gives effect to the amendments to the *Threatened Species Conservation Act 1995* set out in Schedule 1.

**Clause 4** is a formal provision that gives effect to consequential amendments to other Acts and legislation set out in Schedule 2.

**Clause 5** provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced, the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

## **Schedule 1      Amendment of Threatened Species Conservation Act 1995**

### **Principal amendment**

The principal amendment is **Schedule 1 [6]**. It inserts a new Part 7A in the *Threatened Species Conservation Act 1995* which contains key provisions relating to the biobanking scheme.

### **Preliminary matters**

Division 1 of proposed Part 7A contains definitions, and provides for the establishment of a biobanking scheme with the key elements described in the overview. It also provides for the establishment of a biobanking assessment methodology. The methodology, which is to be established by order of the Minister published in the Gazette, will contain rules with respect to the following:

- (a) the actions or proposed actions in respect of which biodiversity credits may be created (*management actions*), being actions that will improve biodiversity values,
- (b) the creation of biodiversity credits or different classes of biodiversity credits in respect of management actions carried out, being carried out or proposed to be carried out on or in respect of biobank sites,
- (c) the circumstances in which development is to be regarded as improving or maintaining biodiversity values, including where the impact of that development is offset against the impact of management actions for which biodiversity credits are created,
- (d) any impact on biodiversity values that cannot be offset by the retirement of biodiversity credits.

This methodology will be used as both the basis for calculating the number of biodiversity credits that may be created in respect of management actions and the number of biodiversity credits that must be retired in respect of development.

### **Biobanking agreements**

Division 2 of proposed Part 7A provides for biobanking agreements. These are agreements entered into between the Minister and land owners that designate land to be a biobank site. The agreements will require or authorise the land owner to carry out management actions in respect of the land. Biodiversity credits may be created in respect of management actions carried out, being carried out or proposed to be carried out on the land in accordance with the biobanking agreement and the biobanking assessment methodology.

Biobanking agreements are registered on title to land and generally have effect in perpetuity. The agreements are binding on the owner (including successors in title to the owner) and the Minister. They may be varied or terminated in limited circumstances. Generally speaking, the obligations can be varied or terminated only if the variation or termination does not have a negative impact on the biodiversity values protected by the agreement. If the variation or termination does have a negative impact, the Minister may require appropriate measures to be taken to offset any negative impact of the variation or termination on the biodiversity values protected by the agreement (such as the cancellation or retirement of biodiversity credits).

Management actions carried out under a biobanking agreement are exempt from the requirement for development consent or environmental assessment under the *Environmental Planning and Assessment Act 1979*, unless otherwise provided by the regulations.

Biobanking agreements may be enforced (by any person) by action taken in the Land and Environment Court. The Bill also confers other enforcement powers on the Minister and Departmental officers.

A biobanking agreement may not be suspended under the *Environmental Planning and Assessment Act 1979* to enable development to be carried out on a biobank site except with the concurrence of the Minister to the suspension. The Bill also contains special provision for dealing with proposals by public authorities affecting biobank sites.

### **Creation of biodiversity credits**

Division 3 of proposed Part 7A provides for the creation of biodiversity credits. Biodiversity credits are created by the Director-General, on application of the owner of a biobank site, in respect of management actions carried out, being carried out or proposed to be carried out on a biobank site.

A biodiversity credit may be created only in respect of a management action carried out, being carried out or proposed to be carried out on a registered biobank site. Entry into a biobanking agreement leads to an automatic entitlement to the registration of the biobank site. However, the Director-General may suspend or cancel registration if a biobank site owner breaches any conditions of a biobanking agreement or contravenes a provision of proposed Part 7A or the regulations under the Part. If registration is suspended or cancelled, the obligation to carry out the management actions required in respect of the biobank site continues, even though the owner ceases to be entitled to create biodiversity credits.

The Bill sets out a procedure under which biobank site owners may apply to the Director-General for the creation of a biodiversity credit. The number of credits and class (if any) that may be created is determined in accordance with the biobanking assessment methodology and the relevant provisions of the biobanking agreement. Once created, a credit remains in force unless it is cancelled or retired under the scheme.

### **Trading in biodiversity credits**

Division 4 of proposed Part 7A provides for trading in biodiversity credits. Once created, a biodiversity credit may be transferred to any person subject to the regulations. The regulations may require an amount to be paid, on the first transfer of a biodiversity credit, into a fund called the Biobanking Trust Fund (the purpose of the Fund is explained below). Transfers of biodiversity credits have effect when registered under the scheme. Other transactions in biodiversity credits may be permitted by the regulations.

### **Cancellation, suspension and retirement of biodiversity credits**

Division 5 of proposed Part 7A provides that a credit may be cancelled by the Director-General because of a wrongdoing by the person who applied for the creation of the credit or for other specified reasons. The Director-General may also cancel a credit at the request of or with the consent of the holder of the credit.

The Director-General may suspend a credit, for a period of up to 2 months, pending an investigation into whether there are grounds for cancelling a biodiversity credit. A biodiversity credit cannot be traded or retired during any suspension period.

The Bill also provides for the retirement of biodiversity credits. A biodiversity credit may be retired when it is used as an offset in connection with a development proposal (see below), retired voluntarily or retired for the purpose of complying with a direction given to a person under proposed Part 7A. A biobank site owner (or former owner) may be directed to retire credits in certain circumstances because of a wrongdoing by the person under the scheme. Failure to comply with such a direction carries a maximum penalty of 5,000 penalty units (currently \$550,000).

### **Biobanking statements**

Division 6 of proposed Part 7A provides for the issue of biobanking statements. A biobanking statement may be issued in respect of development and activities to which Parts 4 and 5 of the *Environmental Planning and Assessment Act 1979* apply and projects to which Part 3A of that Act applies, unless the development concerned requires approval under the *Native Vegetation Act 2003* or is excluded by regulations.

The Bill sets out a procedure for applying for a biobanking statement in respect of a development. The application is required to include an assessment of the impact or likely impact of the development on biodiversity values, prepared in accordance with the biobanking assessment methodology, and a description of the biodiversity credits proposed to be retired to offset that impact or likely impact. An applicant for a biobanking statement is also required to demonstrate that all cost effective onsite measures to minimise the impact of the development on biodiversity values are being or will be carried out.

The Director-General may issue a biobanking statement only if the development will improve or maintain biodiversity values. A development is to be regarded as improving or maintaining biodiversity values only if a determination is made by the Director-General, on the basis of an assessment of the development in accordance with the biobanking assessment methodology, that the development will improve or maintain biodiversity values. The Director-General may issue a biobanking statement in respect of a development that does not improve or maintain biodiversity values only if directed to do so by the Minister. (The Minister is authorised to give such a direction only in relation to projects under Part 3A of the *Environmental Planning and Assessment Act 1979*.)

A biobanking statement is to describe the development to which it applies and any conditions applicable to the issue of the statement. The conditions may include conditions as to onsite measures required to minimise the impact of the development on biodiversity values, and a credit retirement condition. A credit retirement condition is a requirement to retire biodiversity credits specified in the statement, in accordance with a timetable also specified, as an offset against the impact of the development on biodiversity values.

If a biobanking statement is issued in respect of a development, the development is not required to be assessed in accordance with the threatened species assessment provisions contained in Parts 4 and 5 of the *Environmental Planning and Assessment Act 1979*, and the provisions for consulting with, or obtaining the concurrence of, the Minister for the Environment and the Director-General in relation to a development do not apply. However, the development or activity must be consented to, approved or carried out under that Act subject to the conditions of the biobanking statement.

The Bill provides for the modification and revocation of biobanking statements. Biobanking statements will lapse (unless sooner revoked) at the end of the period of 2 years after issue if no further action under the *Environmental Planning and Assessment Act 1979* has been taken in respect of the development.

The Minister may make an order directing a person to retire credits in accordance with a condition of a biobanking statement if a credit retirement condition is not complied with. Failure to comply with such a direction carries a maximum penalty of 10,000 penalty units (currently \$1,100,000).

The Director-General may issue a statement verifying that biodiversity credits have been retired in accordance with a credit retirement condition.

### **Financial matters**

Division 7 of proposed Part 7A provides for the establishment of a fund called the Biobanking Trust Fund. The purpose of the Fund is to provide funding for the management actions carried out by land owners under biobanking agreements. It is intended that the main source of revenue for the Fund will be a requirement, imposed by regulations, that a specified amount be paid into the Fund whenever a biodiversity credit is first sold or transferred. The money will be paid to owners of biobank sites from the Fund in accordance with arrangements specified in biobanking agreements.

The Bill provides for other amounts that may be paid into, or out of, the Fund. It also makes provision in respect of the management and control of the Fund by a Fund Manager appointed by the Minister.

The Bill enables the regulations to require participants in the biobanking scheme to pay a contribution towards the costs of management and administration of the scheme, the costs of ensuring compliance with the scheme and other costs relating to the scheme. Participants in the scheme include biobank site owners, holders of biodiversity credits, persons who apply for or are entitled to act on biobanking statements and persons accredited as conservation brokers under the scheme.

The Bill provides for the establishment of a separate account in the Treasury called the Biodiversity Banking Account to provide for the costs of administration of the scheme.

### **Registers**

Division 8 of proposed Part 7A provides for the establishment of the following registers, to be kept by the Director-General:

- (a) a register of biobank sites,
- (b) a register of biodiversity credits,
- (c) a register of biobanking statements.

The Division provides for evidentiary matters relating to the registers and for correction of the registers.

### **Miscellaneous**

Division 9 of proposed Part 7A provides for appeals to the Land and Environment Court against various decisions that may be made under the new Part.

The Division also makes provision for the participation of conservation brokers in the scheme and the participation of the Minister. The Minister, Director-General and department officers are exempted from liability for things done in good faith under the scheme. The Division also provides for the making of regulations in connection with the scheme, and exempts those regulations from staged repeal requirements under the *Subordinate Legislation Act 1989*.

### **Other amendments**

**Schedule 1 [1] and [2]** provide for a new definition of *biodiversity values*. The purpose of the new definition is to emphasise that biodiversity values include the composition, structure and function of ecosystems (and not just individual threatened species, populations and ecological communities).

**Schedule 1 [3] and [4]** are consequential amendments to the provisions of the *Threatened Species Conservation Act 1995* relating to biodiversity certification of environmental planning instruments. These amendments make it clear that biodiversity certification may be granted subject to conditions that limit it to certain types of development and that the certification does not apply to any development declared by a State environmental planning policy to be development for which biobanking is compulsory.

**Schedule 1 [9]** allows proceedings for offences under the *Threatened Species Conservation Act 1995* to be taken in the Land and Environment Court (in addition to the Local Court). This is consequential on the amendments contained in the Bill that provide for significant penalties for breaches of requirements made under the scheme.

**Schedule 1 [5] and [8]** repeal and re-enact a provision of the *Threatened Species Conservation Act 1995* relating to the accreditation of persons to prepare assessments and surveys. The purpose of the change is to allow the accreditation provisions to be extended to the biobanking scheme.

**Schedule 1 [7]** provides for a renumbering of provisions.

**Schedule 1 [10]** enables the making of savings and transitional regulations.

**Schedule 1 [11]** provides for savings and transitional matters.

## **Schedule 2      Amendment of other Acts and legislation**

### **Amendments to Environmental Planning and Assessment Act 1979**

**Schedule 2.1 [1]** enables the making of a State environmental planning policy that declares any development or class of development (being development for which biobanking is available) to be development for which biobanking is compulsory under Part 4 or 5 of the *Environmental Planning and Assessment Act 1979*. Such a State environmental planning policy is not to be made until a period agreed between the Minister administering that Act and the Minister administering the *Threatened Species Conservation Act 1995* has elapsed since the establishment of the scheme, and the Minister administering the *Threatened Species Conservation Act 1995* certifies that the development concerned is suitable to be treated as development for which biobanking is compulsory. Projects to which Part 3A of the *Environmental Planning and Assessment Act 1979* applies cannot be declared to be development for which biobanking is compulsory.

If development is declared to be development for which biobanking is compulsory, **Schedule 2.1 [7] and [13]** provide for the following consequences:

- (a) if the development is development that requires consent under Part 4 of the *Environmental Planning and Assessment Act 1979*—the consent authority must not grant consent to the development unless a biobanking statement has been issued, and must grant consent subject to the conditions of the biobanking statement,
- (b) if the development is an activity for which a determining authority is granting approval under Part 5 of the *Environmental Planning and Assessment Act 1979*—the determining authority must not grant the approval or carry out the activity unless a biobanking statement has been issued and must grant the approval, or carry out the activity, subject to the conditions of the biobanking statement.

**Schedule 2.1 [2]** allows the Minister administering the *Environmental Planning and Assessment Act 1979*, when granting approval to a project under Part 3A of that Act, to require the proponent of the project to acquire and retire biodiversity credits in respect of the project (whether or not a biobanking statement is obtained). The Minister may also require the proponent to obtain a biobanking statement and to comply with the conditions of the statement.



**Schedule 2.1 [3]** provides that a State environmental planning policy that declares development to be development for which biobanking is compulsory does not apply in respect of a Part 3A project that is dealt with (following approval of a concept plan) under other Parts of the *Environmental Planning and Assessment Act 1979*.

**Schedule 2.1 [8] and [9]** prevent a consent authority from making any significant modifications to a development consent granted in relation to development for which a biobanking statement was issued, unless a new biobanking statement is obtained.

**Schedule 2.1 [10]** requires a determining authority that assesses an activity under Part 5 of the *Environmental Planning and Assessment Act 1979* to have regard to the impact of the activity (if any) on a biobanking agreement.

**Schedule 2.1 [4], [5], [6], [11] and [12]** insert notes in the *Environmental Planning and Assessment Act 1979* to assist in identifying the interaction between the provisions in that Act and the provisions to be inserted in the *Threatened Species Conservation Act 1995*.

#### **Amendments to Environmental Planning and Assessment Regulation 2000**

**Schedule 2.2** makes it clear the requirements in respect of a development application for which a biobanking statement has been issued are modified (so that an indication of the effect of the development on threatened species, populations or ecological communities, or their habitats, or a species impact statement is not required).

#### **Amendments to Land and Environment Court Act 1979**

**Schedule 2.3** makes consequential amendments to the *Land and Environment Court Act 1979* to allocate appeals and other proceedings under the new provisions of the *Threatened Species Conservation Act 1995* to the appropriate class of jurisdiction of the Court.

