

Introduced by Dr P A C Macdonald, MP

First print



New South Wales

Threatened Species Conservation Bill 1995

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows:

- (a) to establish a Scientific Advisory Committee for the purposes of the proposed Act,
 - (b) to provide for the identification and "listing" of species and communities of flora and fauna that are endangered or vulnerable or rare (Schedule 2), or potentially vulnerable (Schedule 3),
 - (c) to provide for a determination of critical habitats for species and communities listed in Schedule 2,
 - (d) to provide for a determination of threatening processes in respect of species and communities listed in Schedules 2 and 3,
 - (e) to provide for the monitoring of species and communities listed in Schedule 3 to assess whether they should be listed in Schedule 2,
 - (f) to provide for the making of recovery plans for species and communities listed in Schedule 2,
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- (g) to provide for the assessment of the impact of development on species and communities listed in Schedules 2 and 3,
- (h) to ensure threatened species are only harmed with the informed consent of the Director-General of National Parks and Wildlife,
- (i) to empower the acquisition of land (including by resumption) for the purposes of the proposed Act,
- (j) to provide for the preparation of a Biological Diversity Strategy,
- (k) to provide for the identification, listing in Schedule 5, and management of threatening processes by means of action plans,
- (l) to make other general provisions concerning enforcement of the proposed Act, payment of compensation by offenders, restraint of breaches of the proposed Act, and miscellaneous matters,
- (m) to prevent species becoming extinct,
- (n) to encourage the recovery and survival of threatened species.

Outline of provisions

Part 1 Preliminary

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

Clause 2 provides that the proposed Act commences on assent.

Clause 3 provides definitions for the purposes of the proposed Act.

Clause 4 states that the objects of the proposed Act are:

- (a) to conserve biodiversity, and
- (b) to maintain ecological and evolutionary processes, and
- (c) to prevent the extinction of any species or community of flora and fauna, other than the species listed in Schedule 1 (Species of flora and fauna excluded from Act), and
- (d) to apply the precautionary principle (which is defined as having the same meaning as in the *Protection of the Environment Administration Act 1991*) in ensuring that species do not become extinct, and
- (e) to eliminate or manage threatening processes, and
- (f) to provide programs of community education in the conservation of threatened flora and fauna, and

- (g) to encourage co-operative management for the conservation of threatened flora and fauna through, among other things, the making of conservation agreements under the *National Parks and Wildlife Act 1974*.

The clause also provides that public authorities are to be administered to further the objects of the proposed Act.

Clause 5 provides that the Scientific Advisory Committee constituted under the proposed Act may recommend that flora and fauna that constitute a serious threat to human health be excluded from the protection of the proposed Act by listing in Schedule 1. Any such recommendation must be advertised and public comment on the proposal must be considered by the Minister before the Minister recommends listing in Schedule 1 to the Governor.

Clause 6 provides that the proposed Act binds the Crown.

Part 2 Administration

Clause 7 provides for administration of the proposed Act by the Director-General of National Parks and Wildlife who is to report annually to Parliament on implementation of the proposed Act.

Clause 8 provides for the constitution of the Scientific Advisory Committee of 7 scientists having knowledge, experience and skills in the science of flora or fauna conservation, conservation biology or ecology. Schedule 6 has effect in relation to the members and procedure of the Committee.

Clause 9 makes provision as to the functions of the Scientific Advisory Committee. These include recommending the listing of threatened species or communities of flora and fauna, advising the Director-General and Minister on matters pertaining to the proposed Act and making recommendations concerning the acquisition of land for the protection of species or communities of threatened flora or fauna. The Committee may obtain from any public authority or person any information necessary for the proper exercise of its functions.

Clause 10 provides for the establishment of a Threatened Species Unit within the National Parks and Wildlife Service. The functions of the Unit include the making of recommendations to the Director-General regarding the exercise of functions under the proposed Act, the provision of technical advice and research data to the Director-General and the Scientific Advisory Committee and liaising with State and Commonwealth authorities and others to ensure the implementation of the proposed Act.

Part 3 Listing

Division 1 Endangered or vulnerable or rare, or potentially vulnerable, species and communities

Clause 11 makes provision for the listing of endangered or vulnerable or rare species and communities of flora and fauna in Schedule 2 to the proposed Act and for the listing of potentially vulnerable species and communities of flora and fauna in Schedule 3 to the proposed Act. The Director-General is to arrange for the addition or removal of items from these Schedules by order in accordance with recommendations of the Scientific Advisory Committee. Orders are to be laid before each House of Parliament within 7 sitting days after they are made. Schedule 12 to the *National Parks and Wildlife Act 1974* (Endangered Fauna) is taken to form part of Schedule 2 to the proposed Act (the word *threatened* in the former Schedule being taken to have the same meaning as *endangered* in the proposed Act) except in relation to species that are extinct.

Clause 12 states that a species or community of flora or fauna is eligible to be listed:

- (a) in Schedule 2 if it is in a state of decline that may result in extinction in New South Wales, or
- (b) in Schedule 3 if it requires ongoing monitoring and research due to existing recognised vulnerability.

The Scientific Committee is to prepare criteria as a basis for listing in the Schedules within 3 months after the commencement of the proposed Act. The criteria only have effect if included in regulations made under the proposed Act.

Clause 13 provides that any person may nominate any species or community of flora or fauna for addition to or removal from Schedule 2 or 3.

Clause 14 provides for the consideration of nominations received under clause 13 by the Scientific Advisory Committee. If the Committee rejects a nomination, it must notify the Minister and the nominator and give reasons for its decision.

Clause 15 requires the Scientific Advisory Committee to advertise its preliminary recommendation on a nomination in a newspaper circulating generally in the State and to allow the making of comments by the public.

Clause 16 makes provision for the making of a final recommendation by the Scientific Advisory Committee to the Director-General after it has considered any public comments. The decision and the reasons for it must be published.

Clause 17 enables the provisional listing of a species or community which is not listed in Schedule 2 or 3 if there is the threat of an activity which is demonstrably likely to threaten its survival or to cause its significant decline in the State and insufficient time is available to comply with the normal listing process. Any person may nominate a species or community for listing by this process. As soon as practicable after provisional listing, the Scientific Advisory Committee is to review the status of the species or community concerned in accordance with clauses 15 and 16 and is to identify any threatening processes in the notifications that it is required to make under those clauses. Provisional listing ceases to have effect when the Committee makes its recommendation on the listing to the Director-General.

Division 2 Critical habitats, threatening processes and monitoring

Clause 18 provides for the determination by the Scientific Advisory Committee of the critical habitat for each species or community of flora or fauna listed in Schedule 2. The Director-General is to keep a register of critical habitats. If the Director-General is of the opinion that any activity is being or is about to be carried out that will damage or destroy a critical habitat and will threaten the survival of the species or community concerned, the Director-General is required to take such action under clause 40 (Stop work orders) as may be necessary to prevent the damage or destruction.

Clause 19 provides for the determination of the threatening process or processes for each species or community of flora or fauna listed in Schedule 2 or 3 by the Scientific Advisory Committee after its listing in Schedule 2 or 3. Threatening processes that adversely affect 2 or more species in Schedule 2 or 3 are listed in Schedule 5.

Clause 20 provides for the establishment by the Scientific Advisory Committee of a monitoring system for species or communities listed in Schedule 3 within 2 years of the listing of the species or community in that Schedule. Provision is made for transfer of listing of species or communities from Schedule 3 to Schedule 2 in accordance with clauses 15 and 16. The Committee may request the Director-General to prepare action plans for species or communities listed in Schedule 3 whose condition is likely to deteriorate.

Division 3 Species and communities presumed extinct

Clause 21 makes provision for the listing in Schedule 4 of species and communities presumed extinct. Provision is made for the making of additions and amendments to, and repeals from, the Schedule by order and for orders to be laid before each House of Parliament after making. If a species is rediscovered, provision is made for its provisional listing in Schedule 2 in accordance with clause 17.

Part 4 Recovery plans

Clause 22 provides for the Minister to make recovery plans for species or a group of species or communities of flora or fauna within specified periods after the commencement of the proposed Act (if they are listed in Schedule 2 at that time) or after they are listed in that Schedule. Consultation on a draft recovery plan is to involve a Recovery Team comprising representatives from relevant public authorities, affected landholders and appropriate experts, and notice of its preparation is to be advertised throughout the State to enable the making of public submissions.

The Director-General is to submit a final draft recovery plan and any submissions on the draft plan to the Scientific Advisory Committee which, in turn, reviews the plan and submits it, with or without amendment, to the Minister. If the Minister does not accept the plan in the form recommended by the Committee, the Minister must provide reasons in the recovery plan. Notice of the making of the recovery plan is to be published, and the Director-General must commence to implement it no later than 3 months after it is made.

In preparing recovery plans, the Director-General is required to give highest priority to the preparation of plans relating to those species or communities that are most likely to benefit from such plans and particularly those that are, or may be, prejudiced by development projects or other activities, and those not adequately protected outside the State.

Clause 23 makes provision for amendment and revocation of recovery plans.

Clause 24 makes provision as to the contents of recovery plans. The Scientific Advisory Committee must review the implementation of each recovery plan annually and advise the Director-General on any deficiencies in implementation of plans. The Director-General must include the Committee's advice in the Director-General's annual report to Parliament.

Clause 25 requires the Director-General to review a recovery plan before the review date included in it.

Clause 26 requires the Minister and public authorities to have regard to relevant recovery plans in the exercise of their functions, and provides for the resolution of disputes concerning exercise of functions in a manner that is inconsistent with a recovery plan.

Clause 27 requires public authorities affected by recovery plans to report on the progress of the plans in their annual reports to Parliament.

Part 5 Impact of activities

Clause 28 creates offences, punishable by a fine of 1,000 penalty units (currently, \$100,000) or 2 years' imprisonment or both, in relation to the taking or killing of any species or community listed in Schedule 2. The holding of a licence under the proposed Act or the *National Parks and Wildlife Act 1974* authorising the doing of the act which constitutes the offence provides a defence to it. The requirements of the clause prevail over inconsistent requirements of other Acts or statutory instruments other than the *Bush Fires Act 1949* in relation to actions taken in accordance with an approved bush fire management plan.

Clause 29 provides further defences to prosecutions for taking or killing species listed in Schedule 2.

Clause 30 provides that the Director-General may issue licences authorising persons to take or kill species or communities listed in Schedule 2.

Clause 31 makes provision for licence applications including the provision of threatened species impact statements and the payment of application and processing fees.

Clause 32 requires the Director-General to advertise licence applications and invite public submissions on them. The matters to be taken into account by the Director-General in considering licence applications are enumerated.

Clause 33 provides for the grant of licences by the Director-General.

Clause 34 requires the Director-General to publicly notify the grant of a licence.

Clause 35 provides that certain persons dissatisfied with a decision of the Director-General relating to licences may appeal to the Land and Environment Court against the decision.

Clause 36 makes provision as to the form and content of threatened species impact statements. Such statements are to be prepared in consultation with the Director-General and are to have regard to any requirements notified by the Director-General.

Clause 37 provides that licences issued under Part 5 are subject to conditions and restrictions for the time being imposed on them by the Director-General or prescribed in relation to licences of the class to which they belong. Conditions and restrictions may be varied or removed, and a licence may be cancelled by the Minister or the Director-General. Any proposal to alter a licence after its issue is to be published. It is an offence to contravene any licence condition or restriction, punishable by a maximum penalty of 1,000 penalty units (currently, \$100,000) or 2 years' imprisonment or both.

Clause 38 states that section 98 (2) of the *National Parks and Wildlife Act 1974* (which creates offences in relation to the taking or killing of protected fauna) does not apply to species or communities listed in Schedule 3 to the proposed Act in relation to the doing of things that are essential to the carrying out of development or an activity in accordance with a development consent or approval given under the *Environmental Planning and Assessment Act 1979* so long as the development or activity conforms with any relevant action plan.

Clause 39 requires consent authorities to advise and consult with the Director-General if development or activity is likely to result in the taking or killing of any species or community listed in Schedule 3.

Clause 40 enables the Minister or the Director-General to order that any action likely to significantly affect the environment of any species or community listed in Schedule 2 cease and that no action, other than that specified in the order, be carried out with respect to the environment within 40 days after the making of the order. Orders may be extended for a further period or periods of 40 days, and may be superseded by the making of an interim protection order under the *National Parks and Wildlife Act 1974*. Inconsistent approvals, notices or orders made under any other Act which require or permit the environment to be significantly affected are void to the extent of any inconsistency with an order made under this clause.