#### **Amendments to Land Tax Management Act 1956**

**Schedule 2.4** exempts biobank sites from land tax (in a manner similar to the treatment of conservation areas under the *National Parks and Wildlife Act 1974*).

#### **Amendments to National Parks and Wildlife Act 1974**

The amendments in **Schedule 2.5** are consequential on the creation of a separate account to cover the costs of administering the biobanking scheme. The amendments ensure that the account is separate from the account kept under the *National Parks and Wildlife Act 1974*.





New South Wales

# Threatened Species Conservation Amendment (Biodiversity Banking) Bill 2006

## Contents

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	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Threatened Species Conservation Act 1995 No 101	2
4 Amendment of other Acts and legislation	2
5 Repeal of Act	2
Schedule 1 Amendment of Threatened Species Conservation Act 1995	3
Schedule 2 Amendment of other Acts and legislation	51





New South Wales

# Threatened Species Conservation Amendment (Biodiversity Banking) Bill 2006

No. , 2006

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## A Bill for

An Act to amend the *Threatened Species Conservation Act 1995* to establish a biodiversity banking and offsets scheme; and to amend other Acts consequentially.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Threatened Species Conservation Amendment (Biodiversity Banking) Act 2006</i> .	3 4
<b>2 Commencement</b>	5
This Act commences on the date of assent.	6
<b>3 Amendment of Threatened Species Conservation Act 1995 No 101</b>	7
The <i>Threatened Species Conservation Act 1995</i> is amended as set out in Schedule 1.	8 9
<b>4 Amendment of other Acts and legislation</b>	10
The Acts and other legislation specified in Schedule 2 are amended as set out in that Schedule.	11 12
<b>5 Repeal of Act</b>	13
(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.	14 15
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	16 17

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<b>Schedule 1</b>	<b>Amendment of Threatened Species Conservation Act 1995</b>	1
		2
	(Section 3)	3
<b>[1] Section 4 Definitions</b>		4
	Insert in alphabetical order in section 4 (1):	5
	<i>biodiversity values</i> has the meaning given by section 4A.	6
<b>[2] Section 4A</b>		7
	Insert after section 4:	8
<b>4A Biodiversity values—meaning</b>		9
(1)	For the purposes of this Act, <i>biodiversity values</i> includes the composition, structure and function of ecosystems, and includes (but is not limited to) threatened species, populations and ecological communities, and their habitats.	10 11 12 13
(2)	However, a reference in this Act to biodiversity values does not extend to biodiversity values as they relate to fish, or marine vegetation, within the meaning of Part 7A of the <i>Fisheries Management Act 1994</i> , other than those that are considered to be animals or plants because of an order made under section 5A of this Act.	14 15 16 17 18 19
<b>[3] Section 126H</b>		20
	Omit the section. Insert instead:	21
<b>126H Certification can be conditional</b>		22
(1)	Biodiversity certification of an EPI can be subject to conditions, including conditions that:	23 24
(a)	limit the certification to specified threatened species, populations and communities or to a specified part of the land to which the EPI applies, or	25 26 27
(b)	limit the certification to specified development or activities.	28 29
(2)	Unless limited by the conditions of the certification, biodiversity certification of an EPI applies:	30 31
(a)	to the whole of the land to which the EPI applies, and	32
(b)	to all development and activities that may be carried out under the EPI, and	33 34

	(c) to all threatened species, populations and ecological communities.	1 2
<b>[4]</b>	<b>Section 126I Effect of biodiversity certification</b>	3
	Omit section 126I (3). Insert instead:	4
	(3) This section applies subject to the conditions of the biodiversity certification.	5 6
	(4) This section does not apply to any development declared to be development for which biobanking is compulsory under a State environmental planning policy made under the <i>Environmental Planning and Assessment Act 1979</i> .	7 8 9 10
<b>[5]</b>	<b>Section 126O Director-General may accredit persons to prepare threatened species assessments and surveys</b>	11 12
	Omit the section.	13
<b>[6]</b>	<b>Part 7A</b>	14
	Insert after Part 7:	15
	<b>Part 7A Biodiversity banking</b>	16
	<b>Introductory note.</b> This Part provides for the establishment of a biodiversity banking and offsets scheme (referred to as <i>the biobanking scheme</i> ).	17 18
	The biobanking scheme has the following key elements:	19
	(a) the establishment of biobank sites on land by means of biobanking agreements entered into between the Minister and the owners of the lands concerned,	20 21
	(b) the creation of biodiversity credits in respect of management actions carried out or proposed to be carried out on or in respect of biobank sites that improve biodiversity values,	22 23 24
	(c) a system that enables those biodiversity credits, once created and registered, to be traded (including by being purchased by developers) and used as an offset against the impact of proposed development on biodiversity values,	25 26 27
	(d) the establishment of a biobanking assessment methodology, by order of the Minister published in the Gazette, for the purpose of determining both the number of biodiversity credits that may be created in respect of management actions or proposed management actions and the number of biodiversity credits that must be retired in connection with a development in order to ensure that it improves or maintains biodiversity values.	28 29 30 31 32 33
	This Part provides for a procedure under which a person may apply to the Director-General for a biobanking statement in respect of a development proposal.	34 35
	If a biobanking statement is issued, it will not be necessary for the development to be assessed in accordance with the threatened species protection measures provided for by Parts 4 and 5 of the <i>Environmental Planning and Assessment Act 1979</i> . However, the developer may be required to purchase and retire sufficient biodiversity credits to ensure that the impact of the development on biodiversity values is offset and to take other onsite measures to minimise any negative impact on biodiversity values.	36 37 38 39 40 41



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Biobanking statements may also be issued in respect of projects proposed to be approved under Part 3A of the *Environmental Planning and Assessment Act 1979*. 1  
2

Initially, participation by developers in the biobanking scheme is voluntary. However, 3  
the *Environmental Planning and Assessment Act 1979* allows a State environmental 4  
planning policy to be made, after an agreed period has elapsed since the establishment 5  
of the biobanking scheme, that declares any development or activity dealt with under 6  
Part 4 or 5 of that Act to be development for which biobanking is compulsory. If such a 7  
State environmental planning policy is made, that Act prevents development consent 8  
from being granted in respect of the development concerned or, in the case of an 9  
activity under Part 5 of that Act, prevents a determining authority from approving or 10  
carrying out the activity, unless a biobanking statement has been issued in respect of 11  
the development or activity. 12

## **Division 1 Preliminary** 13

### **127 Definitions** 14

(1) In this Part: 15

**biobank site** means land that is designated by a biobanking agreement to be a biobank site for the purposes of this Act. 16  
17

**biobanking agreement** means an agreement entered into under Division 2. 18  
19

**biobanking assessment methodology** means the rules established under section 127B. 20  
21

**biobanking scheme** means the biodiversity banking and offsets scheme established under this Part. 22  
23

**biobanking statement** means a biobanking statement issued and in force under this Part. 24  
25

**Biobanking Trust Fund** means the Biobanking Trust Fund established under this Part. 26  
27

**Biodiversity Banking Account** means the Biodiversity Banking Account established under this Part. 28  
29

**biodiversity credit** means a biodiversity credit created under this Part. 30  
31

**consent authority** has the same meaning as in the *Environmental Planning and Assessment Act 1979*. 32  
33

**credit retirement condition** has the meaning given by section 127ZH. 34  
35

**development** means development within the meaning of the *Environmental Planning and Assessment Act 1979*, and includes an activity within the meaning of Part 5 of that Act. 36  
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**development for which biobanking is available** has the meaning given by section 127ZD. 39  
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**development for which biobanking is compulsory** means development, or development of a class, declared by a State environmental planning policy made under the *Environmental Planning and Assessment Act 1979* to be development for which biobanking is compulsory. 1  
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**Fund Manager** means the person for the time being appointed under this Part as Fund Manager in respect of the Biobanking Trust Fund. 6  
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**holder** of a biodiversity credit means a person for the time being recorded as the holder of that credit in the register of biodiversity credits. 9  
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**management action** means an action or proposed action in respect of which a biodiversity credit may be created. 12  
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**owner**, in relation to land, includes: 14

(a) every person who, either at law or in equity: 15

(i) is entitled to the land for any estate of freehold in possession, or 16  
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(ii) is a person to whom the Crown has lawfully contracted to sell the land under the *Crown Lands Act 1989*, the *Crown Lands Consolidation Act 1913* or any other Act relating to the alienation of lands of the Crown, or 18  
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(iii) is entitled to receive, or is in receipt of, or if the land were let to a tenant would be entitled to receive, the rents and profits in respect of the land, whether as beneficial owner, trustee, mortgagee in possession or otherwise, or 23  
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(b) a person who leases land under the *Crown Lands Act 1989*, the *Crown Lands Consolidation Act 1913* or the *Western Lands Act 1901*. 28  
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**register of biobank sites** means the register of biobank sites kept by the Director-General under this Part. 31  
32

**register of biobanking statements** means the register of biobanking statements kept by the Director-General under this Part. 33  
34  
35

**register of biodiversity credits** means the register of biodiversity credits kept by the Director-General under this Part. 36  
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(2) In this Part, a reference to an action, or carrying out an action, includes a reference to doing any thing or refraining from doing any thing. 38  
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<b>127A</b>	<b>Establishment of biobanking scheme</b>	1
(1)	There is established by this Part a biodiversity banking and offsets scheme (the <i>biobanking scheme</i> ).	2 3
(2)	The biobanking scheme has the following key elements:	4
(a)	the establishment of biobank sites on land by means of biobanking agreements entered into between the Minister and the owners of the lands concerned,	5 6 7
(b)	the creation of biodiversity credits in respect of management actions carried out or proposed to be carried out on or in respect of biobank sites that improve biodiversity values,	8 9 10 11
(c)	a system that enables those biodiversity credits, once created and registered, to be traded (including by being purchased by developers) and used as an offset against the impact of proposed development on biodiversity values,	12 13 14 15
(d)	the establishment of a biobanking assessment methodology, by order of the Minister published in the Gazette, for the purpose of determining both the number of biodiversity credits that may be created in respect of management actions or proposed management actions and the number of biodiversity credits that must be retired in connection with a development to offset the impact of the development and ensure that it improves or maintains biodiversity values.	16 17 18 19 20 21 22 23 24
<b>127B</b>	<b>Biobanking assessment methodology</b>	25
(1)	The Minister may, by order published in the Gazette, establish rules with respect to the following:	26 27
(a)	the actions or proposed actions in respect of which biodiversity credits may be created ( <i>management actions</i> ), being actions that will improve biodiversity values,	28 29 30 31
(b)	the creation of biodiversity credits or different classes of biodiversity credits in respect of management actions that have been carried out, are being carried out or are proposed to be carried out on or in respect of biobank sites,	32 33 34 35
(c)	the circumstances in which development is to be regarded as improving or maintaining biodiversity values, including where the impact of that development is offset against the impact of management actions for which biodiversity credits are created,	36 37 38 39 40

Threatened Species Conservation Amendment (Biodiversity Banking)  
Bill 2006

Schedule 1      Amendment of Threatened Species Conservation Act 1995

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- (d) any impact on biodiversity values that cannot be offset by the retirement of biodiversity credits. 1  
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- (2) In particular, the rules are to establish a methodology for the following: 3  
4
  - (a) assessing the impact or likely impact of management actions or development on biodiversity values, 5  
6
  - (b) determining the number and class of biodiversity credits that can be created in respect of a management action, and the times at which they may be created, 7  
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  - (c) determining the number and class of biodiversity credits that are required to be retired in respect of development, as an offset against the impact of the development on biodiversity values, pursuant to the issue of a biobanking statement. 10  
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- (3) A methodology provided for by the rules may include provision for the use of specified computer programs or databases. 15  
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- (4) The rules must comply with any requirements set out in the regulations, including as to the types of actions or proposed actions in respect of which biodiversity credits may be created. 17  
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- (5) Subject to any requirements of the regulations, refraining from doing any thing (whether or not that thing was being done beforehand) may be treated by the rules as an action that improves biodiversity values, if refraining from doing that thing improves biodiversity values or the long term security of biodiversity values. This does not limit the generality of subsection (1) (a). 20  
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- (6) The Director-General is to ensure that a copy of the biobanking assessment methodology is available for public inspection: 27  
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  - (a) at the head office of the Department, and 29
  - (b) on the website of the Department. 30
- (7) Copies of the biobanking assessment methodology, or of any part of the methodology, are to be made available to the public on request, on payment of a fee (if any) fixed by the Director-General. 31  
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- (8) The regulations may: 35
  - (a) prescribe the circumstances in which the Minister is authorised to make an order that amends, repeals or replaces the biobanking assessment methodology, including by requiring consultation to be carried out before such an order is made, and 36  
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(b)	require the Minister to undertake a periodic review of the biobanking assessment methodology and provide for consultation in respect of that review.	1 2 3
(9)	Subject to any requirements of the regulations, the biobanking assessment methodology may be amended, repealed or replaced by further order of the Minister published in the Gazette.	4 5 6
(10)	A biobanking agreement cannot be entered into, and a biobanking statement cannot be issued, until the biobanking assessment methodology is published under this section.	7 8 9
(11)	The biobanking assessment methodology must include provisions that ensure that if an environmental contribution is payable in respect of a development, the number of biodiversity credits required to be retired in respect of the development is reduced (or is nil) to take account of that environmental contribution.	10 11 12 13 14 15
(12)	In this section, <i>environmental contribution</i> means any of the following contributions, or a part of such a contribution, if the contribution or part is required, or is to be used or applied, for the conservation or enhancement of the natural environment:	16 17 18 19
(a)	a development contribution payable under Subdivision 4 of Division 6 of Part 4 of the <i>Environmental Planning and Assessment Act 1979</i> ,	20 21 22
(b)	a monetary contribution required by a planning agreement under Division 6 of Part 4 of that Act.	23 24
<b>Division 2</b>	<b>Biobanking agreements</b>	25
<b>127C</b>	<b>Biobanking agreements</b>	26
(1)	The Minister may enter into an agreement relating to land with the owner of the land for the purpose of establishing a biobank site (a <i>biobanking agreement</i> ).	27 28 29
(2)	Any such agreement may designate any land to which the agreement relates to be a biobank site for the purposes of this Part.	30 31 32
(3)	The regulations may set out criteria for land to be designated as a biobank site by a biobanking agreement.	33 34
(4)	Without limiting subsection (3), the regulations may exclude any land, or land of a particular class, from being designated as a biobank site by a biobanking agreement.	35 36 37