Clause 41 requires that, one month after the notification of a critical habitat under clause 18, persons cease undertaking any activity that is likely to damage or destroy that habitat or to threaten the survival of the species or community for which the habitat is designated. Such persons must also enter into negotiations for a management contract under clause 42.

Clause 42 enables the Director-General to enter into a management contract with one or more persons or public authorities to provide for the management, control or prohibition of any activity that threatens the survival of a species or community or group of species or communities listed in Schedule 2 or 3. The clause makes provision as to the contents, and publication of the making of drafts, of management contracts. Submissions on draft contracts are to be reviewed by the Director-General before the preparation of the final management contract and that document, in turn, is to be reviewed and, if necessary, amended by the Scientific Advisory Committee before it is entered into. The Committee is also to conduct an annual review of the performance of all parties to management contracts and is to advise the Director-General of any deficiencies. The Director-General is to incorporate the Committee's advice in the Director-General's annual report to Parliament.

Part 6 Biological diversity strategy

Clause 43 provides for the establishment of a Biological Diversity Advisory Council of 10 members to advise with respect to the development of the Biological Diversity Strategy. Schedule 6 has effect with respect to the members and procedure of the Council.

Clause 44 makes provision as to the functions of the Biological Diversity Advisory Council. These include advising on the draft Biological Diversity Strategy, devising a public consultation process, advising on the status of, and threats to, biological diversity in the State and reviewing and advising on existing and proposed legislation covering relevant topics.

Clause 45 requires the Director-General to prepare a Biological Diversity Strategy, outlining how the objects of the proposed Act are to be achieved, within 3 months after the commencement of the proposed Act. Provision is made as to the contents of the Strategy.

Clause 46 sets out the procedure for making, and amending, the Strategy.

Part 7 Management of threatening processes

Clause 47 requires the Director-General and the Scientific Advisory Committee to identify threatening processes.

Clause 48 stipulates the procedure for the making of action plans. Action plans are made by the Minister after consideration of any public submissions, and recommendations by the Scientific Advisory Committee. Notice of the making of an action plan is to be published.

Clause 49 provides for amendment or revocation of action plans by the Minister.

Clause 50 makes provision as to the contents, and binding nature, of action plans.

Clause 51 makes provision as to the review of action plans.

Clause 52 requires public authorities affected by action plans to report on the progress of the plans in their annual reports to Parliament.

Part 8 General

Clause 53 provides that, in addition to any other penalty, a person convicted of an offence involving the destruction of or damage to a species or community of flora or fauna may be ordered by the Land and Environment Court to carry out restoration work and to provide security for the performance of that work.

Clause 54 provides for the making of orders for the payment of compensation by persons convicted of offences under the proposed Act by the Land and Environment Court.

Clause 55 makes provision for certain information about flora or fauna to be declared to be confidential if the Director-General is of the view that disclosure is likely to result in harm being done to flora, fauna or a critical habitat. A person improperly disclosing confidential information may be convicted of an offence punishable by a maximum fine of 50 penalty units (\$5,000).

Clause 56 makes provision for the bringing of proceedings in the Land and Environment Court by persons to remedy or restrain breaches of the proposed Act.

Clause 57 specifies that certain matters must be included in the annual report of the National Parks and Wildlife Service.

Clause 58 requires the Director-General to issue information bulletins to public authorities and to arrange seminars or workshops concerning the operations of the proposed Act.

Clause 59 authorises the Director-General to enter into co-operative agreements with persons or public authorities to achieve the objects of the proposed Act.

Clause 60 protects certain persons from personal liability in respect of activities performed in good faith for the purposes of the proposed Act.

Clause 61 makes provision as to proceedings for offences committed under the proposed Act.

Clause 62 makes provision as to offences by corporations.

Clause 63 empowers the Governor to make regulations for the purposes of the proposed Act.

Clause 64 is a formal provision that gives effect to Schedule 7 (Amendment of Acts).

Clause 65 is a formal provision that gives effect to Schedule 8 (Amendment of *Environmental Planning and Assessment Regulation 1994*).

Clause 66 is a formal provision that gives effect to Schedule 9 (Savings and transitional provisions).

Schedules

Schedule 1 is to contain the names of any species of flora or fauna that are excluded from the operation of the proposed Act.

Schedule 2 contains a list of flora and fauna that is endangered or vulnerable or rare.

Schedule 3 is to contain a list of any species and communities of flora or fauna that are potentially vulnerable.

Schedule 4 is to contain a list of any species and communities of flora or fauna that are presumed extinct.

Schedule 5 contains a list of threatening processes that adversely affect species or communities listed in Schedule 2 or 3.

Schedule 6 contains provisions relating to the members and procedure of the Scientific Advisory Committee and the Biological Diversity Advisory Council.

Schedule 7 makes consequential amendments to the *Bush Fires Act 1949*, the *Environmental Planning and Assessment Act 1979*, the *Land and Environment Court Act 1979* and the *National Parks and Wildlife Act 1974*.

Schedule 8 makes a consequential amendment to the *Environmental Planning and Assessment Regulation 1994*.

Schedule 9 contains transitional provisions that postpone the requirement for a licence to take vulnerable flora for 12 months and to take rare flora for 3 years after the commencement of the proposed Act.

Introduced by Dr P A C Macdonald, MP

First print



New South Wales

Threatened Species Conservation Bill 1995

Contents

	Page
Part 1 Preliminary	
1 Name of Act	2
2 Commencement	2
3 Definitions	2
4 Objects	6
5 Flora and fauna excluded from Act	6
6 Act binds Crown	7
Part 2 Administration	
7 Functions of Director-General	8
8 Scientific Advisory Committee	8
9 Functions of Committee	9
10 Threatened Species Unit	10

	Page
<hr/>	
Part 3 Listing	
Division 1 Endangered or vulnerable or rare, or potentially vulnerable, species and communities	
11 The list	12
12 Eligibility for listing	12
13 Making a nomination concerning listing	13
14 Consideration of nomination	13
15 Committee's preliminary recommendation	13
16 Committee's final decision	14
17 Provisional listing	14
Division 2 Critical habitats, threatening processes and monitoring	
18 Determination of critical habitats	15
19 Determination of threatening processes	16
20 Monitoring	17
Division 3 Species and communities presumed extinct	
21 The list	18
<hr/>	
Part 4 Recovery plans	
22 Procedure for making recovery plans	19
23 Amendment and revocation of recovery plans	21
24 Contents of recovery plans	21
25 Review of recovery plans	22
26 Regard to be had to recovery plans	22
27 Public authorities to report on progress of recovery plans	23
<hr/>	
Part 5 Impact of activities	
28 Offences concerning Schedule 2 species and communities	24

Threatened Species Conservation Bill 1995

Contents

	Page
29 Further provisions respecting taking or killing species listed in Schedule 2	25
30 Licences	25
31 Licence applications	26
32 Consideration of licence applications	27
33 Grant of licence applications	28
34 Notice of grant of licence	28
35 Appeals concerning licence applications	28
36 Threatened species impact statements	29
37 Conditions and restrictions attaching to licences	30
38 Taking and killing Schedule 3 species and communities	31
39 Consent authority to advise Director-General in relation to Schedule 3 species and communities	31
40 Stop work orders	31
41 Protection of critical habitats	32
42 Management contracts	33
 Part 6 Biological Diversity Strategy	
43 Biological Diversity Advisory Council	35
44 Functions of Council	35
45 The Strategy	36
46 Procedure for making or amending Strategy	37
 Part 7 Management of threatening processes	
47 Identification of threatening processes	38
48 Procedure for making action plans	38
49 Amendment and revocation of action plans	39
50 Contents of action plans	39
51 Review of action plans	40
52 Public authorities to report on progress of action plans	40
 Part 8 General	
53 Order to carry out restoration work	41
54 Payment of compensation by offender	41

Threatened Species Conservation Bill 1995

Contents

	Page
55 Secrecy	41
56 Restraint of breaches of Act	42
57 Matters to be put in annual report	42
58 Information concerning operations of Act	42
59 Co-operative agreements	43
60 Protection from liability	43
61 Proceedings for offences	43
62 Offences by corporations	44
63 Regulations	44
64 Amendment of Acts	44
65 Amendment of Environmental Planning and Assessment Regulation 1994	44
66 Savings and transitional provisions	44

Schedules

1 Species of Flora and Fauna excluded from Act	45
2 Endangered or Vulnerable or Rare Species and Communities	46
3 Potentially Vulnerable Species and Communities	67
4 Species and Communities presumed extinct	68
5 Threatening Processes	69
6 Provisions relating to Advisory Committee and Council	70
7 Amendment of Acts	77
8 Amendment of Environmental Planning and Assessment Regulation 1994	83
9 Savings and transitional provisions	84



New South Wales

Threatened Species Conservation Bill 1995

No , 1995

A Bill for

An Act to establish a legal and administrative structure to enable and promote the conservation of New South Wales' threatened flora and fauna and to provide for procedures which can be used for the prevention and management of threatening processes; and for related purposes.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Threatened Species Conservation Act 1995*.

2 Commencement

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This Act commences on the date of assent.

3 Definitions

In this Act:

activity means:

- (a) the formulation of proposals, or the making of a recommendation or decision, for the carrying out of development or a work or project by or on behalf of a public authority, or by or on behalf of any person and for which the approval of a public authority is required, or 10
- (b) the incurring of expenditure by or on behalf of a public authority in respect of the carrying out of development or a work or project by or on behalf of the public authority or the incurring of expenditure by or on behalf of any other person in respect of development or a work or project for which the approval of a public authority is required, or 15
- (c) the carrying out of development or a work or project by a public authority or development or a work or project for which the approval of a public authority is required, whether or not undertaken by the public authority. 20

biodiversity is the diversity of life and is made up of 3 25 components:

- (a) genetic diversity—the variety of genes (or units of heredity) in any population, and
- (b) species diversity—the variety of species, and
- (c) ecosystem diversity—the variety of communities or ecosystems. 30

Committee means the Scientific Advisory Committee established under this Act.

community means an assemblage of species inhabiting a given area in the wild.

consent authority includes a consent authority within the meaning of the *Environmental Planning and Assessment Act 1979* and a **determining authority** within the meaning of that Act.

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conservation agreement has the same meaning as in the *National Parks and Wildlife Act 1974*.

10

Council means the Biological Diversity Advisory Council established under this Act.

Court means the Land and Environment Court.

development, in relation to land, includes:

- (a) the construction or exterior alteration of a building or other structure, and
- (b) the demolition or removal of a building or other structure or works, and
- (c) the construction or carrying out of works, and
- (d) the subdivision or consolidation of land, and
- (e) the placing or relocation of a building or other structure or works on land.

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20

Director-General means the Director-General of National Parks and Wildlife appointed under the *National Parks and Wildlife Act 1974*.

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ecologically sustainable development has the same meaning as in the *Protection of the Environment Administration Act 1991*.

exercise a function includes perform a duty.

fauna means any animal life which is indigenous to New South Wales whether vertebrate or invertebrate and in any stage of biological development and includes fish and any other living thing generally classified as fauna, but does not include humans.

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flora means any plant life which is indigenous to New South Wales whether vascular or non-vascular and in any stage of biological development and includes any other living thing generally classified as flora, including fungi.

function includes a power, authority or duty. 5

habitat means the area, locality, site or particular type of local environment occupied or occasionally occupied by a species of flora or fauna or a community.

indigenous means native to New South Wales.

land includes: 10

- (a) buildings and other structures permanently fixed to land, and
- (b) land covered with water, and
- (c) the sea or an arm of the sea, and
- (d) a bay, inlet, lagoon, lake or body of water, whether inland or not and whether tidal or not, and 15
- (e) a river, stream or watercourse, whether tidal or not, and
- (f) any estate, interest, easement, servitude, privilege or right in or over land. 20

landholder means a person who, whether alone or with others, is in occupation or possession, or has the management or control, of land, and includes the agent of such a person. 20

person means an individual, corporation, partnership, trust, association or any other entity.

precautionary principle has the same meaning as in the *Protection of the Environment Administration Act 1991*. 25

public authority means:

- (a) a Government Department, or
- (b) an Administrative Office within the meaning of the *Public Sector Management Act 1988*, or 30
- (c) a council or county council under the *Local Government Act 1993*, or
- (d) any other body constituted by or under an Act,

and includes a person exercising functions on behalf of that Department, Office, council or body.

Service means the National Parks and Wildlife Service operating under the *National Parks and Wildlife Act 1974*.

species means a population or series of populations of living flora or fauna that are capable of interbreeding freely with each other but not with members of other species and includes any defined sub-species and taxon below sub-species and any recognisable variant or distinct population of any such species. 5

Strategy means the Biological Diversity Strategy referred to in Part 6. 10

take includes kill, injure, disturb, collect and without limiting the foregoing also includes significant modification of the habitat of a taxon which is likely to affect it adversely, or (in regard to fauna) may adversely affect its essential behaviour patterns. **Take** also applies to the taking of any flora or fauna of a listed community or its habitat. 15

threatened means endangered, rare, vulnerable, or potentially vulnerable.

threatening process means a process which has or may have the capability to threaten the survival or evolutionary development of any species or community of flora or fauna. 20

wild, in relation to flora or fauna, means in an independent, unpossessed or natural state and not in an intentionally cultivated or domesticated or captive state, regardless of the location or land tenure on which the flora or fauna is situated or found. 25

work, in relation to land, includes any change to the natural or existing condition or topography of the land including the removal, destruction or lopping of trees and the removal of vegetation or soil. 30

4 Objects

- (1) The objects of this Act are:
- (a) to conserve biodiversity, and
 - (b) to maintain ecological and evolutionary processes, and
 - (c) to prevent the extinction of any species or community of flora and fauna, other than the species listed in Schedule 1, and 5
 - (d) to apply the precautionary principle in ensuring that species do not become extinct, and
 - (e) to eliminate or manage threatening processes, and 10
 - (f) to provide programs of community education in the conservation of threatened flora and fauna, and
 - (g) to encourage co-operative management for the conservation of threatened flora and fauna through, among other things, the making of conservation agreements under the *National Parks and Wildlife Act 1974*. 15
- (2) A public authority is to be administered so as to further the objects of this Act.

5 Flora and fauna excluded from Act

- (1) Schedule 1 contains a list of species which are a serious threat to human health. 20
- (2) The Governor may, on the recommendation of the Minister and by order published in the Gazette, add an item (being a species which constitutes a serious threat to human health) to Schedule 1 or amend an item in or repeal an item from Schedule 1. 25
- (3) The Minister may recommend that an item be added to or amended in or repealed from Schedule 1 only on the recommendation of the Committee.
- (4) If the Committee proposes to make a recommendation to the Minister, it is to advertise the proposed recommendation and the reasons for it in the Gazette and in a newspaper circulating generally throughout the State. 30
- (5) After advertising its preliminary recommendation, the Committee is to allow at least 30 days to elapse for public comment to be made and is to consider any public comments which are made during that time before making its recommendation. 35

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- (6) After considering the Committee's recommendation, the Minister is to decide whether or not to recommend to the Governor that the addition, amendment or repeal be made and the Minister is to publish reasons for that decision in the Gazette and in a newspaper circulating generally throughout the State.

5

6 Act binds Crown

This Act binds the Crown, not only in right of the State but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

Part 2 Administration

7 Functions of Director-General

- (1) The Director-General is to administer this Act in such a way as to meet the objects of this Act.
- (2) The Director-General is to report annually to Parliament on the implementation of the Act. 5

8 Scientific Advisory Committee

- (1) There is constituted by this Act a body to be called the Scientific Advisory Committee.
- (2) The Committee is to consist of 7 members, being: 10
 - (a) 2 scientists from within the Service appointed by the Director-General, and
 - (b) 4 scientists, being one each nominated by the Australian Museum, the Royal Botanic Gardens, the Ecological Society of Australia and the Entomological Society of Australia, and 15
 - (c) 1 scientist from the staff of NSW tertiary institutions appointed by the Minister.
- (3) The Minister is not to appoint a person to be a member of the Committee unless satisfied that the person is knowledgeable and experienced in the science of flora or fauna conservation, conservation biology or ecology. 20
- (4) The Committee's members should have skills in one or more of the following fields: 25
 - (a) terrestrial ecology,
 - (b) limnology,
 - (c) marine ecology,
 - (d) plant community ecology,
 - (e) invertebrate biology,
 - (f) vertebrate biology, 30
 - (g) flora biology,
 - (h) genetics of small populations,
 - (i) population dynamics or population viability analysis or evolutionary ecology.

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- (5) Each member of the Committee is, subject to this Act, to hold office for 4 years.
- (6) The Committee is to elect its own Chairperson.
- (7) Schedule 6 has effect.
- (8) If an organisation referred to in this section fails to nominate a scientist for membership of the Committee within one month after being requested to do so by the Director-General, the Committee is not prevented from meeting and exercising its functions under this Act. 5

9 Functions of Committee 10

- (1) The Committee has the following functions:
- (a) to recommend the listing of threatened species or communities of flora and fauna,
 - (b) to advise the Director-General in respect of the exercise of the Director-General's functions conferred or imposed under this Act, 15
 - (c) to advise the Minister on such matters dealing with the conservation of threatened flora and fauna and the operation of this Act as it thinks fit,
 - (d) to recommend to the Minister the acquisition of land for the protection of species or communities listed in Schedule 2 or 3, 20
 - (e) such other functions as are conferred or imposed on it by or under this or any other Act.
- (2) The Committee is to forward to the Minister copies of any advice given to the Director-General in respect of the exercise of functions conferred or imposed on the Director-General under this Act within 7 days after that advice is given. 25
- (3) All records of the Committee are to be open to public inspection, except as provided by section 18 (6) and 55 (Secrecy). 30
- (4) The Committee may co-opt the services of any willing person to any working group of the Committee if the Committee considers that this is necessary to assist it in the proper discharge of its functions.

- (5) The Committee must not delegate any of its functions to any person or public authority.
- (6) The Chairperson of the Committee may request any information that he or she considers necessary for the proper exercise of the Committee's functions from any public authority or person and that public authority or person must comply with the request within the period required by the Chairperson. 5

10 Threatened Species Unit

- (1) The Director-General is to establish a Threatened Species Unit within the head office of the Service. 10
- (2) The functions of the Threatened Species Unit are:
 - (a) to make recommendations to the Director-General for or with respect to the exercise of the Director-General's functions conferred or imposed under this Act, and
 - (b) to assist the Committee in the discharge of its functions conferred or imposed under this Act, and 15
 - (c) to provide technical advice to the Director-General and the Committee in pursuance of this Act's objects, and
 - (d) to undertake and co-ordinate research as necessary to ensure the implementation of this Act, and 20
 - (e) to prepare and maintain appropriate data bases on threatened species and communities, and
 - (f) to undertake and co-ordinate surveys and prepare inventories of biological diversity, in particular, to identify areas with rare, keystone or indicator species, areas of particular ecological distinctiveness or harbouring threatened species or communities, and areas of high biological diversity, especially those at risk from human activities, and 25
 - (g) to liaise with public authorities, other States' authorities, Commonwealth authorities, persons and non-government organisations and others as necessary to ensure the implementation of this Act, and 30

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- (h) to co-ordinate the preparation of education material and other information in pursuance of the objects of this Act, and
 - (i) to exercise such other functions as may be conferred or imposed on it by this or any other Act.
- (3) The Threatened Species Unit is to provide such administrative support to the Committee as is requested or necessary.

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Part 3 Listing

Division 1 Endangered or vulnerable or rare, or potentially vulnerable, species and communities

11 The list

- (1) Schedule 2 contains a list of species and communities of flora and fauna which are endangered or vulnerable or rare. 5
- (2) Schedule 3 contains a list of species and communities of flora and fauna which are potentially vulnerable.
- (3) The Director-General must, if the Committee so recommends, by order published in the Gazette add an item to or remove an item from Schedule 2 or 3. 10
- (4) An order made under subsection (3) is to be laid before each House of Parliament within 7 sitting days after its making.
- (5) The Committee in making a recommendation under this Part and in preparing the list of criteria for eligibility is to have regard only to nature conservation matters. 15
- (6) For the purposes of this Part, Schedule 12 under the *National Parks and Wildlife Act 1974* (as in force at the date of assent to this Act) is taken to form part of Schedule 2 under this Act (with *threatened* in Schedule 12 having the same meaning as *endangered* under this Act) except for species that are considered extinct. 20

12 Eligibility for listing

- (1) A species or community of flora or fauna is eligible to be listed:
 - (a) in Schedule 2 if it is in a state of decline (including long term decline) that may result in extinction in New South Wales, or 25
 - (b) in Schedule 3 if it is a species or community which, while not currently endangered or vulnerable, requires ongoing monitoring and research due to existing recognised vulnerability. 30

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- (2) The Committee is responsible for preparing, within 3 months after the commencement of this Act, and maintaining a set of criteria by which the eligibility of species or communities of flora or fauna for listing can be determined.
- (3) The set of criteria referred to in subsection (2) is of no effect unless it is included in regulations under this Act. 5

13 Making a nomination concerning listing

- (1) Any person may nominate any species or community of flora or fauna to be added to or removed from Schedule 2 or 3.
- (2) A nomination is to be made to the Committee and must include any prescribed information and must be in writing addressed to the Secretary of the Committee. 10

14 Consideration of nomination

- (1) The Committee is to consider each nomination at the first meeting after the nomination has been made. 15
- (2) The Committee may consider different nominations about the same subject together.
- (3) The Committee may reject a nomination if:
- (a) the nomination has already been given effect to, or
 - (b) the nomination is vexatious, or 20
 - (c) the nomination is not accompanied by the prescribed information.
- (4) If the Committee rejects a nomination, it is to notify the Minister and nominator and give reasons for that rejection.

15 Committee's preliminary recommendation

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- (1) The Committee, after reaching a view on a nomination, is to make a preliminary recommendation as to whether the nomination should be supported or not supported or no opinion stated.

- (2) When the Committee has made a preliminary recommendation, it must within 30 days:
 - (a) notify the nominator, and
 - (b) advertise its preliminary recommendation and the reasons for it in a newspaper circulating generally throughout the State. 5
- (3) After advertising its preliminary recommendation, the Committee is to allow 30 days to elapse for public comment to be made and is to consider any public comments which are made during that time. 10

16 Committee's final decision

- (1) After considering any public comments, the Committee is to decide whether or not to recommend to the Director-General that the species or community of flora or fauna be added to or removed from Schedule 2 or 3 in accordance with the nomination. 15
- (2) The Committee must make a decision under subsection (1) within 6 months of the making of the nomination.
- (3) When the Committee has made its decision, it must within 30 days: 20
 - (a) notify the nominator, and
 - (b) advertise the decision and the reasons for it in a newspaper circulating generally throughout the State, and
 - (c) publish notice of the making of the decision in the Gazette.

17 Provisional listing 25

- (1) Where the Committee notifies the Director-General that it is satisfied that:
 - (a) a species or community of flora or fauna is not listed in Schedule 2 or 3, and
 - (b) the species or community is threatened by an activity which is demonstrably likely to threaten its survival or cause its significant decline in New South Wales, and 30
 - (c) the process of listing required under this Division will not be completed prior to the commencement of the activity,

the Director-General must immediately provisionally list that species or community in Schedule 2 or 3 by publication of a notice to that effect in the Gazette.

- (2) As soon as practicable after provisional listing, the Committee is to review the status of the species or community in accordance with sections 15 and 16 (as if the species or community had been nominated for listing) and is to identify any threatening processes in the notifications required under those sections. Provisional listing ceases to have effect when the Committee makes its recommendation to the Director-General on the nomination. 5
10
- (3) Any person may nominate any species or community for provisional listing in Schedule 2 or 3.
- (4) A nomination is to be made to the Committee and must include any prescribed information and must be in writing addressed to the Secretary of the Committee. 15

Division 2 Critical habitats, threatening processes and monitoring

18 Determination of critical habitats

- (1) As soon as practicable after listing in Schedule 2, the Committee is to determine, on the best available scientific information, the critical habitat for each species or community of flora and fauna so listed. 20
- (2) The Director-General must report progress on the identification of critical habitat in the Director-General's annual report to Parliament. 25
- (3) The critical habitat is the whole or any part or parts of the habitat which is likely to be essential for the survival and recovery of that species or community.
- (4) The Committee may determine that a specific area outside the habitat of a species or community is critical habitat for the purposes of this Act. 30

- (5) The Committee is to:
- (a) advertise its determination in a newspaper circulating generally throughout the State and a newspaper circulating in the region where the critical habitat occurs, and
 - (b) publish notice of the determination in the Gazette. 5
- (6) The Committee need not comply with subsection (5) (a) and (b) if:
- (a) the Committee is of the opinion that to disclose the location of the habitat would result in an unreasonable level of harm being done to it and to the flora and fauna which it supports, or 10
 - (b) the landholder of the land concerned requests that the information be withheld and the Minister approves the withholding of the information.
- (7) The Committee may amend a determination. 15
- (8) Any person may propose an amendment of a determination of critical habitat.
- (9) A proposal for amendment is to be made to the Committee and must include any prescribed information and must be in writing addressed to the Secretary of the Committee. 20
- (10) If the Committee amends a determination, it is to notify those persons who were given notice of the making of the determination and publish notice in the Gazette.
- (11) The Director-General is to keep a register of critical habitats.
- (12) If, in the opinion of the Director-General, any activity being or about to be carried out will damage or destroy a critical habitat and will threaten the survival of the species or community concerned, the Director-General must take such action under section 40 (Stop work orders) as may be necessary to prevent that damage or destruction. 25
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19 Determination of threatening processes

- (1) As soon as practicable after listing in Schedule 2 or 3, the Committee is to determine, on the best available scientific information, the threatening process or processes for each species or community, or adversely affecting 2 or more species or communities. 35

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- (2) The Director-General must report progress on the identification of threatening processes in the Director-General's annual report to Parliament.
- (3) Schedule 5 contains a list of threatening processes that adversely affects 2 or more species or communities in Schedule 2 or 3. 5
- (4) The Committee is to:
- (a) advertise its determination in a newspaper circulating generally throughout the State, and
 - (b) publish notice of the determination in the Gazette, adding an item to Schedule 5. 10
- (5) The Committee may amend a determination.
- (6) Any person may propose an amendment to a determination of threatening processes.
- (7) A proposal for amendment is to be made to the Committee and must include any prescribed information and must be in writing addressed to the Secretary of the Committee. 15
- (8) If the Committee amends a determination, it is to publish a notice in the Gazette and in a newspaper circulating generally throughout the State.