(5)	Land may be designated as a single biobank site even if the land consists of separate parcels of land and whether or not the parcels are adjacent (but only if the land is owned by the same person or persons).	1 2 3 4
(6)	The regulations may prescribe a procedure for applying to the Minister to enter into a biobanking agreement, including by requiring a fee to be paid in respect of an application.	5 6 7
(7)	The Minister must consult with the Minister for Planning and the Minister for Primary Industries before entering into any biobanking agreement.	8 9 10
<b>127D</b>	<b>Content of biobanking agreements</b>	11
(1)	A biobanking agreement may contain any of the following terms, binding on the owner from time to time of the land:	12 13
(a)	requiring or authorising the owner to carry out specified management actions on the land,	14 15
(b)	providing for the number and class of biodiversity credits that can be created in respect of any of those management actions in accordance with the biobanking assessment methodology,	16 17 18 19
(c)	providing for the timing of the creation of biodiversity credits and their release for sale,	20 21
(d)	requiring the owner of the land to carry out or continue to carry out any management action in perpetuity, unless otherwise specified (even if a biodiversity credit has already been created in respect of the action or has been transferred or retired),	22 23 24 25 26
(e)	restricting the use of the biobank site,	27
(f)	requiring the owner to permit access to the biobank site by specified persons or persons of a specified class and to allow those persons to take any specified action on the land,	28 29 30 31
(g)	providing for monitoring, reporting and audit requirements,	32 33
(h)	providing for the entitlement of the owner to payments from the Biobanking Trust Fund,	34 35
(i)	specifying the manner in which any money provided to the owner under the agreement is to be applied by the owner,	36 37
(j)	requiring the owner to repay money paid to the owner under the agreement if a specified breach of the agreement occurs,	38 39 40

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| (k)         | specifying the remedial measures that must be taken in the event that any contingency that has a negative impact on the biodiversity values protected by the agreement or that prevents or disrupts the continuation of a management action in respect of which biodiversity credits are in force or have been retired, | 1<br>2<br>3<br>4<br>5<br>6 |
| (l)         | providing for any other matter relating to a biobank site.  | 7                          |
| (2)         | A biobanking agreement may contain any of the following terms, binding on the Minister:   | 8<br>9                     |
| (a)         | requiring the Minister to direct that payments be made from the Biobanking Trust Fund to the owner of the land,   | 10<br>11                   |
| (b)         | requiring the Minister to provide technical advice,   | 12                         |
| (c)         | requiring the Minister to provide other assistance,   | 13                         |
| (d)         | requiring the Minister to carry out specified activities or do specified things,  | 14<br>15                   |
| (e)         | providing for any other matter relating to a biobank site.  | 16                         |
| (3)         | If the biobanking assessment methodology is amended or replaced after a biobanking agreement is entered into, the biobanking agreement prevails to the extent of any inconsistency between the agreement and the provisions of the biobanking assessment methodology as amended or replaced.                            | 17<br>18<br>19<br>20<br>21 |
| <b>127E</b> | <b>General provisions relating to biobanking agreements</b>   | 22                         |
| (1)         | The Minister must not enter into a biobanking agreement relating to land unless:  | 23<br>24                   |
| (a)         | all the owners of the land are parties to the agreement or have consented in writing to the agreement, and  | 25<br>26                   |
| (b)         | where the land (not being land referred to in subsection (5)) is subject to a residential tenancy agreement or other lease, the tenant or the lessee has consented in writing to the biobanking agreement, and  | 27<br>28<br>29<br>30       |
| (c)         | where the land is subject to a mortgage, charge or positive covenant, the mortgagee, chargee or person entitled to the benefit of the covenant has consented in writing to the agreement.   | 31<br>32<br>33<br>34       |
| (2)         | The Minister may enter into a biobanking agreement relating to land that is Crown lands or lands of the Crown:  | 35<br>36                   |
| (a)         | with a public authority (not being a Department of the Public Service) that owns or has the control and management of the land, or  | 37<br>38<br>39             |

Threatened Species Conservation Amendment (Biodiversity Banking)  
Bill 2006

Schedule 1      Amendment of Threatened Species Conservation Act 1995

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(b)	if the land is under the control and management of a Department of the Public Service, with the responsible Minister.	1 2 3
(3)	If a biobanking agreement is entered into under subsection (2) by a public authority that, or responsible Minister who, is not the owner of the land concerned:	4 5 6
(a)	the agreement is taken to have been entered into on behalf of the owner of the land, and	7 8
(b)	a reference in this Part to the owner of the land (however expressed) includes, while a public authority has the control and management of the land, a reference to the public authority that has that control and management and, if the public authority is a Department of the Public Service, the responsible Minister.	9 10 11 12 13 14
(4)	The Minister must not enter into a biobanking agreement relating to Crown-timber lands within the meaning of the <i>Forestry Act 1916</i> except with the consent of the Minister administering that Act.	15 16 17 18
(5)	The Minister must not enter into a biobanking agreement for land leased under the <i>Crown Lands Act 1989</i> , the <i>Crown Lands Consolidation Act 1913</i> or the <i>Western Lands Act 1901</i> except with the consent of the Minister administering the relevant Act.	19 20 21 22
<b>127F</b>	<b>Duration of agreements</b>	23
(1)	A biobanking agreement has effect from a day, or on the happening of an event, specified in the agreement.	24 25
(2)	A biobanking agreement has effect in perpetuity, unless:	26
(a)	it is terminated by consent of the Minister and all the owners (for the time being) of the biobank site concerned, or	27 28 29
(b)	it is terminated by the Minister (without the consent of the owners), and that termination is authorised by this Part.	30 31
(3)	The Minister must not consent to the termination of a biobanking agreement unless such measures as may be required by the Minister are taken by the owner of the biobank site to offset any negative impact of the termination on the biodiversity values protected by the agreement. This subsection does not apply if voluntary termination of the agreement is permitted under this section.	32 33 34 35 36 37 38



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| (4)         | For the purposes of subsection (3), the required measures may include one or more of the following:  | 1  |
|             | (a) the cancellation of credits created in relation to the biobank site,   | 2  |
|             | (b) the retirement of credits created in relation to another biobank site,   | 3  |
|             | (c) entering into a biobanking agreement for the purpose of establishing another biobank site.   | 4  |
| (5)         | The Minister must consent to the termination of a biobanking agreement on the request of the owner of the biobank site if voluntary termination of the agreement is permitted under this section.  | 5  |
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| (6)         | For the purposes of this section, voluntary termination of a biobanking agreement is permitted only if the owner of the biobank site requests the termination of the agreement within 3 months after it is entered into, or after the expiry of 5 years after the agreement has been entered into, and at the time of termination: | 7  |
|             | (a) no biodiversity credits have been created in respect of the biobank site, or   | 8  |
|             | (b) in a case where biodiversity credits have been created, the owner of the biobank site is the holder of all credits that have been created since registration of the biobank site, none of the credits created have been retired and all the credits are cancelled by the Director-General with the consent of the owner.       | 9  |
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| (7)         | The regulations may prescribe a procedure for applying for the consent of the Minister to the termination of an agreement, including by requiring a fee to be paid in respect of an application.   | 11 |
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| <b>127G</b> | <b>Variation of agreements</b>   | 31 |
| (1)         | A biobanking agreement may be varied:  | 32 |
|             | (a) by a subsequent agreement between the Minister and the owners (for the time being) of the biobank site concerned,  | 33 |
|             | or   | 34 |
|             | (b) by the Minister, without the consent of the owners, where that variation is authorised by this Part.   | 35 |
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- (2) The Minister must not agree to any variation of a biobanking agreement unless satisfied that the variation does not have a negative impact on the biodiversity values protected by the agreement or that other measures required by the Minister have been taken by the owner of the biobank site to offset any such negative impact. 1  
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- (3) For the purposes of subsection (2), the required measures may include one or more of the following: 7  
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- (a) the cancellation of credits created in relation to the biobank site, 9  
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- (b) the retirement of credits created in relation to another biobank site. 11  
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- (4) If a biobank site consists of more than one parcel of land, the Minister may consent to the variation of a biobanking agreement so as to terminate its application in respect of any single parcel of land, and the provisions of this section apply in respect of any such variation. 13  
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- (5) The regulations may prescribe a procedure for applying for the consent of the Minister to a variation of an agreement, including by requiring a fee to be paid in respect of an application. 18  
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- 127H Registration of agreements** 21
- (1) On being notified by the Minister that a biobanking agreement has been entered into, or that any such agreement has been varied or terminated, the Registrar-General must: 22  
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- (a) in the case of a biobanking agreement relating to land under the *Real Property Act 1900*—make an entry concerning the agreement, variation or termination in any folio of the Register kept under that Act that relates to that land, or 25  
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- (b) in the case of a biobanking agreement relating to land not under the *Real Property Act 1900*: 30  
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- (i) register the agreement, variation or termination in the General Register of Deeds kept under Division 1 of Part 23 of the *Conveyancing Act 1919*, and 32  
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- (ii) if appropriate, make an entry concerning the agreement, variation or termination in any official record relating to Crown land that relates to that land. 35  
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(2)	A biobanking agreement relating to land under the <i>Real Property Act 1900</i> about which an entry is made in a folio and that is in force is an interest recorded in the folio for the purposes of section 42 of that Act.	1 2 3 4
<b>127I</b>	<b>Agreements to run with land</b>	5
(1)	A biobanking agreement that has been registered by the Registrar-General and that is in force is binding on, and enforceable by and against, the successors in title to the owner who entered into the agreement and those successors in title are taken to have notice of the agreement.	6 7 8 9 10
(2)	In this section: <i>successors in title</i> includes a mortgagee, chargee, covenant chargee or other person, in possession of a biobank site pursuant to a mortgage, charge, positive covenant or other encumbrance entered into before or after the registration of the biobanking agreement.	11 12 13 14 15 16
<b>127J</b>	<b>Management actions under biobanking agreement exempt from Environmental Planning and Assessment Act 1979</b>	17 18
(1)	Management actions under a biobanking agreement for which biodiversity credits may be created under this Part are taken to be exempt development for the purposes of the <i>Environmental Planning and Assessment Act 1979</i> .	19 20 21 22
(2)	For the purposes of section 76 (3) of that Act, a reference to the environmental planning instrument in respect of such exempt development is taken to be a reference to the biobanking agreement.	23 24 25 26
(3)	The regulations may exclude any management actions from the operation of this section.	27 28
<b>127K</b>	<b>Enforcement of agreements</b>	29
(1)	Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of a biobanking agreement, whether or not any right of the person has been or may be infringed by or as a consequence of the breach.	30 31 32 33
(2)	If the Court is satisfied that a breach of the biobanking agreement has been committed or will, unless restrained by order of the Court, be committed, it may make such order as it thinks fit to remedy or restrain the breach.	34 35 36 37

Threatened Species Conservation Amendment (Biodiversity Banking)  
Bill 2006

Schedule 1      Amendment of Threatened Species Conservation Act 1995

---

- (3) Without limiting subsection (2), in the case of proceedings brought in the Court by the Minister, damages may be awarded by the Court against the owner of a biobank site for a breach of the biobanking agreement that arose from an intentional, reckless or negligent act or omission by or on behalf of the owner or a previous owner of the land (being an act or omission of which the owner had notice) including a failure by the owner or previous owner to prevent another person from causing a breach of the biobanking agreement. 1  
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- (4) In assessing damages for breach of a biobanking agreement by an owner or previous owner, the Court may have regard to: 10  
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- (a) any detriment to the public interest arising from the breach, and 12  
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- (b) any financial or other benefit that the owner or previous owner gained or sought to gain by committing the breach, and 14  
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- (c) any other matter that it considers relevant. 17
- (5) Proceedings under this section may be brought by a person on his or her own behalf or on behalf of himself or herself and on behalf of other persons (with their consent), or a body corporate or unincorporated body (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings. 18  
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- (6) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings. 24  
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- (7) Section 89 of the *Conveyancing Act 1919* does not authorise any court to modify or wholly or partially extinguish any restriction or obligation created by a biobanking agreement except with the consent of the Minister. 27  
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**127L Powers of authorised officers** 31

Without limiting section 156B of the *National Parks and Wildlife Act 1974*, the functions conferred on an authorised officer by that section may also be exercised for the purpose of determining whether there has been compliance with or a contravention of a biobanking agreement. 32  
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<b>127M</b>	<b>Minister may order owner to rectify breach of biobanking agreement</b>	1 2
(1)	The Minister may, by order under this section, direct a person who is the owner of a biobank site to carry out at the person's cost, within a period specified in the order, such work or other actions as the Minister considers necessary to rectify any breach of a biobanking agreement.	3 4 5 6 7
(2)	If the requirements of the order are not complied with within the period specified in it, the Minister:	8 9
(a)	may enter the land and cause the work or actions specified in the order to be carried out, and	10 11
(b)	may, by proceedings brought in any court of competent jurisdiction, recover as a debt from the person to whom the order was given the reasonable cost of complying with those requirements.	12 13 14 15
(3)	This section does not prevent the Minister from seeking an award of damages against the owner of a biobank site for a breach of a biobanking agreement.	16 17 18
<b>127N</b>	<b>Transfer of land to Minister</b>	19
(1)	Where a person has contravened, whether by act or omission, a biobanking agreement, the Minister may apply to the Land and Environment Court for an order that the land be conveyed or transferred to the Minister, or to another person or body nominated by the Minister.	20 21 22 23 24
(2)	Notice of the application is to be served on the owner of the land by the Minister, and otherwise the application is to be made, in accordance with any rules of the Court.	25 26 27
(3)	An order may be made under this section only where the Court is satisfied, on the balance of probabilities:	28 29
(a)	that there is a serious risk to the biodiversity values protected by the biobanking agreement because of the contravention by the person, or	30 31 32
(b)	that there is no reasonable likelihood of the person complying with the obligations imposed by the biobanking agreement, or	33 34 35
(c)	that the person has previously committed frequent contraventions of the biobanking agreement, or	36 37
(d)	that the person has persistently and unreasonably delayed complying with the obligations imposed by the biobanking agreement.	38 39 40

Threatened Species Conservation Amendment (Biodiversity Banking)  
Bill 2006

Schedule 1      Amendment of Threatened Species Conservation Act 1995

---

(4)	If the Court makes the order requested, the Court may impose such conditions on the conveyance or transfer of the land as the Court thinks fit.	1 2 3
(5)	Where land is conveyed or transferred to the Minister, or to a person or body nominated by the Minister, in accordance with an order made under this section, the consideration payable by the Minister, person or body, is to be determined in the same way as the compensation payable under the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> in respect of an acquisition of land, but is to be reduced by the amount that, in the opinion of the Court, is equivalent to any outstanding liability of the person to the Minister arising out of contravention of the biobanking agreement.	4 5 6 7 8 9 10 11 12 13
(6)	In calculating the consideration payable as referred to in subsection (5), the value of the land is to be determined having regard to the fact that it is subject to a biobanking agreement, and any increase in the value of the land attributable to anything done or omitted to be done in contravention of the biobanking agreement is to be disregarded.	14 15 16 17 18 19
<b>1270</b>	<b>Application of Environmental Planning and Assessment Act 1979</b>	20
(1)	For the purposes of section 28 of the <i>Environmental Planning and Assessment Act 1979</i> :	21 22
(a)	a biobanking agreement is taken to be a regulatory instrument, and	23 24
(b)	the Minister is responsible for the administration of such a regulatory instrument.	25 26
	<b>Note.</b> Section 28 of the <i>Environmental Planning and Assessment Act 1979</i> allows an environmental planning instrument to suspend the operation of a regulatory instrument for the purpose of enabling development to be carried out. Such a suspension cannot be given effect to without the concurrence in writing of the Minister responsible for the administration of the regulatory instrument.	27 28 29 30 31 32
(2)	The Minister is not to concur, under section 28 of the <i>Environmental Planning and Assessment Act 1979</i> , to the suspension of a biobanking agreement unless satisfied that:	33 34 35
(a)	the suspension, or any development the suspension of the biobanking agreement would enable to be carried out, does not have a negative impact on the biodiversity values protected by the agreement, or	36 37 38 39

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(b)	other measures are to be taken that will satisfactorily offset the negative impact of the suspension or development on the biodiversity values protected by the agreement (which may include the cancellation or retirement of biodiversity credits).	1 2 3 4 5
(3)	In relation to any particular biobanking agreement, a provision of an environmental planning instrument made under section 28 of the <i>Environmental Planning and Assessment Act 1979</i> and in force:	6 7 8 9
(a)	immediately before the commencement of this section, or	10
(b)	immediately before the biobanking agreement takes effect,	11
	does not affect the operation of the biobanking agreement unless the provision is subsequently amended to expressly affect the operation of the biobanking agreement.	12 13 14
<b>127P</b>	<b>Proposals by public authorities affecting biobank sites</b>	15
(1)	A public authority must not carry out development on a biobank site unless:	16 17
(a)	it has given written notice of the proposed development to the Minister and the owner of the biobank site, and	18 19
(b)	it has received written notice from the Minister consenting to the development.	20 21
(2)	The Minister may consent to the development only if:	22
(a)	the Minister is of the opinion that the proposed development will neither adversely affect any management actions that may be carried out on the land under the biobanking agreement nor adversely affect the biodiversity values protected by the agreement, or	23 24 25 26 27
(b)	the Minister is satisfied that any adverse effect of the development on biodiversity values will be offset by the retirement of biodiversity credits by the public authority, or	28 29 30 31
(c)	the development is required for an essential public purpose or for a purpose of special significance to the State.	32 33
(3)	The Minister may, as a condition of granting consent under this section, direct the public authority to retire biodiversity credits of a number and class specified by the Minister to the Director-General.	34 35 36 37

Threatened Species Conservation Amendment (Biodiversity Banking)  
Bill 2006

Schedule 1      Amendment of Threatened Species Conservation Act 1995

---

- (4) For the purpose of enabling a public authority to carry out development on a biobank site, the Minister may, by order published in the Gazette, vary or terminate a biobanking agreement without the consent of the owner of the biobank site. 1  
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- (5) A copy of the order is to be laid before each House of Parliament within 30 sitting days of that House, or such other period as may be prescribed by the regulations, after publication of the order. 5  
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- (6) The Minister is not to vary or terminate an agreement under subsection (4) unless: 8  
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- (a) written notice of the Minister's intention to vary or terminate the agreement has been given to the owner of the biobank site stating that the owner may make submissions to the Minister within the period specified in the notice (being a period of not less than 28 days), and 10  
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- (b) the Minister has considered any submissions made by the owner of the biobank site, being submissions made within that specified period. 15  
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- (7) If an agreement is varied under this section, the owner of the biobank site may, by written notice given to the Minister, terminate the agreement but only if: 18  
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- (a) no biodiversity credits have been created in respect of the biobank site, or 21  
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- (b) in a case where biodiversity credits have been created, the owner of the biobank site is the holder of all credits that have been created since registration of the biobank site (that is, none of the credits created have been retired) and all the credits are cancelled by the Director-General with the consent of the owner. 23  
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- (8) The owner of a biobank site is not entitled to any compensation as a result of any variation or termination of an agreement by the Minister under this section. 29  
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- (9) This section does not apply to any part of a biobank site that is a wilderness area within the meaning of the *Wilderness Act 1987*. 32  
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- (10) This section does not apply in respect of development proposed to be carried out by a public authority on a biobank site if the public authority is the owner of the biobank site and the proposed development is not inconsistent with the terms of the biobanking agreement. 34  
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- (11) The consent of the Minister under this section is not an approval for the purposes of Part 5 of the *Environmental Planning and Assessment Act 1979*. 39  
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<b>127Q</b>	<b>Resolution of certain disputes</b>	1
(1)	If a dispute arises as to the failure of the Minister to consent to a development proposal of a public authority under section 127P, or as to the conditions of any consent granted or proposed to be granted under that section by the Minister, a party to the dispute may submit that dispute to the Premier for settlement.	2 3 4 5 6
(2)	On the submission of a dispute to the Premier, the Premier may:	7
(a)	appoint a Commissioner of Inquiry to hold an inquiry and make a report to the Premier, or	8 9
(b)	hold an inquiry into the dispute.	10
(3)	After the completion of the inquiry, and after considering any report, the Premier may make such order with respect to the dispute, having regard to the public interest and to the circumstances of the case, as the Premier thinks fit.	11 12 13 14
(4)	An order made by the Premier may direct the payment of any costs or expenses of or incidental to the holding of the inquiry.	15 16
(5)	A Minister or public authority is to comply with an order given under this section and is, despite the provisions of any Act, taken to be empowered to comply with any such order.	17 18 19
<b>Division 3</b>	<b>Creation of biodiversity credits</b>	20
<b>127R</b>	<b>Creation of biodiversity credits</b>	21
(1)	Biodiversity credits may be created by the Director-General in accordance with this Part.	22 23
(2)	A biodiversity credit is to be created in a form approved by the Director-General.	24 25
<b>127S</b>	<b>Application for creation of biodiversity credit</b>	26
(1)	An owner of land that is a biobank site may apply to the Director-General for the creation of biodiversity credits.	27 28
(2)	An application for the creation of a biodiversity credit:	29
(a)	is to be made in a form approved by the Director-General, and	30 31
(b)	is to contain, or be accompanied by, such information as the Director-General requires in order to determine the application, and	32 33 34
(c)	is to be accompanied by a fee (if any) approved by the Director-General.	35 36

Threatened Species Conservation Amendment (Biodiversity Banking)  
Bill 2006

Schedule 1      Amendment of Threatened Species Conservation Act 1995

---

- (3) If an application is duly made, the Director-General may determine the application by creating biodiversity credits or refusing the application. 1  
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- (4) The Director-General may create biodiversity credits in respect of a biobank site without requiring an application to be lodged under this section if it is required or permitted by the relevant biobanking agreement. 4  
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- (5) The Director-General may create a biodiversity credit only if satisfied that the management action or actions in respect of which the credit is to be created has been carried out, is being carried out or will be carried out in accordance with the biobanking agreement. 8  
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- (6) The Director-General is to determine the number and class of credits to be created in accordance with the biobanking assessment methodology and any relevant provisions of the biobanking agreement. 13  
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- (7) If the Director-General creates a biodiversity credit, the Director-General must: 17  
18
  - (a) register the creation of the credit by making an entry in relation to the credit in the register of biodiversity credits, and 19  
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21
  - (b) record the owner of the land as the holder of the credit. 22
- (8) A biodiversity credit has no force or effect until it is so registered. 23
- (9) The Director-General may refuse an application for the creation of a biodiversity credit: 24  
25
  - (a) if the Director-General is not satisfied that the relevant management actions have been carried out, are being carried out or will be carried out, in accordance with the biobanking agreement, or 26  
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29
  - (b) if the creation of the credit would not comply with the biobanking agreement or the biobanking assessment methodology, or 30  
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32
  - (c) if any provision of the biobanking agreement has not been complied with (whether or not the relevant management actions have been carried out or are being carried out), or 33  
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  - (d) for any other reason specified in the regulations. 36
- (10) The Director-General must refuse an application for the creation of a biodiversity credit if the biobank site concerned is not a registered biobank site. 37  
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- (11) The regulations may prescribe a period after making an application for the creation of a biodiversity credit at the end of which, if the Director-General fails to either create or refuse to create the credit, the Director-General is taken to have refused to create the credit. 1  
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- 127T Registration of biobank sites** 6
- (1) The Director-General must register land as a biobank site if the Minister enters into a biobanking agreement under which the land is designated as a biobank site for the purposes of this Act. 7  
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- (2) The Director-General registers land as a biobank site by creating an entry in relation to the land in the register of biobank sites and recording in the register a description of the land and a copy of the biobanking agreement relating to that land. 10  
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- (3) Registration of land as a biobank site remains in force unless it is suspended or cancelled by the Director-General, by notice in writing to the owner of the land. 14  
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- (4) The Director-General must cancel the registration of land as a biobank site if there ceases to be any biobanking agreement in force that designates the land as a biobank site for the purposes of this Act. 17  
18  
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20
- (5) The Director-General may suspend or cancel the registration of land as a biobank site if the owner of the land breaches any conditions of the biobanking agreement or contravenes a provision of this Part or the regulations under this Part. 21  
22  
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24
- (6) The cancellation or suspension of registration of a biobank site does not affect any obligations of the owner of a biobank site under a biobanking agreement. In particular, it does not affect any requirement that the owner carry out, or continue to carry out, management actions in respect of the land, even though the owner ceases to be entitled (as a result of the cancellation or suspension) to create biodiversity credits. 25  
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- 127U Duration of biodiversity credit** 32
- A biodiversity credit, when registered in the register of biodiversity credits, remains in force unless it is cancelled or retired under this Part. 33  
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- Note.** A biodiversity credit cannot be transferred after it has been cancelled or retired, or during any suspension period. 36  
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<b>Division 4</b>	<b>Trading in biodiversity credits</b>	1
<b>127V</b>	<b>Transfers of biodiversity credits</b>	2
(1)	The holder of a biodiversity credit that is in force may transfer the credit to any person, subject to this section and the regulations.	3 4
(2)	A biodiversity credit cannot be transferred if it has been suspended by the Director-General and the suspension is in force.	5 6
(3)	The regulations may make further provision with respect to the transfer of biodiversity credits (including by prohibiting certain transfers of biodiversity credits).	7 8 9
<b>127W</b>	<b>Payment of amount into Biobanking Trust Fund on first transfer of credit</b>	10 11
(1)	The regulations may require a specified amount to be paid into the Biobanking Trust Fund before a first transfer of a biodiversity credit is registered under this Division.	12 13 14
(2)	The amount to be paid into the Biobanking Trust Fund, or the manner of its calculation, is to be as specified in the regulations.	15 16
(3)	The regulations may specify exemptions from the requirement to pay an amount into the Biobanking Trust Fund on the first transfer of the credit. If, because of such an exemption, no amount is payable to the Biobanking Trust Fund in respect of a first transfer of a credit, the regulations may require the amount to be paid into the Biobanking Trust Fund in respect of any subsequent transfer of the credit before the transfer is registered.	17 18 19 20 21 22 23
(4)	If a biodiversity credit is retired or proposed to be retired without having been transferred by the owner of a biobank site, the regulations may require any amount that would have been payable if the biodiversity credit had been transferred to be paid into the Biobanking Trust Fund before the credit is retired.	24 25 26 27 28
<b>127X</b>	<b>Registration of transfer of biodiversity credit</b>	29
(1)	The transfer of a biodiversity credit does not have effect until the transfer is registered by the Director-General under this Part.	30 31
(2)	An application for registration of a transfer of a biodiversity credit may be made to the Director-General by the parties to the transfer.	32 33 34
(3)	The application:	35
(a)	is to be made in a form approved by the Director-General, and	36 37

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(b)	is to be accompanied by:	1
(i)	the fee (if any) for registration of the transfer approved by the Director-General, and	2
(ii)	such other information as the Director-General requires in relation to the transfer.	3
(4)	The Director-General registers a transfer by making a recording in the register of biodiversity credits in relation to the credit to indicate that the person to whom the credit has been transferred is the holder of the biodiversity credit.	4
(5)	If an application for the transfer of a biodiversity credit is duly made, the Director-General must register the transfer unless authorised or required to refuse to register the transfer by this Act or the regulations.	5
(6)	The Director-General must refuse to register a transfer of a biodiversity credit in respect of which an amount is required to be paid to the Biobanking Trust Fund unless satisfied that the amount required to be paid to that Fund has been so paid.	6
(7)	If the Director-General refuses to register a transfer of a biodiversity credit in respect of which an amount has been paid to the Biobanking Trust Fund, the Director-General may direct the Fund Manager to repay that amount to the person who paid it, and the Fund Manager is authorised to comply with that direction.	7
<b>127Y</b>	<b>Other transactions involving biodiversity credits</b>	8
	A biodiversity credit cannot be mortgaged, assigned, leased, charged or otherwise encumbered, except as authorised by the regulations.	9
<b>Division 5</b>	<b>Cancellation, suspension and retirement of biodiversity credits</b>	10
<b>127Z</b>	<b>Cancellation of biodiversity credit</b>	11
(1)	The Director-General may cancel a biodiversity credit that is in force, or that has been suspended under this Part, for any of the following reasons:	12
(a)	the Director-General is of the opinion that any management action in respect of which the biodiversity credit was created has not been carried out or completed, or is not being carried out, in accordance with the biobanking agreement,	13