20 Monitoring

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- (1) When a species or community of flora or fauna is listed in Schedule 3, the Committee must establish a monitoring system for the species or community within 2 years of listing of the species.
- (2) The Committee is to regularly review monitoring data to assess whether a species or community listed in Schedule 3 should be listed in Schedule 2. 25
- (3) If a species or community listed in Schedule 3 should, in the opinion of the Committee, be listed in Schedule 2, the Committee is to list the species or community in accordance with sections 15 and 16. 30

- (4) The Committee is to request the Director-General to prepare action plans for species or communities or groups of species or communities listed in Schedule 3 whose condition is likely to deteriorate.

Division 3 Species and communities presumed extinct 5

21 The list

- (1) Schedule 4 contains a list of species and communities of flora and fauna which are presumed extinct.
- (2) The Director-General must, if the Committee so recommends, by order published in the Gazette add an item to Schedule 4 or amend an item in or repeal an item from Schedule 4. 10
- (3) An order made under subsection (2) is to be laid before each House of Parliament within 7 sitting days after its making.
- (4) A species or community of flora or fauna is eligible to be listed if it is no longer known to exist in the wild in New South Wales after repeated searches of the known or likely areas of occurrence or if there have been no reliable observations of that species or community for at least 50 years. 15
- (5) If the Committee proposes to make a recommendation to the Director-General, it must advertise the proposed recommendation and the reasons for it in a newspaper circulating generally throughout the State. 20
- (6) After advertising its preliminary recommendation, the Committee is to allow at least 30 days to elapse for public comment to be made and is to consider any public comments which are made during that time before making its recommendation. 25
- (7) The Committee is to decide whether or not to recommend to the Director-General that the addition, amendment or repeal be made and the Committee is to publish reasons for that decision in the Gazette and in a newspaper circulating generally throughout the State and is to make the reasons for its decision available on payment of such reasonable fee as the Director-General determines. 30
- (8) If a species in Schedule 4 is rediscovered, the Committee is to provisionally list it in Schedule 2 under section 17. 35

Part 4 Recovery plans

22 Procedure for making recovery plans

- (1) The Minister is to make a recovery plan for each species or group of species or community of flora or fauna specified in this subsection within the time specified in this subsection as follows: 5
- (a) for each species or group of species or community of flora or fauna listed in Schedule 2 as endangered on the date on which this Act commenced—within 3 years after that date;
 - (b) for each species or group of species or community of flora or fauna listed in Schedule 2 as endangered after the date on which this Act commenced—within 2 years after the date on which the species, group or community is so listed; 10
 - (c) for each species or group of species or community of flora or fauna listed in Schedule 2 as vulnerable or rare on the date on which this Act commenced—within 5 years after that date; 15
 - (d) for each species or group of species or community of flora or fauna listed in Schedule 2 as vulnerable or rare after the date on which this Act commenced—within 3 years after the date on which the species, group or community is so listed. 20
- (2) Before making a recovery plan, the Director-General is to prepare a draft recovery plan and is to consult on the draft plan with a Recovery Team established by the Director-General for the purpose, comprising representatives from relevant public authorities, affected landowners and appropriate experts. 25
- (3) The Director-General is to give notice of the preparation of a draft recovery plan by publishing notice of the preparation of a draft recovery plan in a newspaper circulating generally throughout the State. 30
- (4) A notice is to:
- (a) be in the prescribed form, and
 - (b) state the date by which submissions may be made to the Director-General, which is to be at least 30 days after the date on which the notice is published, and 35

- (c) specify the manner in which submissions may be made, and
 - (d) fix a time and place at which a copy of the draft plan will be available to the public for inspection.
- (5) Any person may make submissions to the Director-General about a draft recovery plan and the Director-General is to acknowledge receipt of each submission. 5
- (6) After considering all the submissions made within the period set out in the notice, the Director-General is to submit a final draft recovery plan, and any submissions on the plan, to the Committee. 10
- (7) The Committee is to review and may amend the final draft recovery plan.
- (8) The Director-General:
 - (a) must consult any public authority that is affected by a draft recovery plan before the plan is finalised and must take any submission by any such authority into account before finalising the plan, and 15
 - (b) must consult the Director of NSW Fisheries if a final draft recovery plan contains measures to conserve a species of fish. 20
- (9) Where the Minister does not make the recovery plan as amended by the Committee and submitted by the Director-General, the Minister is to provide reasons in the recovery plan.
- (10) After the recovery plan has been made, the Minister is to give notice of its making in the same way as notice was given under subsection (3) and is to publish notice of its making in the Gazette. 25
- (11) The Director-General is to commence to implement each plan as soon as is practicable and in any case within 3 months of its making. 30
- (12) In preparing recovery plans, the Director-General is to assign the highest priority to those species or communities:
 - (a) most likely to benefit from such plans, particularly those species or communities that are, or may be, in conflict with development projects or other activities, and 35
 - (b) not adequately protected outside New South Wales.

23 Amendment and revocation of recovery plans

- (1) The Minister may amend or revoke a recovery plan.
- (2) The procedures applicable to the making of a recovery plan apply to the revocation of a recovery plan or the making of an amendment to a recovery plan which is not a minor amendment.

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24 Contents of recovery plans

- (1) A recovery plan is to state:
 - (a) the species or community of flora or fauna to which it applies, and
 - (b) its critical habitat, and 10
 - (c) the threatening process or processes pertaining to that species or community, and
 - (d) what must be done to ensure the recovery of that species or community to a position of viability in the wild, and
 - (e) what must be done to protect the critical habitat, and 15
 - (f) in relation to the objects of this Act:
 - (i) the way in which those objects are to be implemented or promoted for the benefit of that species or community, and
 - (ii) the method by which progress towards achieving those objects can be assessed, and 20
 - (g) the date by which the recovery plan should be subject to review by the Director-General and the Committee, and
 - (h) the reasons for the Minister failing to make the recovery plan as amended by the Committee and submitted by the Director-General. 25
- (2) Despite anything in this or any other Act or in any instrument made under this or any other Act, if the Minister has made a recovery plan the Minister is bound to implement that plan.
- (3) The Director-General may enlist the services of appropriate persons or public authorities as part of a team to implement a recovery plan. 30

- (4) The Committee is:
- (a) to review the implementation of each recovery plan annually, and
 - (b) to advise the Director-General of any deficiencies in implementation of any recovery plan. 5
- (5) The Director-General is to incorporate the Committee's advice on the review of recovery plans in the Director-General's annual report to Parliament.

25 Review of recovery plans

The Director-General is to review a recovery plan before the date fixed in accordance with section 24 (1) (g). 10

26 Regard to be had to recovery plans

- (1) The Minister is to have regard to any relevant recovery plan in the exercise of the Minister's functions under this Act.
- (2) Public authorities are to have regard to any recovery plan that is relevant to the exercise of their functions. 15
- (3) A public authority is to notify the Minister if it intends to exercise a function in a manner that is inconsistent with a recovery plan.
- (4) The Minister must, on receiving such a notification, endeavour to resolve the matter in consultation with the Minister responsible for the public authority concerned. 20
- (5) If the matter cannot be resolved by the Ministers, the Minister must refer it to the Premier for resolution.
- (6) The Ministers and the public authority concerned must give effect to any decision of the Premier on the matter and are, despite the provisions of any Act, empowered to comply with any order or direction that the Premier gives on the matter. 25
- (7) The Premier is to cause the grounds on which he or she resolves any matter under this section to be published in the Gazette within 28 days of that resolution. 30

27 Public authorities to report on progress of recovery plans

Public authorities affected by a recovery plan are to report on the progress of the implementation of the plan in their annual reports to Parliament.

Part 5 Impact of activities

28 Offences concerning Schedule 2 species and communities

- (1) A person must not:
- (a) take or kill any species or community listed in Schedule 2,
or 5
 - (b) use any animal, firearm, explosive, net, trap, hunting
device or instrument or means whatever for the purpose of
taking or killing any species or community listed in
Schedule 2.
- Maximum penalty: 1,000 penalty units or imprisonment for 2 10
years or both.
- (2) A person is not to be convicted of an offence arising under this
section or under the *National Parks and Wildlife Act 1974* if the
person proves that the act constituting the offence was done
under and in accordance with or by virtue of the authority 15
conferred by a licence under this Part.
- (3) A licence under this Part to take or kill a species of fish listed in
Schedule 2 is required only where the need for a licence is
specified in a recovery plan or action plan.
- (4) Except as provided by subsection (2), this section does not limit 20
the operation of the *National Parks and Wildlife Act 1974*.
- (5) If the provisions of any other Act or any instrument under any
other Act authorise or require anything to be done that would
constitute an offence under this section:
- (a) the provisions of this section prevail (except where what is 25
done is done in accordance with a bush fire management
plan approved under section 41A of the *Bush Fires Act*
1949), and
 - (b) a person is not to be convicted of an offence against that 30
other Act or instrument because of the person's failure to
comply with that other Act or instrument if compliance
with that other Act or instrument would constitute an
offence under subsection (1).

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- (6) A licence or authority in force under section 120 or 171 of the *National Parks and Wildlife Act 1974* immediately before the commencement of this section is for the purposes of this section taken to be a licence under this Part for the duration of its term with no alteration or extension. 5
- (7) Despite subsection (6), the Director-General may require a person to hold a licence for plants and communities under this Part.

29 Further provisions respecting taking or killing species listed in Schedule 2 10

A person is not to be convicted of an offence arising under section 28 (1) if the person proves:

- (a) that the animal concerned was in some person's lawful possession and that the act constituting the offence was, having regard to the circumstances of the case, reasonably necessary for promoting the welfare of the animal, or 15
- (b) that the animal concerned had strayed or escaped from some person's lawful possession and that the act constituting the offence was, having regard to the circumstances of the case, reasonably necessary for securing the return of the animal. 20

30 Licences

- (1) The Director-General may issue a licence authorising a person to:
- (a) take or kill any species or community listed in Schedule 2, or 25
- (b) use any animal, firearm, explosive, net, trap, hunting device or instrument or means whatever for the purpose of taking or killing any species or community listed in Schedule 2.
- (2) Any application for a licence is to take into account the relevant recovery plan or action plan, prepared under this Act. 30
- (3) The terms and conditions of a licence are to comply with any relevant recovery plan or action plan prepared under this Act, but may also contain additional conditions in conformity with the objectives of this Act. 35

- (4) For the purposes of deciding significant modification of the habitat of a taxon which is likely to affect it adversely or (in regard to fauna) may adversely affect its essential behaviour patterns, the following factors must be taken into account:
- (a) the extent of modification or removal of habitat in relation to the same habitat type in the locality, 5
 - (b) the sensitivity of the species or community to removal or modification of its habitat,
 - (c) the time required to regenerate critical habitat,
 - (d) the effect on the ability of the species population or community to recover, including interactions between the subject land and adjacent habitat that may influence the population or community beyond the area proposed for development or activities, 10
 - (e) any proposal to ameliorate the impact, 15
 - (f) whether the land is currently being assessed for wilderness by the Director-General under the *Wilderness Act 1987*,
 - (g) any adverse effect on the survival of the species or the community or that population of plant or animal.

31 Licence applications 20

- (1) An application for a licence must be accompanied by:
- (a) a threatened species impact statement prepared in accordance with section 36, and
 - (b) an application fee of \$200.
- (2) The Director-General is to levy a processing fee, being an amount not more than the costs (including on-costs) incurred by the Service in the assessment and processing of the application (whether or not it is successful) and the fee is recoverable by the Director-General as a debt due to the Crown in a court of competent jurisdiction. The Director-General may, before dealing with the application, require the applicant to pay an amount not exceeding one-half of the estimated processing fee. 25 30
- (3) The Director-General may reduce the amount of a processing fee levied for any licence application having regard to the following:

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- (a) the extent of scientific examination necessary for the processing of the licence application,
 - (b) the adequacy of any threatened species impact statement or environmental impact statement supplied by the applicant,
 - (c) the capacity of the applicant or persons with whom the applicant is associated to meet the fee levied, 5
 - (d) whether and to what extent the activity sought to be licensed may confer a commercial benefit on the applicant if the licence is granted.

32 Consideration of licence applications 10

- (1) On receipt of an application, the Director-General must cause to be placed in a newspaper circulating throughout the State a notice:
 - (a) outlining the nature of the application,
 - (b) stating the locations at which copies of the threatened species impact statement may be inspected or purchased, and 15
 - (c) inviting public submissions within a period of not less than 28 days of the date of the notice.
- (2) In considering an application, the Director-General must take into account the following: 20
 - (a) any threatened species impact statement or environmental impact statement,
 - (b) any submissions received within the period specified under subsection (1), 25
 - (c) the criteria referred to in section 12 (2),
 - (d) any reasons provided pursuant to section 16,
 - (e) the precautionary principle,

and may require any further information concerning the proposed action and the environment to be affected from the applicant or from any public authority. 30
- (3) In deciding whether to reject or grant the application, the Director-General may consider any modifications to the action including the development of a recovery plan.

33 Grant of licence applications

- (1) The Director-General may grant an application for a licence or refuse the application, but must not grant the application until the processing fee levied has been paid.
- (2) The Director-General is to notify the applicant and any person who has made a submission under section 32 of the Director-General's decision and the reasons for it. 5
- (3) All information concerning a species or community supplied to the Director-General in support of a licence application is to be made freely available to the public, subject to section 55 (Secrecy). 10

34 Notice of grant of licence

- (1) Within 14 days after the grant of a licence under this Part, the Director-General is required to publish in the Gazette notice of the decision to grant the licence. 15
- (2) The Director-General is required to make available for public inspection the Director-General's reasons for granting the licence and a person is entitled to a copy of those reasons on payment of such reasonable fee as the Director-General determines.

35 Appeals concerning licence applications 20

- (1) An applicant for a licence under this Part or any person who has made a submission pursuant to section 32, if dissatisfied with the Director-General's decision on the application, may appeal to the Court.
- (2) In determining an appeal, the Court must take into account the factors set out in section 32 (2), but this does not limit section 39 of the *Land and Environment Court Act 1979*. 25
- (3) An appeal may be made by a person only within 28 days after the Director-General notified the person of the decision concerned pursuant to section 33. 30
- (4) A licence has no operation until the expiration of the period for the making of an appeal or (if an appeal is commenced within that time) until the appeal is withdrawn or determined.

- (5) Where the Director-General fails to grant an application for a licence under this Part, the application is taken to have been refused upon the expiration of 40 days (or such longer period as the Director-General may notify the applicant is required to consider an application in a particular case) after the application was received by the Director-General. 5

36 Threatened species impact statements

- (1) A threatened species impact statement must:
- (a) be in writing, and
 - (b) be signed by the person who prepared it, and 10
 - (c) include, to the fullest extent reasonably practicable, the following:
 - (i) a description of the species or community to be affected by the actions and the habitat used by the species or community, 15
 - (ii) an assessment of the regional and statewide distribution of the species and the habitat to be affected by the actions and any environmental pressures on them,
 - (iii) a description of the actions and how they will modify the environment and affect the essential behavioural patterns of the species or community in the short and long term where long term encompasses the time required to regenerate essential habitat components, 20 25
 - (iv) details of the measures to be taken to ameliorate the impact,
 - (v) details of the qualifications and experience in biological science and fauna management of the person preparing the statement and of any other person who has conducted research or investigations relied on by the person preparing the statement. 30

- (2) The person preparing the statement must consult with the Director-General and must, in preparing the statement, have regard to any requirements notified to him or her by the Director-General in respect of the form and content of the statement. 5
- (3) The Director-General must notify any requirements pursuant to subsection (2) within 28 days after the consultation.
- (4) Despite sections 77 (3) (d1) and 112 (1B) of the *Environmental Planning and Assessment Act 1979*, if an environmental impact statement has been prepared pursuant to that Act which addresses the matters set out in subsection (1), no separate threatened species impact statement is required. 10
- (5) A fauna impact statement in the course of preparation and substantially completed in accordance with section 92D of the *National Parks and Wildlife Act 1974* at the commencement of this Act is taken to have been prepared as a threatened species impact statement in accordance with this section. 15

37 Conditions and restrictions attaching to licences

- (1) A licence issued under this Part is subject to such conditions and restrictions (if any) as are for the time being imposed on the licence under this Part or prescribed by the regulations in relation to licences of the class to which the licence belongs. 20
- (2) The Director-General may, if the Director-General thinks fit, attach any conditions or restrictions to a licence on its issue.
- (3) The Director-General may, by notice in writing served on the holder of a licence: 25
 - (a) attach any conditions or restrictions to the licence after its issue, or
 - (b) vary or remove any conditions or restrictions attached by the Director-General to the licence, or 30
 - (c) otherwise vary the licence.
- (4) The Director-General must, at least 28 days before taking action under subsection (3), cause details of the proposed conditions or restrictions to be attached, or of the variation or removal of conditions or restrictions attached, to a licence or of any other variation of a licence to be published in the Gazette and in a newspaper circulating throughout New South Wales. 35

- (5) The holder of a licence must not contravene any condition or restriction attached to the licence.

Maximum penalty: 1,000 penalty units or imprisonment for 2 years or both.

- (6) A licence issued under this Part may be cancelled by the Minister or the Director-General. 5

38 Taking and killing Schedule 3 species and communities

Section 98 (2) of the *National Parks and Wildlife Act 1974* does not apply to those species and communities listed in Schedule 3, in relation to things which are essential for the carrying out of: 10

- (a) development in accordance with a development consent within the meaning of the *Environmental Planning and Assessment Act 1979*, or
- (b) an activity whether by a determining authority or pursuant to an approval of a determining authority within the meaning of Part 5 of that Act if the determining authority has complied with that Part, 15

so long as the development or activity conforms with any direction to any person or authority in an action plan and the consent authority takes the plan into account in making its determination. 20

39 Consent authority to advise Director-General in relation to Schedule 3 species and communities

If a consent authority is of the opinion that any species or community listed in Schedule 3 is likely to be taken (within the meaning of this Act) as the result of development or an activity, it must advise the Director-General and seek the Director-General's comment. 25

40 Stop work orders

- (1) If the Minister or the Director-General is of the opinion that any action is likely to significantly affect the environment of any species or community listed in Schedule 2, and such action is being or is about to be carried out, the Minister or Director-General may order that any such action is to cease and that no action, other than such action as may be specified in that order, is to be carried out with respect to that environment within a period of 40 days after the date of that order. 30 35

- (2) An order made under subsection (1) takes effect on and from the date on which a copy of that order is affixed in a conspicuous place in the environment or place the subject of that order or the persons performing or about to perform the action are notified that an order has been made, whichever is the sooner. 5
- (3) When the Minister or Director-General makes an order under subsection (1), he or she must immediately consult with the person or persons proposing to perform the action to determine whether any modification of the action may be sufficient to protect the environment of any species or community listed in Schedule 2. 10
- (4) The Minister or Director-General may extend an order made pursuant to subsection (1) for such further period or periods of 40 days as the Minister or Director-General thinks fit.
- (5) If, in the opinion of the Minister or the Director-General, satisfactory provisions cannot be made to protect the environment the subject of an order under subsection (1), he or she must make, or in the case of the Director-General recommend the making of, an interim protection order under Part 6A of the *National Parks and Wildlife Act 1974*. 15 20
- (6) The Minister or Director-General is not required, before making an order pursuant to subsection (1), to notify any person who may be affected by the order.
- (7) When an order made pursuant to subsection (1) is in force in relation to an environment, an approval, notice or order (whether made or issued before or after the order pursuant to subsection (1)) under any other Act which requires or permits the environment to be significantly affected is void to the extent of the inconsistency with the order. 25
- 41 Protection of critical habitats** 30
- (1) Within one month after the notification of a critical habitat under section 18, the Director-General must begin discussions to protect that habitat with any person (including the landowner) undertaking an activity likely to damage or destroy that habitat or threaten the survival of the species or community for which the habitat was designated. 35

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- (2) If, before the expiry of 5 months after the notification of a critical habitat, the Director-General is of the opinion that the activity is likely to continue and likely to damage or destroy that habitat or threaten the survival of the species or community for which the habitat was designated, the Director-General must require the person undertaking the activity: 5
- (a) to apply for a licence under this Part, or
 - (b) cease that activity and forthwith enter into negotiations for a management contract under section 42.
- (3) The Director-General may also impose a stop work order under this Act. 10

42 Management contracts

- (1) The Director-General may enter into a management contract with one or more persons or public authorities to provide for the management, control or prohibition of any activity that is threatening the survival of a species or community or group of species or communities listed in Schedule 2 or 3. 15
- (2) The management contract referred to in subsection (1) is to provide for the areas covered by the contract to be kept and maintained to the fullest extent possible in a manner which will ensure its continuing and undiminished role as a community and habitat for a taxon. 20
- (3) Before entering into a management contract, the Director-General is to publish notice of the proposal to make the draft contract in the Gazette and a newspaper circulating generally throughout the State. 25
- (4) A notice must:
- (a) be in the prescribed form, and
 - (b) state the date by which submissions may be made to the Director-General which is to be at least 30 days after the date on which the notice is published, and 30
 - (c) specify the manner in which submissions must be made, and
 - (d) fix a time and place at which a copy of the draft management contract will be available to the public for inspection. 35

- (5) Any person may make submissions to the Director-General about the draft management contract.
- (6) After considering all the submissions, the Director-General is to prepare a final management contract.
- (7) The Committee is to review all management contracts before they are entered into and may amend them as it sees fit. 5
- (8) A management contract is to set out its purposes and aims, the duties and areas of responsibility of the parties to the contract and its commencement date.
- (9) A management contract may only be changed or terminated by mutual agreement between the parties or according to the terms of the contract. 10
- (10) A management contract is binding on all parties to the contract.
- (11) The Committee is:
 - (a) to review annually the performance of all parties in meeting the terms of a management contract, and 15
 - (b) to advise the Director-General of any deficiencies in implementation of any management contract.
- (12) The Director-General is to incorporate the Committee's advice on the review of management contracts in the Director-General's annual report to Parliament. 20
- (13) The Director-General may require any person or public authority to provide security for the satisfactory performance of obligations set out in a management contract.

Part 6 Biological Diversity Strategy

43 Biological Diversity Advisory Council

- (1) There is to be a Biological Diversity Advisory Council.
- (2) The Council is to consist of the following 10 members:
 - (a) one scientist appointed by the Minister, who is to be the Chairperson of the Council, 5
 - (b) one person with expertise in industry appointed by the Minister,
 - (c) 3 scientists, one each to be selected by the Minister from 3 nominees of the Ecological Society of Australia, 3 nominees of the Australian Museum and 3 nominees of the National Biodiversity Council, 10
 - (d) 3 representatives of the environment movement selected by the Minister from 6 nominees of the Nature Conservation Council of New South Wales, 15
 - (e) one Aboriginal person selected by the Minister from 3 nominees of the New South Wales Aboriginal Land Council,
 - (f) one councillor within the meaning of the Local Government Act 1993 selected by the Minister from 3 nominees of the Local Government Association of New South Wales. 20
- (3) Schedule 6 has effect.

44 Functions of Council

- The Council has the following functions: 25
- (a) to advise the Director-General and the Minister on the draft Strategy,
 - (b) to devise and to assist in the implementation of a comprehensive consultation process for preparation of the Strategy, 30
 - (c) to advise on the status of, and threats to, the biological diversity of the State,

- (d) to undertake a review of existing legislation for implementing biodiversity programs and of existing legislation that may directly or indirectly result in the loss of biodiversity, and to advise on the necessity for future legislative action, 5
- (e) to advise the Director-General and the Minister on matters relating to the conservation of biological diversity, including the monitoring of the implementation of the Strategy.