Threatened Species Conservation Amendment (Biodiversity Banking)  
Bill 2006

Schedule 1      Amendment of Threatened Species Conservation Act 1995

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- (b) the person who applied for the creation of the credit provided any information to the Director-General in, or in connection with, the application that was false or misleading in a material particular, 1  
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  - (c) the credit was created in error, 5
  - (d) the holder of the credit has requested or agreed to the cancellation, 6  
7
  - (e) any other reason specified in the regulations. 8
- (2) The Director-General must not cancel a biodiversity credit unless before doing so the Director-General: 9  
10
  - (a) gives notice to the holder of the credit that he or she intends to do so, and 11  
12
  - (b) specifies in that notice the reasons for his or her intention to do so, and 13  
14
  - (c) gives the holder of the credit a reasonable opportunity to make submissions in relation to the proposed cancellation, and 15  
16  
17
  - (d) takes into consideration any such submissions by the holder of the credit. 18  
19
- (3) The Director-General is not to cancel a credit if the Director-General is satisfied that the holder of the credit is a bona fide purchaser of the credit without notice of the circumstances that are grounds for the cancellation of the credit. 20  
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**Note.** However, the Director-General may require a wrongdoer to retire a specified number or class of credits under section 127ZC. 24  
25
- (4) Subsections (2) and (3) do not apply if the holder of a biodiversity credit has requested or agreed to the cancellation of the credit. 26  
27
- (5) The Director-General cancels a biodiversity credit by making a recording in the register of biodiversity credits, in relation to the biodiversity credit concerned, that indicates that the credit is cancelled. 28  
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- (6) The Director-General must give the holder of the credit notice in writing of the cancellation. 32  
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- (7) No compensation is payable for the cancellation of a biodiversity credit. 34  
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- (8) If a biodiversity credit is cancelled, the Minister may vary or terminate the relevant biobanking agreement to make it clear that any obligation to carry out, or to continue to carry out, a management action that arises only because of the creation of that credit ceases to have effect. Such a variation or termination may be made with or without the consent of the owner. 1  
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- (9) The cancellation of a biodiversity credit does not prevent the Minister from seeking an award of damages against the owner of a biobank site for a breach of a biobanking agreement. 7  
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- 127ZA Suspension of biodiversity credit** 10
- (1) If the Director-General considers that there may be reasons for cancelling a biodiversity credit, the Director-General may suspend the biodiversity credit for a period of up to 2 months pending an investigation into the matter. 11  
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- (2) The Director-General suspends a biodiversity credit by making a recording in the register of biodiversity credits, in relation to the biodiversity credit concerned, that indicates that the credit is suspended. 15  
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- (3) The Director-General must give the holder of the credit notice in writing of the suspension. 19  
20
- (4) No compensation is payable for the suspension of a biodiversity credit. 21  
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- 127ZB Retirement of biodiversity credits** 23
- (1) The holder of a biodiversity credit that is in force may, by application in writing to the Director-General, retire the credit. 24  
25  
**Note.** Once the creation of a biodiversity credit is registered, it remains in force unless it is cancelled or retired—see section 127U. 26  
27
- (2) A biodiversity credit that has been suspended by the Director-General may not be retired during any period in which the suspension has effect. 28  
29  
30
- (3) Any application to retire a biodiversity credit may be made by the holder of the credit: 31  
32
- (a) for the purpose of complying with a credit retirement condition specified in a biobanking statement, or 33  
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- (b) for the purpose of complying with a direction made under this Part, or 35  
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Threatened Species Conservation Amendment (Biodiversity Banking)  
Bill 2006

Schedule 1      Amendment of Threatened Species Conservation Act 1995

---

- (c) for the purpose of complying with a condition of an approval granted by the Minister under Part 3A of the *Environmental Planning and Assessment Act 1979* in respect of a project to which that Part applies, or 1
    - (d) on a voluntary basis. 2
  - (4) If the Director-General accepts the application, the Director-General is to retire the biodiversity credit by making a recording in the entry relating to the credit in the register of biodiversity credits to indicate that the credit has been retired. 3
  - (5) The regulations may make provision for the retirement of biodiversity credits, including the procedure for retiring a credit and the circumstances in which the Director-General may refuse an application to retire a credit. 4
  - (6) The retirement of a biodiversity credit does not affect any requirement imposed on the owner of a biobank site under a biobanking agreement. In particular, it does not affect any requirement that the owner carry out, or continue to carry out, management actions in respect of the land in relation to which the credit was created. 5
- 127ZC    Order requiring biobank site owner to retire biodiversity credits** 20
- (1) The Minister may, by order in writing to a person, direct the person to retire biodiversity credits of a specified number and class (if applicable) within a time specified in the order. 21
  - (2) A direction may be given to a person under this section only if: 22
    - (a) the person is the owner of a biobank site (or a former owner), and 23
    - (b) the Minister is satisfied that, because of any act or omission by the person, one or more biodiversity credits were created in respect of a management action that was not carried out or completed, or that is not being carried out, in accordance with the relevant biobanking agreement, and 24
    - (c) the biodiversity credit or credits created have been transferred to another person or retired. 25



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- (3) The number of biodiversity credits, and class (if applicable), that are required to be retired is to be equivalent to the number and class of biodiversity credits that, in the opinion of the Minister, were created in respect of management actions not carried out or completed, or not being carried out, in accordance with the biobanking agreement and which have been transferred or retired. 1  
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- (4) A direction may be given to a person under this section only if before doing so the Minister: 8  
9
- (a) gives notice to the person that he or she intends to make the direction, and 10  
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- (b) specifies in that notice the reasons for his or her intention to do so, and 12  
13
- (c) gives the person a reasonable opportunity to make submissions in relation to the proposed direction, and 14  
15
- (d) takes into consideration any such submissions by the person. 16  
17
- (5) A person must not, without reasonable excuse, fail to comply with an order under this section. 18  
19  
Maximum penalty: 5,000 penalty units. 20  
**Note.** If the owner of a biobank site fails to comply with the order, that failure is also grounds for the cancellation or suspension of registration of a biobank site. 21  
22  
23
- (6) It is not an excuse for a failure to comply with an order under this section that the person who is the subject of the order does not, at the time the order is made, hold a sufficient number of biodiversity credits to comply with the order. 24  
25  
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27  
**Note.** If the person who is the subject of the order does not hold a sufficient number of credits to comply with the order, the person may obtain the required number by purchasing them or carrying out the necessary management actions to create them. 28  
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- (7) Any action taken under this section does not prevent the Minister from seeking an award of damages against the owner or former owner of a biobank site for a breach of a biobanking agreement. 32  
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<b>Division 6</b>	<b>Biobanking statements</b>	1
<b>127ZD</b>	<b>Development for which biobanking is available</b>	2
	For the purposes of this Part, <i>development for which biobanking is available</i> means any development (whether or not development that is a project to which Part 3A of the <i>Environmental Planning and Assessment Act 1979</i> applies, development that requires development consent under Part 4 of that Act or development that is an activity to which Part 5 of that Act applies) other than the following:	3 4 5 6 7 8 9
	(a) any clearing of native vegetation that must not be carried out except in accordance with a development consent granted in accordance with the <i>Native Vegetation Act 2003</i> or a property vegetation plan under that Act,	10 11 12 13
	(b) development declared by the regulations to be development in respect of which biobanking is not available.	14 15 16
	<b>Note.</b> A biobanking statement may be issued in respect of any development that is development for which biobanking is available. However, participation in the scheme is voluntary (that is, it is not necessary to obtain a biobanking statement in respect of the development). If a statement is obtained, the proponent of the development obtains the benefit of the statement (as set out in sections 127ZI and 127ZJ). The conditions of the statement will be incorporated into the conditions of the development consent or approval for the activity given under the <i>Environmental Planning and Assessment Act 1979</i> . A State environmental planning policy under that Act may declare certain types of development as being development for which biobanking is compulsory. It is only in the case of such declared development that participation in the scheme is compulsory (that is, a biobanking statement must be obtained).	17 18 19 20 21 22 23 24 25 26 27 28 29 30
<b>127ZE</b>	<b>Application for biobanking statement in respect of development</b>	31
	(1) A person who proposes to carry out any development for which biobanking is available (including any development for which biobanking is compulsory) may apply to the Director-General for a biobanking statement in respect of the development.	32 33 34 35
	(2) The application must be made in an approved form and be accompanied by such fee, if any, as may be approved by the Director-General.	36 37 38
	(3) An application for a biobanking statement must be accompanied by:	39 40
	(a) a description of the development to which the application relates, and	41 42

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(b)	a statement of any onsite measures that are proposed to be taken in connection with the development to minimise the impact of the development on biodiversity values, and	1 2 3
(c)	an assessment of the impact or likely impact of the development on biodiversity values, prepared in accordance with the biobanking assessment methodology, and	4 5 6 7
(d)	a statement of the number and class (if applicable) of biodiversity credits proposed to be retired to offset the impact or likely impact of the development on biodiversity values, prepared in accordance with the biobanking assessment methodology.	8 9 10 11 12
(4)	The regulations may prescribe other things that are required to be submitted with the application.	13 14
<b>127ZF</b>	<b>Circumstances in which biobanking statement may be issued</b>	15
(1)	The Director-General may, on application made in accordance with this Part, issue a biobanking statement in respect of a proposed development if the development will improve or maintain biodiversity values.	16 17 18 19
(2)	For the purposes of this Division, a development will improve or maintain biodiversity values only if a determination is made by the Director-General, on the basis of an assessment of the development in accordance with the biobanking assessment methodology (including the number and class of biodiversity credits to be retired as an offset against the negative impact of the development on biodiversity values), that the development will improve or maintain biodiversity values.	20 21 22 23 24 25 26 27
(3)	The Director-General must refuse to issue a biobanking statement in respect of a development that does not improve or maintain biodiversity values, unless directed by the Minister to issue the statement under section 127ZG.	28 29 30 31
(4)	In addition, the Director-General may refuse an application for the issue of a biobanking statement:	32 33
(a)	if the application does not comply with this Part or the regulations, or	34 35
(b)	if, in the opinion of the Director-General, insufficient information is provided to enable a biobanking statement to be issued, or	36 37 38
(c)	if, in the opinion of the Director-General, the application does not sufficiently address the biobanking assessment methodology, or	39 40 41

Threatened Species Conservation Amendment (Biodiversity Banking)  
Bill 2006

Schedule 1 Amendment of Threatened Species Conservation Act 1995

---

- (d) if, in the opinion of the Director-General, the applicant has not demonstrated that all cost effective onsite measures to minimise any negative impact of the development on biodiversity values are being or will be carried out, or
- (e) for any other reason specified in the regulations.
- (5) The Director-General must refuse an application for the issue of a biobanking statement in respect of development that is not development for which biobanking is available.
- (6) A biobanking statement may apply generally to the proposed development or may be limited by reference to one or more of the following:
- (a) the impact or potential impact of the proposed development on specified biodiversity values,
- (b) a specified aspect of the proposed development,
- (c) a specified part of the land on which the development is to be carried out.
- (7) The regulations may prescribe a period after making an application for a biobanking statement at the end of which, if the Director-General fails to either issue or refuse to issue a biobanking statement, the Director-General is taken to have refused to issue the biobanking statement.
- (8) To avoid any doubt, a refusal by the Director-General to issue a biobanking statement in respect of a development, other than development for which biobanking is compulsory, does not affect the operation of the *Environmental Planning and Assessment Act 1979* in respect of the development.
- Note.** Except in the case of development for which biobanking is compulsory, participation in the biobanking scheme is voluntary. If a biobanking statement is not obtained in respect of a development (including because it is refused by the Director-General) the development may still be evaluated, consented to or approved in accordance with the relevant provisions of the *Environmental Planning and Assessment Act 1979*. These provisions may require (among other things) the preparation of a species impact statement and the concurrence of, or consultation with, the Minister for the Environment and the Director-General.
- (9) A biobanking statement is not an approval for the purposes of Part 5 of the *Environmental Planning and Assessment Act 1979*.

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<b>127ZG</b>	<b>Directions by Minister</b>	1
(1)	The Minister may direct the Director-General to issue a biobanking statement in respect of any development that is a project to which Part 3A of the <i>Environmental Planning and Assessment Act 1979</i> applies, even if, on the basis of an assessment of the development in accordance with the biobanking assessment methodology, it does not improve or maintain biodiversity values if authorised to do so by the regulations.	2 3 4 5 6 7 8 9
(2)	The regulations may specify the circumstances in which the Minister is authorised to give a direction under this section.	10 11
(3)	The Minister may, in a direction under this section, require the Director-General to assess the development in accordance with such variations to the biobanking assessment methodology as are permitted by the regulations for the purpose of assessing projects to which Part 3A of the <i>Environmental Planning and Assessment Act 1979</i> apply.	12 13 14 15 16 17
(4)	The Director-General must comply with a direction under this section.	18 19
(5)	The regulations may specify the circumstances in which the negative impact of a development are taken to be adequately offset for the purposes of making a direction under this section.	20 21 22
(6)	A direction under this section is not an approval for the purposes of Part 5 of the <i>Environmental Planning and Assessment Act 1979</i> .	23 24 25
<b>127ZH</b>	<b>Form and conditions of biobanking statement</b>	26
(1)	A biobanking statement must:	27
(a)	describe the development to which the statement relates, and	28 29
(b)	specify any conditions applicable to the statement, being conditions of the following kind:	30 31
(i)	a condition or conditions relating to the onsite measures that must be taken in connection with the development to minimise any negative impact on biodiversity values,	32 33 34 35
(ii)	a credit retirement condition, being a condition that specifies the number and class of biodiversity credits (if any) that are to be retired to ensure that the development improves or maintains biodiversity values, and the timing of that retirement.	36 37 38 39 40