45 The Strategy 10

- (1) The Director-General is to prepare a Biological Diversity Strategy within 3 months after the commencement of this Act setting out how the objects of this Act are to be achieved.
- (2) The Strategy is to include proposals for:
 - (a) ensuring the survival and evolutionary development in the wild of all species and communities of flora and fauna native to the State or that, in the case of fauna being birds, periodically or occasionally migrate to the State, and including appropriate protection under the *Wilderness Act 1987* or the *National Parks and Wildlife Act 1974*, and 15
 - (b) preparing or contributing to the preparation of strategies for ecologically sustainable development in New South Wales, including the integration of biological diversity conservation and natural resource management, and 20
 - (c) an education program targeted at the community and public authorities, and 25
 - (d) a biodiversity research program, and
 - (e) encouraging greater community involvement in decision making affecting biological diversity.
- (3) The Strategy must also include: 30
 - (a) the objectives and performance targets of the Strategy, and
 - (b) a statement of the means by which these objectives and performance targets are to be achieved, and
 - (c) a statement of the manner in which the Service proposes to assess its performance with respect to attainment of the objectives and performance targets of the Strategy. 35
- (4) The Director-General may amend the Strategy.

46 Procedure for making or amending Strategy

- (1) The Director-General is to prepare a draft Strategy and publish notice of the draft Strategy in a newspaper circulating generally throughout the State.
- (2) A notice is to:
 - (a) be in the prescribed form, and
 - (b) state the date by which submissions may be made to the Director-General, which is to be at least 30 days after the date on which the notice is published, and
 - (c) specify the manner in which submissions may be made, and
 - (d) fix a time and place at which a copy of the draft Strategy will be available to the public for inspection.
- (3) Any person may make submissions to the Director-General about the draft Strategy.
- (4) The Director-General may, on the expiration of the period referred to in subsection (2) and examination of submissions made, amend the Strategy and is to refer the Strategy and any submissions made to the Committee for its consideration and advice.
- (5) Before adopting the Strategy, the Director-General is to consider the comments and suggestions of the Committee and is to seek the advice of any other relevant public authority.
- (6) The Director-General may adopt the Strategy without alteration or with such alterations as he or she thinks fit.
- (7) After the Strategy has been adopted, the Director-General is to publish notice of its making in the Gazette and in a newspaper circulating generally throughout the State.
- (8) The procedures applicable to the making of the Strategy apply to the making of an amendment to the Strategy which is not a minor amendment.

Part 7 Management of threatening processes

47 Identification of threatening processes

The Director-General and the Committee are to identify threatening processes which:

- (a) affect more than one species or community in Schedule 2 5
 or 3, or
- (b) operate across a geographic or administrative region, or
- (c) will cause the condition of a species or community listed
 in Schedule 3 to deteriorate.

48 Procedure for making action plans 10

- (1) After consultation with relevant public authorities and persons,
 the Director-General is to prepare a draft action plan for each
 process identified under section 45.
- (2) The Director-General is to give notice of the preparation of a
 draft action plan by giving notice of the preparation of a draft 15
 action plan in the Gazette and in a newspaper circulating
 generally throughout the State.
- (3) A notice is to:
 - (a) be in the prescribed form, and
 - (b) state the date by which submissions may be made to the 20
 Director-General, which is to be at least 30 days after the
 date on which the notice is published, and
 - (c) specify the manner in which submissions may be made,
 and
 - (d) fix a time and a place at which a copy of the draft plan will 25
 be available to the public for inspection.
- (4) Any person may make a submission to the Director-General
 about a draft action plan and the Director-General is to
 acknowledge receipt of each submission.
- (5) After considering all the submissions made within the period set 30
 out in the notice, the Director-General is to prepare a final action
 plan.

- (6) The Director-General is to forward a copy of the final plan to the Committee for its review.
- (7) The Committee is to review the plan and may make recommendations to the Director-General for its amendment.
- (8) The Minister is to make the action plan after taking into account any recommendations made by the Committee. 5
- (9) Where the Minister does not make the action plan as submitted by the Director-General or does not give effect to a recommendation of the Committee, the Minister is to provide reasons in the action plan. 10
- (10) After the action plan has been made, the Minister is to publish notice of its making in the Gazette and in a newspaper circulating generally throughout the State.

49 Amendment and revocation of action plans

- (1) The Minister may amend or revoke an action plan. 15
- (2) The procedure applicable to the making of an action plan applies to the revocation of an action plan or the making of an amendment to the action plan which is not a minor amendment.

50 Contents of action plans

- (1) An action plan is to state: 20
 - (a) the threatening process to which it applies, and
 - (b) the area over which it applies, and
 - (c) what must be done to eliminate or mitigate the impact of that threatening process, and
 - (d) the persons or public authorities who are bound by the plan, and 25
 - (e) the date by which the action plan should be subject to review by the Director-General.
- (2) Despite anything in this or any other Act or in any instrument made under this or any other Act, where the Minister has made an action plan the Minister and the Director-General are bound to implement that plan. 30

Clause 51 Threatened Species Conservation Bill 1995

Part 7 Management of threatening processes

51 Review of action plans

The Director-General is to review an action plan before the date fixed under section 50 (1) (e).

52 Public authorities to report on progress of action plans

Public authorities affected by an action plan are to report on the progress of the plan in their annual reports to Parliament. 5

Part 8 General

53 Order to carry out restoration work

If a person is convicted of an offence under this Act involving the destruction of or damage to a species or community of flora or fauna listed in Schedule 2 or 3 or a critical habitat, the Court may order that person:

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- (a) to carry out restoration work, and
 - (b) to provide security for the performance of that work,
- and this order may be in addition to or in substitution for any other penalty.

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54 Payment of compensation by offender

- (1) If a person is convicted of an offence under this Act involving the destruction of or damage to a species or community of flora or fauna listed in Schedule 2 or 3 or a critical habitat, the Court may order that person to pay compensation for that destruction or damage to the Director-General in addition to any other penalty.
- (2) The amount of compensation payable under subsection (1) may be fixed by the Court after taking evidence on oath from any person who may assist the Court to determine the nature and extent of the damage.
- (3) In fixing the amount of compensation to be paid, the Court is to have regard to the cost of any restoration work required to be carried out as a result of the offence.

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55 Secrecy

- (1) The Director-General with the approval of the Minister may declare information about flora or fauna to be confidential if the Director-General is of the opinion that the disclosure of that information is likely to result in an unreasonable level of harm being done to the flora or fauna or a critical habitat.
 - (2) If, in the course of performing duties under this Act, a person obtains information which has been declared to be confidential, that person must not disclose or make use of that information except to the extent necessary to perform that person's duties or for the purpose of legal proceedings.
- Maximum penalty: 50 penalty units.

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56 Restraint of breaches of Act

- (1) Any person may bring proceedings in the Court for an order to remedy or restrain a breach of this Act, whether or not any right of that person has been or may be infringed by or as a consequence of that breach. 5
- (2) Any person may bring proceedings in the Court for an order to remedy a failure by the Director-General to comply with section 7 (1) or a failure to perform any act or duty under this Act which is not discretionary.
- (3) Proceedings under this section may be brought by a person on the person's own behalf or on behalf of another person (with their consent), or a body corporate or unincorporated (with the consent of its committee or other controlling or governing body), having like to common interests in those proceedings. 10
- (4) 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. 15

57 Matters to be put in annual report

The annual report of the Service is to set out the activities undertaken by the Service within the reporting year to further the purposes of this Act, including: 20

- (a) an assessment of the progress made toward achieving the objects of this Act, and
- (b) any prescribed matters.

58 Information concerning operations of Act 25

The Director-General:

- (a) is to issue an information bulletin to all public authorities informing them of the operations of this Act, and
- (b) is to arrange such seminars or workshops relating to the operations of this Act as the Director-General considers appropriate, 30

as soon as practicable after the commencement of this Act.

59 Co-operative agreements

- (1) The Director-General may enter into co-operative agreements with any person or public authority to achieve the objects of this Act.
- (2) The Director-General may enter into co-operative agreements with any Federal Government authority to assist in meeting Australia's obligations under international treaties or conventions pertaining to the conservation of threatened species. 5

60 Protection from liability

Any matter or thing done by the Minister, the Director-General, a member of the Committee or any member of staff of the Service does not, if the matter or thing was done in good faith for the purposes of executing this Act, subject such a person personally to any action, liability, claim or demand. 10

61 Proceedings for offences

- (1) Proceedings for an offence under this Act or the regulations are to be disposed of summarily before: 15
 - (a) a Local Court constituted by a Magistrate sitting alone, or
 - (b) the Court in its summary jurisdiction.
- (2) Despite any provision of the *Justices Act 1902* or any other Act, proceedings for an offence against this Act or the regulations may be commenced not later than 3 years after the date alleged to be the date on which the offence was committed. 20
- (3) Proceedings may be taken and prosecuted only by a person acting with the authority of the Director-General. 25
- (4) The maximum pecuniary penalty that may be imposed by a Local Court in proceedings for an offence under this Act or the regulations is 100 penalty units or the maximum penalty applicable to the offence, whichever is less.
- (5) In proceedings for an offence, a certificate by the Director-General or the Minister as to the granting of authority or consent to prosecute is evidence of that authority or consent. 30

- (1) If a corporation contravenes any provision of this Act, each person who is a director of the corporation or who is concerned in the management of the corporation is to be taken to have contravened the same provision if the person knowingly authorised or permitted the contravention. 5
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or convicted under that provision. 10
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act.

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

The Acts listed in Schedule 7 are amended as set out in that Schedule. 20

The *Environmental Planning and Assessment Regulation 1994* is amended as set out in Schedule 8. 25

Schedule 9 has effect.

Threatened Species Conservation Bill 1995

Species of Flora and Fauna excluded from Act

Schedule 1

**Schedule 1 Species of Flora and Fauna excluded
from Act**

(Section 5)

Threatened Species Conservation Bill 1995

Schedule 2 Endangered or Vulnerable or Rare Species and Communities

**Schedule 2 Endangered or Vulnerable or Rare
 Species and Communities**

(Section 11 (1))

FISH

ENDANGERED 5

Eastern Freshwater Cod	<i>(Maccullochella ikei)</i>
Purple Spotted Gudgeon	<i>(Mogurnda adspersa)</i>
Trout Cod	<i>(Maccullochella</i> <i>macquariensis)</i>

VULNERABLE 10

Australian Grayling	<i>(Prototroctes maraena)</i>
Great White Shark	<i>(Carcharodon Carcharias)</i>
Macquarie Perch	<i>(Macquaria australasica)</i>
Murray Hardyhead	<i>(Craterocephalus fluvlatilis)</i>
Oxleyan Pygmy Perch	<i>(Nannoperca oxleyana)</i>
Southern Bluefin Tuna	<i>(Thunnus maccoyii)</i>

15

RARE

Whale Shark	<i>(Rhincodon typus)</i>
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PLANTS

ENDANGERED 20

Acronychia littoralis
Allocasuarina defungans
Allocasuarina portuensis
Apatophyllum constablei
Asterclasia elegans
Astrotricha roddii

25

<i>Austromyrtus fragrantissima</i>	
<i>Boronia granitica</i>	
<i>Caladenia rosella</i>	
<i>Corchorus cunninghamii</i>	
<i>Cynanchum elegans</i>	5
<i>Davidsonia</i> sp. Mullumbimby-Currumbin Ck (A.G. Floyd 1595)	
<i>Deyeuxia appressa</i>	
<i>Digitaria porrecta</i>	
<i>Diospyros mabacea</i>	
<i>Diploglottis campbellii</i>	10
<i>Diuris pallens</i>	
<i>Elaeocarpus williamsianus</i>	
<i>Endiandra floydii</i>	
<i>Epacris hamoltonii</i>	
<i>Eripacaulon carsonii</i>	15
<i>Eucalyptus recurva</i>	
<i>Euphrasia collina</i> subsp. <i>muelleri</i>	
<i>Fontainea oraria</i>	
<i>Genoplesium rhyoliticum</i>	
<i>Gentiana baeuerlenii</i>	20
<i>Gentiana wingecarribiensis</i>	
<i>Grevillea beadleana</i>	
<i>Grevillea caleyi</i>	
<i>Grevillea iaspicula</i>	
<i>Grevillea wilkinsonii</i> Maxinson ms	25

Threatened Species Conservation Bill 1995

Schedule 2 Endangered or Vulnerable or Rare Species and Communities

<i>Hakea pulvinifera</i>	
<i>Haloragodendron lucasii</i>	
<i>Homoholis bezsonii</i>	
<i>Isoglossa eranthemoides</i>	
<i>Kunzea rupestris</i>	5
<i>Lepidium hyssopifolium</i>	
<i>Lepidium monoplocoides</i>	
<i>Marsdenia longiloba</i>	
<i>Ochrosia moprei</i>	
<i>Olearia flocktoniae</i>	10
<i>Persoonia nutans</i>	
<i>Phebalium lachnaeoides</i>	
<i>Pimelia spicata</i>	
<i>Prasophyllum petilum</i>	
<i>Prasophyllum uroglossum</i>	15
<i>Pterostylis gibbosa</i>	
<i>Quassia</i> sp. Mooney Creek (J. King s.n. 1949)	
<i>Randia moorei</i>	
<i>Rutidosis leptorhynchoides</i>	
<i>Swainsona recta</i>	20
<i>Tylophora linearis</i>	
<i>Tylophora woollsi</i>	
<i>Uronyrtus australis</i>	
<i>Zieria adonephora</i>	
<i>Zieria baeuerlineae</i> Armstrong ms	25

Zieria formosa Briggs & Armstrong ms
Zieria obcordata
Zieria parrisiae Briggs & Armstrong ms
Zieria prostrata Armstrong ms

VULNERABLE

5

Acacia bynoeana
Acacia carnei
Acacia clunies-rossiae
Acacia constablei
Acacia courtii
Acacia flocktoniae
Acacia georgensis
Acacia phasmoides
Acacia pubescens
Acacia ruppii
Acrophyllum australe
Allocasuarina glareicola
Ammobium craspedioides
Amorphospermum whitei
Amphibromus fluitans
Angophora robur
Arthraxon hispidus
Asperu .. asthenes
Atriplex infrequens

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Threatened Species Conservation Bill 1995

Schedule 2 Endangered or Vulnerable or Rare Species and Communities

<i>Baloghia marmocrata</i>	
<i>Bertya ingramii</i> T. James ms	
<i>Boronia deanei</i>	
<i>Bosistoa selwynii</i>	
<i>Bosistoa t-ansversa</i>	5
<i>Bossiaea oligosperma</i>	
<i>Bothricchloa biloba</i>	
<i>Brachyscome muelleroides</i>	
<i>Brachyscome papillosa</i>	
<i>Budawangia gnidioides</i>	10
<i>Bulbophyllum globuliforme</i>	
<i>Cadellia pentastylis</i>	
<i>Calandenia tessellata</i>	
<i>Callitriche cyclocarpa</i>	
<i>Callitris oblonga</i>	15
<i>Calotis glandalosa</i>	
<i>Calotis moorei</i>	
<i>Clematis fawcettii</i>	
<i>Corokia whiteana</i>	
<i>Correa baeuerlenii</i>	20
<i>Cryptocarya foetida</i>	
<i>Cryptostylis hunteriana</i>	
<i>Darwinia biflora</i>	
<i>Desmodium acanthocladum</i>	
<i>Dichanthium setosum</i>	25

<i>Dillwynia tenuifolia</i>	
<i>Ditris aequalis</i>	
<i>Diuris praecox</i> D. Jones ms	
<i>Diuris sheaffiana</i>	
<i>Diuris venosa</i>	5
<i>Eleocharis obicis</i>	
<i>Endiandra hayesii</i>	
<i>Eriocaulon australasicum</i>	
<i>Eriastemon ericifolius</i>	
<i>Erythranthera pumila</i>	10
<i>Eucalyptus aquatica</i>	
<i>Eucalyptus benthamii</i>	
<i>Eucalyptus camfieldii</i>	
<i>Eucalyptus glaucina</i>	
<i>Eucalyptus imlayensis</i>	15
<i>Eucalyptus kartzoffiana</i>	
<i>Eucalyptus langleyi</i>	
<i>Eucalyptus macrorrhyncha</i> subsp. <i>cannonii</i>	
<i>Eucalyptus mckieana</i>	
<i>Eucalyptus nicholii</i>	20
<i>Eucalyptus parramattensis</i> subsp. <i>decadens</i>	
<i>Eucalyptus parvifolia</i>	
<i>Eucalyptus pulverulenta</i>	
<i>Eucalyptus pumila</i>	
<i>Eucalyptus robertsonii</i> subsp. <i>hamaespherica</i>	25

Threatened Species Conservation Bill 1995

Schedule 2 Endangered or Vulnerable or Rare Species and Communities

<i>Eucalyptus rubida</i> subsp. <i>barbigororum</i>	
<i>Eucalyptus sturgissiana</i>	
<i>Eucalyptus tetrapleura</i>	
<i>Euphrasia bella</i>	
<i>Floydia praealta</i>	5
<i>Fontainea australis</i>	
<i>Gentiana bredboensis</i>	
<i>Goodenia macbarronii</i>	
<i>Grevillea evansiana</i>	
<i>Grevillea kennedyana</i>	10
<i>Grevillea rivularis</i>	
<i>Grevillea scortechinii</i>	
<i>Grevillea shiressii</i>	
<i>Hakea</i> sp. <i>Kowmung River</i> (H. Doherty 17-24)	
<i>Hakea trineura</i>	15
<i>Haloragis exalata</i>	
<i>Hicksbeachia pinnatifolia</i>	
<i>Homoranthus darwinoides</i>	
<i>Indigofera efoliata</i>	
<i>Isopogon fletcheri</i>	20
<i>Kennedia retrorsa</i>	
<i>Kunzea cabbagei</i>	
<i>Lasiopetalum long stamineum</i>	
<i>Leptospermum deanei</i>	
<i>Leptospermum thompsonii</i>	25

<i>Leucopogon exolasius</i>	
<i>Macadamia cetraphylla</i>	
<i>Maireana cheelii</i>	
<i>Melaleuca groveana</i>	
<i>Micromyrtus blakelyi</i>	5
<i>Micromyrtus minutiflora</i>	
<i>Microstrobos fitzgeraldii</i>	
<i>Olearia cordata</i>	
<i>Ownia cepiodora</i>	
<i>Ozothamnus tessellatus</i>	10
<i>Persicaria elatior</i>	
<i>Persoonia acerosa</i>	
<i>Persoonia glaucescens</i>	
<i>Persoonia marginata</i>	
<i>Phaius australis</i>	15
<i>Phaius tancarvilleae</i>	
<i>Phebalium ralstonii</i>	
<i>Phebalium rhytidophyllum</i>	
<i>Phebalium sympetalum</i>	
<i>Phyllota humifusa</i>	20
<i>Pimelea venosa</i>	
<i>Plinthanthesis rodwayi</i>	
<i>Pomaderris brunnea</i>	
<i>Pomaderris pallida</i>	
<i>Pomaderris parrisiae</i>	25

Threatened Species Conservation Bill 1995

Schedule 2 Endangered or Vulnerable or Rare Species and Communities

<i>Prasophyllum morganii</i>	
<i>Prostanthera cineolifera</i>	
<i>Prostanthera crypcandroides</i>	
<i>Prostanthera censa</i>	
<i>Prostanthera ciscolor</i>	5
<i>Prostanthera stircta</i>	
<i>Prostanthera teretifolia</i>	
<i>Pterostylis cobarensis</i>	
<i>Pterostylis pulchella</i>	
<i>Pultenaea aristata</i>	10
<i>Pultenaea baeuerlenii</i>	
<i>Pultenaea campbellii</i>	
<i>Pultenaea glabra</i>	
<i>Pultenaea parrisiae</i> Briggs & Crisp ms	
<i>Pultenaea parviflora</i>	15
<i>Pultenaea stuartiana</i>	
<i>Ramunculus anemoneus</i>	
<i>Restio longipes</i>	
<i>Rulingia procembens</i>	
<i>Rutidosia heterogama</i>	20
<i>Rutidosia leiolepis</i>	
<i>Sarcophilus fitzgeraldii</i>	
<i>Sarcophilus hartmannii</i>	
<i>Sarcophilus weinthalii</i>	
<i>Senecio garlandii</i>	25

<i>Sophora fraseri</i>	
<i>Stipa metatoris</i>	
<i>Swainsona murrayana</i>	
<i>Swainsona plagiotropis</i>	
<i>Swainsona pyrophila</i>	5
<i>Symplocos baeuerlenii</i>	
<i>Syzygium hodgkinsoniae</i>	
<i>Syzygium moorei</i>	
<i>Syzygium paniculatum</i>	
<i>Tasmannia glaucifolia</i>	10
<i>Tasmannia purpurascens</i>	
<i>Tetradlea glandulosa</i>	
<i>Tetradlea juncea</i>	
<i>Thesium australe</i>	
<i>Tinospora tinoporoides</i>	15
<i>Velleia perfoliata</i>	
<i>Westringia davidii</i>	
<i>Xerothamnella parvifolia</i>	
<i>Zieria citriodora</i> Armstrong ms	
<i>Zieria covenyi</i> Armstrong ms	20
<i>Zieria granulata</i>	
<i>Zieria ingramii</i> Armstrong ms	
<i>Zieria involucrata</i>	
<i>Zieria murphyi</i>	
<i>Zieria tuberculata</i> Armstrong ms	25

Threatened Species Conservation Bill 1995

Schedule 2 Endangered or Vulnerable or Rare Species and Communities

RARE

<i>Abrotanella nivigena</i>	
<i>Acacia adunca</i>	
<i>Acacia asparagoides</i>	
<i>Acacia ausfeldii</i>	5
<i>Acacia blayana</i>	
<i>Acacia chalkeri</i>	
<i>Acacia chrysotricha</i>	
<i>Acacia costiniana</i>	
<i>Acacia covenyi</i>	10
<i>Acacia floydii</i>	
<i>Acacia forsythii</i>	
<i>Acacia fulva</i>	
<i>Acacia ingramii</i>	
<i>Acacia jonesii</i>	15
<i>Acacia kydrensis</i>	
<i>Acacia latisepala</i>	
<i>Acacia lucasii</i>	
<i>Acacia olsenii</i>	
<i>Acacia rhigiophylla</i>	20
<i>Acacia sp. 4</i>	
<i>Acacia subtilinervis</i>	
<i>Acianthus amplexicaulis</i>	
<i>Acomis acoma</i>	
<i>Acronychia baeuerlenii</i>	25

<i>Adenochilus mortonii</i>	
<i>Alania endlicheri</i>	
<i>Archidencron muellerianum</i>	
<i>Ardisia bakeri</i>	
<i>Argophyllum nullumense</i>	5
<i>Asperula charophyton</i>	
<i>Astelia psychrocharis</i>	
<i>Asterolasia hexapetala</i>	
<i>Atkinsonia ligustrina</i>	
<i>Atriplex morrisii</i>	10
<i>Austrobuxus swainii</i>	
<i>Backhousia anisata</i>	
<i>Baeckea denticulata</i>	
<i>Baeckea sp. Pyranids</i>	
<i>Banksia conferta</i>	15
<i>Bertya astrotricha</i>	
<i>Bertya findlayi</i>	
<i>Blandfordia cunninghamii</i>	
<i>Blechnum gregsonii</i>	
<i>Boronia fraseri</i>	20
<i>Boronia rubiginosa</i>	
<i>Boronia subulifolia</i>	
<i>Bosistoa floydii</i>	
<i>Brachyscome stolonifera</i>	
<i>Bulbophyllum argyrapus</i>	25

Threatened Species Conservation Bill 1995

Schedule 2 Endangered or Vulnerable or Rare Species and Communities

<i>Bulbophyllum weinthalii</i>	
<i>Burnettia cuneata</i>	
<i>Caladenia alata</i>	
<i>Callistemon acuminatus</i>	
<i>Callistemon shiressii</i>	5
<i>Carex capillacea</i>	
<i>Carex cephalotes</i>	
<i>Carex raleighii</i>	
<i>Cassia marksiana</i>	
<i>Chionochloa frigida</i>	10
<i>Chionohebe densifolia</i>	
<i>Colobanthus nivicola</i>	
<i>Colobanthus pulvinatus</i>	
<i>Conospermum burgessiorum</i>	
<i>Cordyline congesta</i>	15
<i>Craspedia leucantha</i>	
<i>Cryptocarya floydii</i>	
<i>Cryptocarya sp. 1</i>	
<i>Cryptocarya sp. 2</i>	
<i>Cryptocarya sp. 3</i>	20
<i>Cyperus rupicolus</i>	
<i>Cyphanthera scabrella</i>	
<i>Cystopteris filix-fragilis</i>	
<i>Darwinia ciminuta</i>	
<i>Darwinia glaucophylla</i>	25