(2)	A biobanking statement is to be issued in a form approved by the Director-General.	1 2
(3)	The Director-General may, before issuing a biobanking statement, provide a draft of the statement proposed to be issued to the applicant.	3 4 5
(4)	The Director-General may provide a copy of a biobanking statement, or a draft of a statement proposed to be issued by the Director-General, to the Minister administering the <i>Environmental Planning and Assessment Act 1979</i> , a consent authority, a determining authority (within the meaning of Part 5 of that Act), or to any other person prescribed by the regulations.	6 7 8 9 10 11
<b>127ZI</b>	<b>Effect of issue of biobanking statement—development requiring development consent</b>	12 13
(1)	If development described in a biobanking statement supplied to a consent authority is development for which consent is required under Part 4 of the <i>Environmental Planning and Assessment Act 1979</i> , the development is taken, for the purposes of that Part, to be development that is not likely to significantly affect any threatened species, population or ecological community under this Act, or its habitat.	14 15 16 17 18 19 20
(2)	If a consent authority grants consent, under Part 4 of the <i>Environmental Planning and Assessment Act 1979</i> , to the carrying out of development in respect of which a biobanking statement has been issued and supplied to the consent authority, being a statement that specifies conditions, the consent authority must impose (and is taken to be authorised under that Act to impose) a condition on the grant of that consent that requires those conditions to be complied with.	21 22 23 24 25 26 27 28
	<b>Note.</b> The carrying out of development in contravention of the conditions of a development consent is an offence under section 126 of the <i>Environmental Planning and Assessment Act 1979</i> .	29 30 31
(3)	A person cannot appeal to the Land and Environment Court under the <i>Environmental Planning and Assessment Act 1979</i> in respect of a condition imposed by a consent authority under subsection (2).	32 33 34 35
	<b>Note.</b> However, a person can appeal under this Part against a decision of the Director-General in respect of the issue of a biobanking statement if the development is development for which biobanking is compulsory.	36 37 38
(4)	Subsection (2) does not affect the right of a consent authority to impose conditions under section 80A of the <i>Environmental Planning and Assessment Act 1979</i> not inconsistent with the conditions of a biobanking statement or to refuse consent.	39 40 41 42

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(5)	Despite section 79C of the <i>Environmental Planning and Assessment Act 1979</i> , if a biobanking statement has been issued in respect of a development, a consent authority is not required to (but may) take into consideration the likely impact of the development on biodiversity values.	1 2 3 4 5
(6)	This section applies subject to any terms of the biobanking statement that limit the statement to:	6 7
(a)	a particular aspect of the development, or	8
(b)	a particular part of the land on which the development is to be carried out, or	9 10
(c)	the impact of the development on particular biodiversity values.	11 12
(7)	Nothing in this section affects the operation of Part 4 of the <i>Environmental Planning and Assessment Act 1979</i> in respect of any development that is likely to significantly affect any threatened species, population or ecological community within the meaning of Part 7A of the <i>Fisheries Management Act 1994</i> .	13 14 15 16 17
<b>127ZJ</b>	<b>Effect of issue of biobanking statement—activities under Part 5 of Environmental Planning and Assessment Act 1979</b>	18 19
(1)	If development described in a biobanking statement supplied to a determining authority is an activity to which Part 5 of the <i>Environmental Planning and Assessment Act 1979</i> applies, the activity is taken, for the purposes of that Part, to be an activity that is not likely to significantly affect any threatened species, population or ecological community under this Act, or its habitat.	20 21 22 23 24 25
(2)	If a determining authority approves an activity under Part 5 of the <i>Environmental Planning and Assessment Act 1979</i> in respect of which a biobanking statement has been issued and supplied to the determining authority, being a statement that specifies conditions, the determining authority must impose (and is taken to be authorised to impose) a condition on the approval of the activity that requires those conditions to be complied with.	26 27 28 29 30 31 32
(3)	Subsection (2) does not affect the right of a determining authority to impose conditions on the approval of the activity under section 112 of the <i>Environmental Planning and Assessment Act 1979</i> not inconsistent with the conditions of a biobanking statement or to refuse to approve the activity.	33 34 35 36 37

Threatened Species Conservation Amendment (Biodiversity Banking)  
Bill 2006

Schedule 1      Amendment of Threatened Species Conservation Act 1995

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(4)	If there is a right of appeal under any Act in respect of conditions imposed on the approval, that right does not apply in respect of a condition imposed by the determining authority under subsection (2).	1 2 3 4
	<b>Note.</b> However, a person can appeal under this Part against a decision of the Director-General in respect of the issue of a biobanking statement if the activity is development for which biobanking is compulsory.	5 6 7
(5)	If a determining authority is the proponent of an activity under Part 5 of the <i>Environmental Planning and Assessment Act 1979</i> in respect of which a biobanking statement has been issued, being a statement that specifies conditions, the determining authority must carry out the activity in accordance with the conditions of the biobanking statement.	8 9 10 11 12 13
(6)	Subsection (5) does not affect the right of a determining authority to refrain from carrying out the activity or to modify its activity in a manner not inconsistent with the conditions of the biobanking statement.	14 15 16 17
(7)	Despite section 111 of the <i>Environmental Planning and Assessment Act 1979</i> , if a biobanking statement has been issued in respect of an activity, a determining authority is not required to (but may) consider the effect of the activity on biodiversity values.	18 19 20 21 22
(8)	This section applies subject to any terms of the biobanking statement that limit the statement to:	23 24
	(a) a particular aspect of the activity, or	25
	(b) a particular part of the land on which the activity is to be carried out, or	26 27
	(c) the effect of the activity on particular biodiversity values.	28
(9)	For the purposes of this or any other Act, if a determining authority fails to comply with this section in relation to an activity the determining authority is taken not to have complied with Part 5 of the <i>Environmental Planning and Assessment Act 1979</i> .	29 30 31 32
(10)	Nothing in this section affects the operation of Part 5 of the <i>Environmental Planning and Assessment Act 1979</i> in respect of any activity that is likely to significantly affect any threatened species, population or ecological community within the meaning of Part 7A of the <i>Fisheries Management Act 1994</i> .	33 34 35 36 37
<b>127ZK</b>	<b>Modification, revocation and lapsing of biobanking statement</b>	38
(1)	A person may apply to the Director-General for the modification or revocation of a biobanking statement.	39 40



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- (2) An application may be made by: 1
- (a) the person who applied for the biobanking statement, or 2
  - (b) any other person entitled to act on a development consent 3  
or approval under the *Environmental Planning and* 4  
*Assessment Act 1979* given in relation to the development 5  
described in the biobanking statement. 6
- (3) Subject to the regulations, this Division applies to an application 7  
to modify or revoke a biobanking statement in the same way as it 8  
applies to the original application. 9
- (4) A biobanking statement (unless revoked sooner) ceases to have 10  
any effect under this Part: 11
- (a) at the end of the period of 2 years after it is issued by the 12  
Director-General, or 13
  - (b) if it is extended by the Director-General before the end of 14  
that 2-year period, at the end of the extended period. 15
- (5) A biobanking statement does not cease to have effect at the end 16  
of the 2-year period referred to in subsection (4) if the statement 17  
is acted on before the end of that period. 18
- (6) If a biobanking statement is revoked before the statement is acted 19  
on, and a new biobanking statement is not issued in respect of the 20  
development, the *Environmental Planning and Assessment Act* 21  
*1979* applies in respect of the assessment and evaluation of the 22  
development to which the biobanking statement applied, and any 23  
consent or approval granted in respect of the development, as if 24  
the statement had not been issued. 25
- Note.** Except in the case of development for which biobanking is 26  
compulsory, participation in the biobanking scheme is voluntary. 27  
Accordingly, a developer who has obtained a biobanking statement may 28  
apply for the revocation of that statement and have the development 29  
evaluated, consented to or approved in accordance with the relevant 30  
provisions of the *Environmental Planning and Assessment Act 1979*. 31  
These provisions may require (among other things) the preparation of a 32  
species impact statement and the concurrence of, or consultation with, 33  
the Minister for the Environment and the Director-General. 34
- (7) For the purposes of this section, a biobanking statement is acted 35  
on if: 36
- (a) in the case of a statement that relates to a project to which 37  
Part 3A of the *Environmental Planning and Assessment* 38  
*Act 1979* applies, the Minister administering that Act 39  
approves that project, or 40

- (b) in the case of a statement that relates to development for which consent is required under Part 4 of the *Environmental Planning and Assessment Act 1979*—development consent is granted in respect of the development, or 1  
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  - (c) in the case of a statement that relates to an activity under Part 5 of the *Environmental Planning and Assessment Act 1979*—a determining authority approves the activity or commences carrying out the activity. 6  
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- 127ZL Minister may require retirement of credits** 10
- (1) The Minister may, by order in writing to a person, direct the person to retire biodiversity credits of a specified number and class (if applicable) to the Minister within a time specified in the order. 11  
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  - (2) A direction may be given to a person under this section if: 15
    - (a) the person carries out development in respect of which a biobanking statement has been issued, and 16  
17
    - (b) the person fails to retire biodiversity credits in accordance with a credit retirement condition specified in the biobanking statement that has effect. 18  
19  
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  - (3) For the purposes of this section, a credit retirement condition has effect if: 21  
22
    - (a) in the case of a statement that relates to a project to which Part 3A of the *Environmental Planning and Assessment Act 1979* applies, the Minister administering that Act imposes the credit retirement condition as a condition of approval under that Part, or 23  
24  
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    - (b) in the case of a statement that relates to development for which consent is required under Part 4 of the *Environmental Planning and Assessment Act 1979*—the development consent requires compliance with the credit retirement condition, or 28  
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32
    - (c) in the case of a statement that relates to an activity under Part 5 of the *Environmental Planning and Assessment Act 1979*—an approval of a determining authority requires compliance with the credit retirement condition or, if the activity is to be carried out by the determining authority, the determining authority commences carrying out that activity. 33  
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(4)	A person must not, without reasonable excuse, fail to comply with a direction under this section.	1
	Maximum penalty: 10,000 penalty units.	2
(5)	It is not an excuse for a failure to comply with a direction under this section that the person who is the subject of the direction does not, at the time the direction is given, hold a sufficient number of biodiversity credits to comply with the direction.	3
	<b>Note.</b> If the person who is the subject of the direction does not hold a sufficient number of credits to comply with the direction, the person may obtain the required number by purchasing them.	4
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<b>127ZM</b>	<b>Director-General may verify retirement of biodiversity credits</b>	11
(1)	The Director-General may issue a statement confirming that a number and class (if applicable) of biodiversity credits specified in the statement have been retired by a person for the purpose of complying with a credit retirement condition.	12
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(2)	The Director-General may issue such a statement at the request of the Minister administering the <i>Environmental Planning and Assessment Act 1979</i> , a consent authority, a determining authority (within the meaning of Part 5 of that Act), the person who applied for the biobanking statement concerned or in any other circumstances prescribed by the regulations.	16
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<b>Division 7</b>	<b>Financial matters</b>	24
<b>127ZN</b>	<b>Biobanking Trust Fund</b>	25
(1)	There is to be established by this Act a fund called the "Biobanking Trust Fund".	26
	<b>Note.</b> The regulations may require a specified amount to be paid into the Fund when a biodiversity credit is first transferred to another person. It is intended that amounts so paid will be the principal source of revenue for the Fund.	27
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		29
(2)	The following amounts are to be paid into the Fund, subject to any requirements specified in the regulations:	30
		31
(a)	amounts required to be paid to the Fund under the regulations in respect of the transfer or retirement of a biodiversity credit,	32
		33
		34
(b)	any amount paid out of the Fund to the owner of a biobank site that is repaid by or recovered from the owner,	35
		36
(c)	the proceeds of investment of money in the Fund,	37

(d)	any other money appropriated by Parliament for the purposes of the Fund or required by law to be paid into the Fund,	1 2 3
(e)	such other amounts as are payable to the Fund under this Act or the regulations.	4 5
(3)	The following may be paid out of the Fund, subject to any requirements specified in the regulations:	6 7
(a)	such amounts as the Minister directs to be paid from the Fund to an owner of a biobank site in respect of management actions carried out, being carried out or to be carried out in accordance with a biobanking agreement,	8 9 10 11
(b)	such amounts as the Minister directs to be paid from the Fund to the Fund Manager, in payment of the remuneration of the Fund Manager,	12 13 14
(c)	any amounts payable by the Fund Manager in discharging the liabilities incurred by the Fund Manager in the exercise of its functions,	15 16 17
(d)	such other amounts as are authorised to be paid out of the Fund by this Act or the regulations.	18 19
<b>127ZO</b>	<b>Management and control of Fund</b>	20
(1)	The Fund Manager is to manage and control the Biobanking Trust Fund in accordance with this Act and the regulations.	21 22
(2)	The Fund Manager:	23
(a)	is to act as trustee of money vested in the Biobanking Trust Fund, and	24 25
(b)	is to invest the money vested in the Biobanking Trust Fund not immediately required for the purposes for which it is to be applied in the same way as trustees may invest trust funds under the <i>Trustee Act 1925</i> , subject to any requirements specified in the regulations, and	26 27 28 29 30
(c)	is to make payments from the Biobanking Trust Fund as authorised by this Act and the regulations.	31 32
(3)	The Fund Manager has such other functions as may be conferred on the Fund Manager by the regulations.	33 34
(4)	The Fund Manager may do all things necessary or convenient to be done in connection with the exercise of the Fund Manager's functions.	35 36 37

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- (5) The regulations may make further provision with respect to the Biobanking Trust Fund, including by providing for the following:
- (a) the investment of the money vested in the Fund,
  - (b) the establishment of committees to advise the Fund Manager on the exercise of the Fund Manager's functions under this Division or to oversee the exercise of those functions,
  - (c) the obligation of the Fund Manager to report to the Minister on the exercise of the Fund Manager's functions under this Division,
  - (d) the winding up of the Fund,
  - (e) the review of any complaints made against the Fund Manager.
- 127ZP Fund Manager**
- (1) The Minister is to appoint a person as Fund Manager in respect of the Biobanking Trust Fund.
  - (2) It is not necessary for the person appointed as Fund Manager to be a public authority.
  - (3) However, if the person appointed as Fund Manager is not a public authority, the Fund Manager is not, and does not represent, the Crown. Accordingly, any such Fund Manager:
    - (a) is not an instrumentality or agency of the State, and
    - (b) is not entitled to any immunity or privilege of the State, and
    - (c) cannot render the State liable for any debts, liabilities or obligations of the Fund, and
    - (d) is not a public authority for any purpose and is taken not to have been constituted or established for a public purpose or for a purpose of the State.
  - (4) The regulations may make further provision for the appointment of the Fund Manager, and make provision for the termination of the appointment of the Fund Manager and remuneration of the Fund Manager.

<b>127ZQ</b>	<b>Cost recovery</b>	1
(1)	The regulations may require any participant in the biobanking scheme to pay to the Minister a contribution towards the following:	2
		3
		4
	(a) the costs of management and administration of the scheme (including payment for services provided by any person or body exercising functions under the scheme),	5
		6
		7
	(b) the costs of ensuring compliance with the scheme,	8
	(c) any other costs relating to the scheme.	9
(2)	The amount of the contribution (or the manner in which it is to be calculated) and other matters concerning its payment are to be set out in the regulations.	10
		11
		12
(3)	The contribution is recoverable by the Minister as a debt in a court of competent jurisdiction.	13
		14
(4)	The regulations may authorise the payment of the contribution by instalments. If an instalment is not paid by the due date, the balance then becomes due and payable (together with any interest or penalty (or both) that the regulations require to be paid in respect of a late payment).	15
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(5)	The regulations may:	20
	(a) exempt any person or class of persons from payment of a contribution referred to in this section, and	21
		22
	(b) authorise the Minister to waive payment, or extend the time for payment, of a contribution, or part of a contribution, or any interest or penalty payable under this section.	23
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(6)	In this section:	27
	<i>participant</i> in the biobanking scheme means any of the following persons:	28
		29
	(a) the owner of a biobank site,	30
	(b) the holder of a biodiversity credit,	31
	(c) a person who applies for a biobanking statement, a person who owns the land on which development described in a biobanking statement may be carried out or a person entitled to act on a development consent or approval under the <i>Environmental Planning and Assessment Act 1979</i> given in relation to a development described in a biobanking statement,	32
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(d)	a person accredited as a conservation broker under the regulations.	1 2
(7)	For the purposes of this section, the Minister or Director-General is not considered to be a participant in the biobanking scheme in respect of any thing done on behalf of the Crown.	3 4 5
<b>127ZR</b>	<b>Biodiversity Banking Account</b>	6
(1)	There is to be established in the Special Deposits Account an account called the “Biodiversity Banking Account”.	7 8
(2)	Money in the account is under the control of the Minister and can be expended by the Minister only for the purposes authorised by this section.	9 10 11
(3)	There is to be paid into the account:	12
(a)	all contributions paid by participants in the biobanking scheme under a regulation referred to in section 127ZQ, and	13 14 15
(b)	all fees and charges paid in connection with this Part, other than any amount that is payable under this Part to the Biobanking Trust Fund, and	16 17 18
(c)	all costs or damages recovered in connection with enforcement action taken against an owner of a biobank site in respect of a failure to comply with a biobanking agreement, this Part or the regulations under this Part, other than amounts payable to the Biobanking Trust Fund, and	19 20 21 22 23 24
(d)	all money received in respect of penalties recovered pursuant to this Part or the regulations under this Part, and	25 26
(e)	the proceeds of investment of money in the account, and	27
(f)	any money acquired by the Minister under section 148 of the <i>National Parks and Wildlife Act 1974</i> for the purposes of this Part, and	28 29 30
(g)	any money received by the Minister pursuant to section 149 of the <i>National Parks and Wildlife Act 1974</i> in respect of land or other property, or an interest in land or property, acquired by the Minister for the purposes of this Part, or by purchase with money from the Biodiversity Banking Account, and	31 32 33 34 35 36
(h)	any other money provided by Parliament for the purposes of the account or required by law to be paid into the account.	37 38 39

- (4) There may be paid out of the account: 1
  - (a) the costs of management and administration of the 2  
biobanking scheme, and 3
  - (b) the costs of ensuring compliance with the biobanking 4  
scheme, and 5
  - (c) such costs as the Minister directs are to be paid from the 6  
account to an owner of a biobank site, and 7
  - (d) such costs as the Minister directs to be paid from the 8  
account in payment of the remuneration of the Fund 9  
Manager, and 10
  - (e) such other costs relating to the biobanking scheme as the 11  
Minister directs to be paid out of the account. 12
- (5) There may be paid out of the account to the Consolidated Fund 13  
any amount in the account that, in the opinion of the Minister, is 14  
in excess of the amounts required to meet the costs referred to in 15  
subsection (4). 16

**Division 8      Registers** 17

**127ZS      Register of biobank sites** 18

- (1) The Director-General is to keep a register of biobank sites. 19
- (2) The register of biobank sites is to contain the following 20  
information: 21
  - (a) the location of each biobank site, 22
  - (b) a copy of the biobanking agreement relating to each 23  
biobank site. 24
- (3) The register of biobank sites may also contain other information 25  
of a kind prescribed by the regulations (including in relation to a 26  
biobank site the registration of which has been suspended or 27  
cancelled). 28
- (4) Subject to the regulations, information on the register is to be 29  
made available for public inspection at the head office of the 30  
Department and on the website of the Department. 31
- (5) The regulations may prescribe a fee for the provision of copies of 32  
information on the register. 33
- (6) The regulations may specify information on the register that is 34  
not to be made available to the public under this section. 35
- (7) The register may be kept wholly or partly by electronic means. 36



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<b>127ZT</b>	<b>Register of biodiversity credits</b>	1
(1)	The Director-General is to keep a register of biodiversity credits.	2
(2)	The register of biodiversity credits is to contain the following information in relation to each biodiversity credit created under this Part:	3 4 5
(a)	particulars of the biobank site and management actions in respect of which the biodiversity credit was created,	6 7
(b)	the class of the biodiversity credit (if applicable),	8
(c)	the name of the current holder, and any previous holders, of the biodiversity credit,	9 10
(d)	any suspension, cancellation or retirement of the biodiversity credit.	11 12
(3)	The register of biodiversity credits may also contain other information of a kind prescribed by the regulations.	13 14
(4)	Subject to the regulations, information on the register is to be made available for public inspection at the head office of the Department and on the website of the Department.	15 16 17
(5)	The regulations may prescribe a fee for the provision of copies of information on the register.	18 19
(6)	The regulations may specify information on the register that is not to be made available to the public under this section.	20 21
(7)	The register may be kept wholly or partly by electronic means.	22
<b>127ZU</b>	<b>Register of biobanking statements</b>	23
(1)	The Director-General is to keep a register of biobanking statements.	24 25
(2)	The register of biobanking statements is to contain the following information in relation to each biobanking statement issued under this Part:	26 27 28
(a)	a copy of the biobanking statement,	29
(b)	the name of the person who applied for the biobanking statement.	30 31
(3)	The register of biobanking statements may also contain other information of a kind prescribed by the regulations.	32 33
(4)	Subject to the regulations, information on the register is to be made available for public inspection at the head office of the Department and on the website of the Department.	34 35 36

(5)	The regulations may prescribe a fee for the provision of copies of information on the register.	1 2
(6)	The regulations may specify information on the register that is not to be made available to the public under this section.	3 4
(7)	The register may be kept wholly or partly by electronic means.	5
<b>127ZV</b>	<b>Evidentiary provisions</b>	6
(1)	A register kept under this Division is evidence of any particulars registered in it.	7 8
(2)	If a register is wholly or partly kept by electronic means, a document issued by the Director-General producing in writing particulars included in the register, or the part kept by electronic means, is admissible in legal proceedings as evidence of those particulars.	9 10 11 12 13
<b>127ZW</b>	<b>Correction of register</b>	14
	The Director-General may correct any error in or omission from a register kept under this Part, or update a register in accordance with the requirements (if any) specified in the regulations.	15 16 17
<b>Division 9</b>	<b>Miscellaneous</b>	18
<b>127ZX</b>	<b>Appeals</b>	19
(1)	A person who owns land that is a biobank site and who is dissatisfied with the decision of the Director-General to suspend or cancel the registration of the biobank site may appeal to the Land and Environment Court against the decision.	20 21 22 23
(2)	The holder of a biodiversity credit who is dissatisfied with a decision of the Director-General to cancel a biodiversity credit may appeal to the Land and Environment Court against the decision.	24 25 26 27
(3)	A person who applies for the registration of a transfer of a biodiversity credit and who is dissatisfied with a decision of the Director-General to refuse to register the transfer may appeal to the Land and Environment Court against the decision, but only in the circumstances (if any) authorised by the regulations.	28 29 30 31 32
(4)	A person who applies for a biobanking statement in respect of development which is development for which biobanking is compulsory and who is dissatisfied with the decision of the Director-General in respect of the application may appeal to the Land and Environment Court against the decision.	33 34 35 36 37

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- (5) A person cannot appeal under subsection (4) against the provisions of the biobanking assessment methodology or the reasonableness of any determination of the Director-General (including a refusal to issue a biobanking statement) made in accordance with that methodology. 1  
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- (6) An appeal may be made by a person under this section no later than 28 days after being notified by the Director-General of the decision or, if the Director-General is taken to have refused an application and the appeal relates to that refusal, no later than 28 days after the refusal is taken to have occurred. 6  
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- 127ZY Conservation brokers** 11
- (1) The regulations may make provision for or with respect to conservation brokers. 12  
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- (2) For the purposes of this section, a *conservation broker* is a person who provides, or offers to provide, any of the following services (whether or not for fee or reward): 14  
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16
- (a) the identification of potential biobank sites or management actions, 17  
18
- (b) the negotiation of a biobanking agreement on behalf of a land owner, 19  
20
- (c) assistance with an application for registration of a biodiversity credit or an application for a biobanking statement, 21  
22  
23
- (d) assistance with buying or selling biodiversity credits, 24
- (e) any other service in connection with the biobanking scheme that is prescribed by the regulations for the purposes of this definition. 25  
26  
27
- (3) Without limiting subsection (1), the regulations may: 28
- (a) provide for the accreditation of persons as conservation brokers, and 29  
30
- (b) exempt any person or class of persons from those requirements, and 31  
32
- (c) prohibit any person from holding himself or herself out to be a conservation broker, or advertising a service of a kind referred to in subsection (2), unless accredited. 33  
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- 127ZZ Participation of Minister** 36
- The Minister may participate in the biobanking scheme, including by purchasing, holding and transferring biodiversity credits. 37  
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<b>127ZZA</b>	<b>Exemption from liability</b>	1
(1)	The Minister, the Director-General and any other persons employed in the administration of this Part are not liable in any civil proceedings for anything done or omitted to be done in good faith in the exercise or purported exercise of any function under this Part.	2 3 4 5 6
(2)	This section does not extend to the Fund Manager.	7
<b>127ZZB</b>	<b>Regulations</b>	8
(1)	The regulations may make further provision for or with respect to the biobanking scheme.	9 10
(2)	In particular, the regulations may:	11
(a)	require the Director-General to periodically review the operation of the scheme and report on its operation to the Minister, and	12 13 14
(b)	make provision for the arrangements that may be entered into between participants in the biobanking scheme (within the meaning of section 127ZQ), or between those participants and other persons, in connection with the scheme.	15 16 17 18 19
<b>127ZZC</b>	<b>Regulations not subject to staged repeal</b>	20
	A regulation that contains only the following provisions is not repealed by the operation of Part 3 of the <i>Subordinate Legislation Act 1989</i> :	21 22 23
(a)	provisions that relate to the biobanking scheme established by this Part (including any provisions required or authorised by this Part, and any ancillary, consequential, savings or transitional provisions),	24 25 26 27
(b)	provisions that deal with the citation and commencement of the regulation, or other provisions of a machinery nature.	28 29 30
<b>[7]</b>	<b>Part 8 Scientific Committee</b>	31
	Renumber sections 127 and 128 as sections 128 and 128A respectively.	32

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<b>[8] Section 142B</b>	1
Insert after section 142A:	2
<b>142B Director-General may accredit persons to prepare assessments and surveys</b>	3
	4
(1) The Director-General may institute arrangements for the accreditation of suitably qualified and experienced persons to undertake and prepare surveys and assessments for use in connection with:	5
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(a) biodiversity certification of EPIs under Division 5 of Part 7, or	9
	10
(b) any assessment of the matters referred to in section 5A (Significant effect on threatened species, populations or ecological communities, or their habitats) of the <i>Environmental Planning and Assessment Act 1979</i> , or	11
	12
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	14
(c) the biobanking scheme established under Part 7A.	15
(2) An applicant for accreditation must furnish the Director-General with such information as the Director-General requires to effectively determine the application and the application must be accompanied by the fee fixed by the Director-General for the consideration of the application.	16
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(3) An accreditation is to be for the period (not exceeding 3 years) specified by the Director-General in the instrument of accreditation, and the accreditation (or any renewal of it) may be given subject to the conditions and restrictions (if any) specified in the instrument of accreditation.	21
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(4) Without limiting subsection (3), an accreditation is to include conditions that require surveys and assessments to be undertaken and prepared in accordance with standards approved from time to time by the Director-General by order published in the Gazette.	26
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(5) The Director-General may vary conditions or restrictions (if any) attaching to an accreditation and may suspend or cancel an accreditation.	30
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	32
<b>[9] Section 151</b>	33
Omit the section. Insert instead:	34
<b>151 Proceedings for offences</b>	35
(1) Proceedings for an offence under this Act or the regulations may be dealt with:	36
	37
(a) summarily before a Local Court, or	38

Threatened Species Conservation Amendment (Biodiversity Banking)  
Bill 2006

Schedule 1      Amendment of Threatened Species Conservation Act 1995

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(b)	summarily before the Land and Environment Court.	1
(2)	The maximum pecuniary penalty that a Local Court may impose in respect of an offence against this Act or the regulations is 200 penalty units or the maximum penalty provided by this Act or the regulations in respect of the offence, whichever is the lesser.	2 3 4 5
<b>[10]</b>	<b>Schedule 7 Savings, transitional and other provisions</b>	6
	Insert at the end of clause 1 (1):	7
	<i>Threatened Species Conservation Amendment (Biodiversity Banking) Act 2006</i>	8 9
<b>[11]</b>	<b>Schedule 7, Part 6</b>	10
	Insert after Part 5:	11
	<b>Part 6 Provisions consequent on enactment of Threatened Species Conservation Amendment (Biodiversity Banking) Act 2006</b>	12 13 14 15
<b>15</b>	<b>Renumbering of provisions</b>	16
	Anything done or omitted to be done under a provision of this Act renumbered by the <i>Threatened Species Conservation Amendment (Biodiversity Banking) Act 2006</i> is taken to have been done or omitted to be done under the corresponding provision of this Act as so renumbered.	17 18 19 20 21
<b>16</b>	<b>Accreditation</b>	22
(1)	Any person accredited under section 126O to undertake and prepare surveys and assessments as referred to in section 126O (1) (a) or (b), as in force immediately before its repeal by the <i>Threatened Species Conservation Amendment (Biodiversity Banking) Act 2006</i> , is taken to have been accredited to undertake and prepare surveys and assessments as referred to in section 142B (1) (a) or (b) (as the case requires).	23 24 25 26 27 28 29
(2)	Any standards approved by the Director-General under section 126O by order published in the Gazette and in force immediately before the repeal of that section are taken to have been approved under section 142B.	30 31 32 33

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<b>Schedule 2</b>	<b>Amendment of other Acts and legislation</b>	1
	(Section 4)	2
<b>2.1</b>	<b>Environmental Planning and Assessment Act 1979 No 203</b>	3
<b>[1]</b>	<b>Section 32</b>	4
	Insert after section 31:	5
<b>32</b>	<b>Biobanking under the Threatened Species Conservation Act 1995</b>	6
(1)	Without affecting the generality of any other provisions of this Act, a State environmental planning policy may declare any development or class of development (being development for which biobanking is available under the <i>Threatened Species Conservation Act 1995</i> ) to be development for which biobanking is compulsory for the purposes of Part 4 or 5 of this Act (or both).	7 8 9 10 11 12
(2)	The Minister must not recommend the making of a State environmental planning policy that contains provisions declaring any development or class of development to be development for which biobanking is compulsory (including any amendment to such a policy that extends those provisions), unless the Minister administering the <i>Threatened Species Conservation Act 1995</i> has, by notice in writing to the Minister, certified that the development affected by the provisions is suitable to be treated as development for which biobanking is compulsory under the biobanking scheme established under Part 7A of that Act.	13 14 15 16 17 18 19 20 21 22
(3)	A State environmental planning policy is not to be made under this section until a period agreed to by the Minister and the Minister administering the <i>Threatened Species Conservation Act 1995</i> has elapsed since the establishment of the biobanking scheme by section 127A of that Act.	23 24 25 26 27
	<b>Note.</b> The biobanking scheme established under Part 7A of the <i>Threatened Species Conservation Act 1995</i> initially operates on a voluntary basis. This section allows participation in the scheme to be made compulsory in respect of certain kinds of development after an agreed period has elapsed since the establishment of the scheme.	28 29 30 31 32
(4)	A project to which Part 3A applies cannot be declared to be development for which biobanking is compulsory.	33 34
(5)	In this section, <i>development</i> includes an activity within the meaning of Part 5.	35 36

<b>[2] Section 75J Giving of approval by Minister to carry out project</b>	1
Insert after section 75J (4):	2
(5) Without limiting subsection (4), the Minister may approve a project subject to a condition that requires the proponent to acquire and retire (in accordance with Part 7A of the <i>Threatened Species Conservation Act 1995</i> ) biodiversity credits of a number and class (if any) specified by the Minister in the approval. This subsection applies whether or not a biobanking statement under Part 7A of that Act was obtained in respect of the project.	3 4 5 6 7 8 9
(6) If a biobanking statement was obtained in respect of the project, the Minister may approve the project subject to a condition that requires the proponent to comply with any conditions of the biobanking statement.	10 11 12 13
<b>Note.</b> The conditions of a biobanking statement may require the proponent to retire biodiversity credits in respect of the project in order to ensure that it maintains or improves biodiversity values, or to carry out other onsite measures to minimise any negative impact of the project on biodiversity values.	14 15 16 17 18
(7) A person cannot appeal to the Court in respect of a condition imposed by the Minister under subsection (6).	19 20
<b>[3] Section 75P Determinations with respect to project for which concept plan is approved</b>	21 22
Insert after section 75P (2) (c):	23
(ca) any State environmental planning policy that declares development to be development for which biobanking is compulsory does not apply in respect of the project or any stage of the project,	24 25 26 27
<b>[4] Section 78A Application</b>	28
Insert after section 78A (8):	29
<b>Note.</b> Part 7A of the <i>Threatened Species Conservation Act 1995</i> provides for certain circumstances in which development is taken not to significantly affect threatened species, populations or ecological communities, or their habitats.	30 31 32 33
<b>[5] Section 79B Consultation and concurrence</b>	34
Insert after section 79B (3):	35
<b>Note.</b> If a biobanking statement has been issued in respect of the development under Part 7A of the <i>Threatened Species Conservation Act 1995</i> , the development is taken not to significantly affect threatened species, populations or ecological communities, or their habitats. For some types of development it may be compulsory to obtain a biobanking statement under that Part before development consent is granted under this Part.	36 37 38 39 40 41 42



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<b>[6] Section 79C Evaluation</b>	1
Insert at the end of the note to section 79C (1):	2
<b>Note.</b> If a biobanking statement has been issued in respect of a development under Part 7A of the <i>Threatened Species Conservation Act 1995</i> , the consent authority is not required to (but may) take into consideration the likely impact of the development on biodiversity values.	3 4 5 6 7
<b>[7] Section 80 Determination</b>	8
Insert after section 80 (8):	9
<b>(8A) Development for which biobanking is compulsory</b>	10
If a proposed development is development for which biobanking is compulsory under a State environmental planning policy referred to in section 32, a consent authority must not grant consent to the development unless a biobanking statement has been issued in respect of the development under Part 7A of the <i>Threatened Species Conservation Act 1995</i> .	11 12 13 14 15 16
<b>(8B)</b> If a biobanking statement is issued under that Part, section 127ZI of the <i>Threatened Species Conservation Act 1995</i> applies in relation to development.	17 18 19
<b>Note.</b> Section 127ZI requires the consent authority, if it grants consent to the development, to impose conditions on the grant of the consent that give effect to the conditions of the biobanking statement.	20 21 22
<b>[8] Section 96 Modification of consents—generally</b>	23
Omit section 96 (5). Insert instead:	24
<b>(5) Threatened species</b>	25
Development consent of the kind referred to in section 79B (3), or in respect of which a biobanking statement has been issued under Part 7A of the <i>Threatened Species Conservation Act 1995</i> , is not to be modified unless:	26 27 28 29
(a) in the case of development referred to in section 79B (3)—the requirements of section 79B (3)–(7) have been complied with in relation to the proposed modification as if the application for the proposed modification were an application for development consent, or	30 31 32 33 34

(b)	in the case of development in respect of which a biobanking statement has been issued under Part 7A of the <i>Threatened Species Conservation Act 1995</i> —the applicant has made an application for modification of the biobanking statement in relation to the proposal and a new biobanking statement has been issued or the consent authority is satisfied that the modification will have no impact on biodiversity values (within the meaning of that Act).	1 2 3 4 5 6 7 8
<b>[9]</b>	<b>Section 96AA Modification by consent authorities of consents granted by the Court</b>	9 10
	Omit section 96AA (1B). Insert instead:	11
(1B)	Development consent of the kind referred to in section 79B (3), or in respect of which a biobanking statement has been issued under Part 7A of the <i>Threatened Species Conservation Act 1995</i> , is not to be modified unless:	12 13 14 15
(a)	in the case of development referred to in section 79B (3)—the requirements of section 79B (3)–(7) have been complied with in relation to the proposed modification as if the application for the proposed modification were an application for development consent, or	16 17 18 19 20
(b)	in the case of development in respect of which a biobanking statement has been issued under Part 7A of the <i>Threatened Species Conservation Act 1995</i> —the applicant has made an application for modification of the biobanking statement in relation to the proposal and a new biobanking statement has been issued or the consent authority is satisfied that the modification will have no impact on biodiversity values (within the meaning of that Act).	21 22 23 24 25 26 27 28
<b>[10]</b>	<b>Section 111 Duty to consider environmental impact</b>	29
	Insert at the end of section 111 (2) (c):	30
	, and	31
(d)	any biobanking agreement entered into under Part 7A of the <i>Threatened Species Conservation Act 1995</i> that applies to the whole or part of the land to which the activity relates.	32 33 34
<b>[11]</b>	<b>Section 111, note</b>	35
	Insert after the section:	36
	<b>Note.</b> If a biobanking statement has been issued in respect of a development under Part 7A of the <i>Threatened Species Conservation Act 1995</i> , the determining authority is not required to (but may) consider the impact of the activity on biodiversity values.	37 38 39 40

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<b>[12] Section 112 Decision of determining authority in relation to certain activities</b>	1 2
Insert after section 112 (1C):	3
<b>Note.</b> If a biobanking statement has been issued in respect of the activity under Part 7A of the <i>Threatened Species Conservation Act 1995</i> , the activity is taken not to significantly affect threatened species, populations or ecological communities, or their habitats. For some activities, it may be compulsory to obtain a biobanking statement under that Part before the activity is carried out, or an approval is granted, under this Part.	4 5 6 7 8 9
<b>[13] Section 112F</b>	10
Insert after section 112E:	11
<b>112F Activities for which biobanking is compulsory</b>	12
(1) If an activity is an activity for which biobanking is compulsory under a State environmental planning policy referred to in section 32, a determining authority must not grant an approval in relation to the activity unless a biobanking statement has been issued in respect of the activity under Part 7A of the <i>Threatened Species Conservation Act 1995</i> .	13 14 15 16 17 18
(2) If an activity is an activity for which biobanking is compulsory under a State environmental planning policy referred to in section 32, the proponent must not carry out that activity unless a biobanking statement has been issued in respect of the activity under Part 7A of the <i>Threatened Species Conservation Act 1995</i> .	19 20 21 22 23
(3) If a biobanking statement is issued under Part 7A of the <i>Threatened Species Conservation Act 1995</i> , section 127ZJ of that Act applies in relation to the activity.	24 25 26
<b>Note.</b> Section 127ZJ of the <i>Threatened Species Conservation Act 1995</i> requires the determining authority, if it grants approval to, or carries out, the activity, to impose conditions on the grant of the approval, or modify the activity, in accordance with the conditions of the biobanking statement.	27 28 29 30 31
<b>2.2 Environmental Planning and Assessment Regulation 2000</b>	32
<b>[1] Schedule 1 Forms</b>	33
Insert “(unless the development is taken to be development that is not likely to have such an effect, because of the issue of a biobanking statement under Part 7A of the <i>Threatened Species Conservation Act 1995</i> , in which case it is sufficient to indicate that the statement has been issued)” after “or their habitats” in clause 1 (e).	34 35 36 37 38

<b>[2] Schedule 1, clause 2 (5A)</b>	1
Insert after clause 2 (5):	2
(5A) The species impact statement referred to in subclause (1) (f) is not required in relation to the effect of the development on any threatened species, populations or ecological communities, or their habitats, if, because of the issue of a biobanking statement under Part 7A of the <i>Threatened Species Conservation Act 1995</i> , the development is taken to be development that is not likely to significantly affect those threatened species, populations, ecological communities, or their habitats.	3 4 5 6 7 8 9 10
<b>2.3 Land and Environment Court Act 1979 No 204</b>	11
<b>[1] Section 17 Class 1—environmental planning and protection appeals</b>	12
Insert after section 17 (ea):	13
(eb) appeals under section 127ZX of the <i>Threatened Species Conservation Act 1995</i> , and	14 15
<b>[2] Section 20 Class 4—environmental planning and protection and development contract civil enforcement</b>	16 17
Insert after section 20 (1) (cg):	18
(cga) proceedings under sections 127K and 127N of the <i>Threatened Species Conservation Act 1995</i> ,	19 20
<b>[3] Section 21 Class 5—environmental planning and protection summary enforcement</b>	21 22
Insert after section 21 (ha):	23
(hb) proceedings under sections 127ZC and 127ZL of the <i>Threatened Species Conservation Act 1995</i> , and	24 25
<b>2.4 Land Tax Management Act 1956 No 26</b>	26
<b>[1] Section 10 Land exempted from tax</b>	27
Insert after section 10 (1) (o):	28
(p) land that is the subject of a biobanking agreement under Part 7A of the <i>Threatened Species Conservation Act 1995</i> ,	29 30
<b>[2] Section 10 (2C)</b>	31
Insert “or part of any land is the subject of a biobanking agreement under Part 7A of the <i>Threatened Species Conservation Act 1995</i> ,” after “subsection (1) (p1),”.	32 33 34

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<b>2.5 National Parks and Wildlife Act 1974 No 80</b>	1
<b>[1] Section 138 Payments into Fund</b>	2
Insert “(except any money provided by Parliament for the purposes of the Biodiversity Banking Account or Biobanking Trust Fund under Part 7A of the <i>Threatened Species Conservation Act 1995</i> )” after “ <i>Act 1995</i> ” in section 138 (1) (a).	3 4 5 6
<b>[2] Section 138 (1) (b) (iii)</b>	7
Insert “, except those that are required to be paid into the Biodiversity Banking Account or Biobanking Trust Fund under Part 7A of the <i>Threatened Species Conservation Act 1995</i> ” after “those Acts”.	8 9 10
<b>[3] Section 138 (1) (b) (vii)</b>	11
Insert “, except penalties recovered pursuant to Part 7A of the <i>Threatened Species Conservation Act 1995</i> or the regulations under that Part” after “is trustee”.	12 13 14
<b>[4] Section 138 (1) (c)</b>	15
Insert “, except money required to be paid into the Biodiversity Banking Account under Part 7A of the <i>Threatened Species Conservation Act 1995</i> ” after “section 148”.	16 17 18
<b>[5] Section 138 (1) (d)</b>	19
Insert “, except money required to be paid into the Biodiversity Banking Account under Part 7A of the <i>Threatened Species Conservation Act 1995</i> ” after “section 149”.	20 21 22
<b>[6] Section 138 (1) (g)</b>	23
Insert “or money payable into the Biodiversity Banking Account or Biobanking Trust Fund under Part 7A of the <i>Threatened Species Conservation Act 1995</i> ” after “(if any)”.	24 25 26
<b>[7] Section 139 Payments out of Fund</b>	27
Insert “, except those incurred under Part 7A of the <i>Threatened Species Conservation Act 1995</i> ” after “ <i>Act 1995</i> ” in section 139 (2) (a).	28 29

Threatened Species Conservation Amendment (Biodiversity Banking)  
Bill 2006

Schedule 2      Amendment of other Acts and legislation

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**[8] Section 139 (2) (l)**

Insert “(except in relation to a dealing in land or other property, or an interest  
in property, the proceeds of which are payable into the Biodiversity Banking  
Account under Part 7A of the *Threatened Species Conservation Act 1995*)”  
after “149”.

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