<i>Darwinia grandiflora</i>	
<i>Darwinia peduncularis</i>	
<i>Darwinia procera</i>	
<i>Daviesia</i> sp. 25	
<i>Daviesia</i> sp. 26	5
<i>Dendrobium schneideras</i>	
<i>Deyeuxia accedens</i>	
<i>Deyeuxia affinis</i>	
<i>Dillwynia</i> sp. 1	
<i>Dillwynia</i> sp. 2	10
<i>Dillwynia stipulifera</i>	
<i>Discaria nitida</i>	
<i>Discaria pubescens</i>	
<i>Dodonaea hirsuta</i>	
<i>Dodonaea megazyga</i>	15
<i>Dodonaea rhombifolia</i>	
<i>Dodonaea serratifolia</i>	
<i>Drabastrum alpestre</i>	
<i>Durringtonia paludosa</i>	
<i>Eleocharis blakeana</i>	20
<i>Endiandra globosa</i>	
<i>Epacris apiculata</i>	
<i>Epacris coriaceae</i>	
<i>Epacris muelleri</i>	
<i>Erigeron setosus</i>	25

Threatened Species Conservation Bill 1995

Schedule 2 Endangered or Vulnerable or Rare Species and Communities

<i>Eriostemon obovalis</i>	
<i>Eucalyptus apiculata</i>	
<i>Eucalyptus approximans</i>	
<i>Eucalyptus badjensis</i>	
<i>Eucalyptus baeuerlenii</i>	5
<i>Eucalyptus burgessiana</i>	
<i>Eucalyptus codonocarpa</i>	
<i>Eucalyptus deuaensis</i>	
<i>Eucalyptus dunnii</i>	
<i>Eucalyptus fusiformis</i>	10
<i>Eucalyptus gregsoniana</i>	
<i>Eucalyptus largeana</i>	
<i>Eucalyptus luehmanniana</i>	
<i>Eucalyptus macarthurii</i>	
<i>Eucalyptus michaeliana</i>	15
<i>Eucalyptus olsenii</i>	
<i>Eucalyptus paliformis</i>	
<i>Eucalyptus ruddery</i>	
<i>Eucalyptus rummeryi</i>	
<i>Eucalyptus rupicola</i>	20
<i>Eucalyptus saxatilis</i>	
<i>Eucalyptus sp. 10</i>	
<i>Eucalyptus sp. 3</i>	
<i>Eucalyptus sp. 5</i>	
<i>Eucalyptus triflora</i>	25

<i>Eucalyptus wilcoxii</i>	
<i>Euphrasia alsa</i>	
<i>Euphrasia bowderiae</i>	
<i>Euphrasia orthocheila</i>	
<i>Euphrasia ramulosa</i>	5
<i>Gahnia insignis</i>	
<i>Galium rodii</i>	
<i>Genoplesium baueri</i>	
<i>Gentiana wissmannii</i>	
<i>Geranium graniticola</i>	10
<i>Geranium obtusisepalum</i>	
<i>Gingidia algens</i>	
<i>Gingidia montana</i>	
<i>Gonocarpus longifolius</i>	
<i>Gonocarpus salsoloides</i>	15
<i>Goodenia glomerata</i>	
<i>Goodenia rostrivalvis</i>	
<i>Grevillea acerata</i>	
<i>Grevillea barklyana</i>	
<i>Grevillea johnsonii</i>	20
<i>Grevillea linsmithii</i>	
<i>Grevillea longifolia</i>	
<i>Grevillea molyneuxii</i>	
<i>Grevillea obtusiflora</i>	
<i>Grevillea oldei</i>	25

Threatened Species Conservation Bill 1995

Schedule 2 Endangered or Vulnerable or Rare Species and Communities

<i>Grevillea rerwickiana</i>	
<i>Hakea constablei</i>	
<i>Haloragodendron baeuwerlenii</i>	
<i>Helichrysum</i> sp. 1	
<i>Helichrysum whitei</i>	5
<i>Helmholtzia glaberrima</i>	
<i>Hibbertia elata</i>	
<i>Hibbertia hermanniifolia</i>	
<i>Hibbertia hexandra</i>	
<i>Hibbertia nitida</i>	10
<i>Hibbertia</i> sp. 2	
<i>Hierochloe submutica</i>	
<i>Hymenophyllum pumilum</i>	
<i>Irenepharsus magicus</i>	
<i>Irenepharsus trypherus</i>	15
<i>Kunzea bracteolata</i>	
<i>Lasiopetalum joyceae</i>	
<i>Lastreopsis silvestris</i>	
<i>Lepiderema pulchella</i>	
<i>Leptopteris fraseri</i>	20
<i>Leptospermum argenteum</i>	
<i>Leptospermum blakelyi</i>	
<i>Leptospermum crassifolium</i>	
<i>Leptospermum deuense</i>	
<i>Leptospermum epacridoideum</i>	25

<i>Leptospermum petraeum</i>	
<i>Leptorspermum rupicola</i>	
<i>Leptospermum spectabile</i>	
<i>Leptospermum subglabratum</i>	
<i>Leucopogon fletcheri</i>	5
<i>Lissanthe sapida</i>	
<i>Lomandra orevis</i>	
<i>Lomandra flaviatilis</i>	
<i>Lomandra patens</i>	
<i>Lycopodium phlegmaria</i>	10
<i>Macrozamia diplomera</i>	
<i>Macrozamia stenomera</i>	
<i>Melaleuca deanei</i>	
<i>Melaleuca tortifolia</i>	
<i>Millettia australis</i>	15
<i>Monotoca ledifolia</i>	
<i>Monatoca rotundifolia</i>	
<i>Muellerina myrtifolia</i>	
<i>Myoporum floribundum</i>	
<i>Neoastelia sp. 1</i>	20
<i>Notochloe microdon</i>	
<i>Olax angulata</i>	
<i>Olearia heterocarpa</i>	
<i>Olearia quercifolia</i>	

Threatened Species Conservation Bill 1995

Schedule 2 Endangered or Vulnerable or Rare Species and Communities

<i>Olearia</i> sp. 2	
<i>Olearia stilwelliae</i>	
<i>Oreocallis pinnata</i>	
<i>Oreomyrrhis brevipes</i>	
<i>Oschatzia cuneifolia</i>	5
<i>Oxylobium</i> sp. 1	
<i>Ozothamnus vagans</i>	
<i>Papillilabium backleri</i>	
<i>Parahebe</i> sp. 1	
<i>Parantennaria uniceps</i>	10
<i>Parsonsia tenuis</i>	
<i>Persoonia</i> sp. 10	
<i>Persoonia</i> sp. 2	
<i>Phebalium carruthersii</i>	
<i>Phebalium ellipticum</i>	15
<i>Phebalium obcordatum</i>	
<i>Phebalium viridiflorum</i>	
<i>Pimelea</i> sp. 6	
<i>Pistosporum oreillyanum</i>	
<i>Plantago cladarophylla</i>	20
<i>Plantago palustris</i>	
<i>Platysace clelandii</i>	
<i>Platysace stephensonii</i>	
<i>Pneumatopteris pennigera</i>	
<i>Podolepis monticola</i>	25

<i>Pomaderris brogaerisis</i>	
<i>Pomaderris costata</i>	
<i>Pomaderris gilmourii</i>	
<i>Pomaderris notata</i>	
<i>Pomaderris pauciflora</i>	5
<i>Pomaderris virgata</i>	
<i>Prasophyllum laminatum</i>	
<i>Prostanthera crusiflora</i>	
<i>Prostanthera monticola</i>	
<i>Prostanthera porcata</i>	10
<i>Prostanthera walteri</i>	
<i>Pseudanthus divaricatissimus</i>	
<i>Pterostylis longicurva</i>	
<i>Pterostylis nigricans</i>	
<i>Pterostylis woollsii</i>	15
<i>Pultenaea incurvata</i>	
<i>Pultenaea psychophylla</i>	
<i>Pultenaea</i> sp. 4	
<i>Pultenaea villifera</i>	
<i>Quassia</i> sp. 2	20
<i>Ranunculus clivicola</i>	
<i>Ranunculus dissectifolius</i>	
<i>Ranunculus niphophilus</i>	
<i>Ranunculis productus</i>	
<i>Rhamadamnia maideniana</i>	25
<i>Rulingia hermanniifolia</i>	

Threatened Species Conservation Bill 1995

Schedule 2 Endangered or Vulnerable or Rare Species and Communities

<i>Rulingia salvifolia</i>	
<i>Rupicola sp. 1</i>	
<i>Rupicola sprengelioides</i>	
<i>Sauropus ramosissimus</i>	
<i>Schistotylus purpuratus</i>	5
<i>Senecio macranthus</i>	
<i>Solanum karsensis</i>	
<i>Sphaerocionium lyallii</i>	
<i>Sprengelia menticola</i>	
<i>Spyricium cinereum</i>	10
<i>Stipa nullanulla</i>	
<i>Styphelia sp. 1</i>	
<i>Taraxacum aristum</i>	
<i>Tetradlea neglecta</i>	
<i>Thelionema grande</i>	15
<i>Thysanotus virgatus</i>	
<i>Trichosanthes subvelutina</i>	
<i>Typhonium eliosurum</i>	
<i>Viola improcera</i>	
<i>Wahlenbergia densifolia</i>	20
<i>Wahlenbergia sp. 3</i>	
<i>Westringia blakeana</i>	
<i>Westringia lucida</i>	
<i>Westringia saxatilis</i>	
<i>Zannichellia palustris</i>	25
<i>Zieria sp. 10</i>	

Threatened Species Conservation Bill 1995

Potentially Vulnerable Species and Communities

Schedule 3

**Schedule 3 Potentially Vulnerable Species and
Communities**

(Section 11 (2))

Threatened Species Conservation Bill 1995

Schedule 4 Species and Communities presumed extinct

**Schedule 4 Species and Communities presumed
extinct**

(Section 21 (1))

Schedule 5 Threatening Processes

(Section 19 (3))

Alteration to the natural flow of rivers and streams.	
Alteration to the natural temperature regimes of rivers and streams.	5
Competition and land degradation by feral camels.	
Competition and land degradation by feral donkeys.	
Competition and land degradation by feral goats.	
Competition and land degradation by feral horses.	
Competition and land degradation by feral pigs.	10
Competition and land degradation by feral rabbits.	
Dieback caused by the root-rot fungus (<i>Phytophthora cinnamomi</i>).	
Introduction of exotic organisms into marine waters.	
Introduction of live fish into waters outside their natural range within a river catchment since 1770.	15
Long-line fishing.	
Loss of hollow-bearing trees in native forests.	
Prawn trawling (otter).	
Predation by the European red fox (<i>Vulpes vulpes</i>).	20
Predation by feral cats.	
Removal of wood debris from streams.	
Use of lead shot cartridges for the hunting of waterfowl.	

Schedule 6 Provisions relating to Advisory Committee and Council

(Sections 8 (7) and 43 (3))

Part 1 Preliminary

1 Definitions

5

In this Schedule, *member* means a member of the Committee or a member of the Council.

Part 2 Members

2 Deputies

- (1) The Minister may, from time to time, appoint a person to be the deputy of a member and the Minister may revoke any such appointment. 10
- (2) In the absence of a member, the member's deputy:
 - (a) may, if available, act in the place of the member, and
 - (b) while so acting, has all the functions of the member and is to be regarded as a member. 15
- (3) The deputy of a member who is also Chairperson does not have the member's functions as Chairperson.
- (4) A person while acting in the place of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person. 20

3 Allowances

A member is entitled to be paid such allowances as the Minister from time to time determines in respect of the member. 25

4 Vacancy in office of member

- (1) The office of a member becomes vacant if the member:
- (a) dies, or
 - (b) completes a term of office and is not reappointed, or
 - (c) resigns the office by instrument in writing addressed to the Minister, or 5
 - (d) is removed from office by the Minister under this clause, or
 - (e) is absent from 4 consecutive meetings of the Committee or the Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Committee or the Council or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Committee or the Council for having been absent from those meetings, or 10 15
 - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or 20
 - (g) becomes a mentally incapacitated person, or
 - (h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable. 25
- (2) The Minister may remove a member from office at any time.

5 Filling of vacancy in office of appointed member

If the office of a member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy. 30

6 Vacation of office by Chairperson

- (1) The office of Chairperson of the Committee or the Council becomes vacant if the Chairperson:
- (a) resigns the office by instrument in writing addressed to the Minister, or 5
 - (b) is removed from office by the Minister under this clause, or
 - (c) ceases to be a member.
- (2) The Minister may remove the Chairperson from office at any time. 10

7 Disclosure of pecuniary interests

- (1) A member of the Committee or the Council:
- (a) who has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Committee or the Council, and 15
 - (b) whose interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,
- must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Committee or the Council. 20
- (2) A disclosure by a member of the Committee or the Council at a meeting of the Committee or the Council that the member:
- (a) is a member, or is in the employment, of a specified company or other body, or 25
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under this clause. 30

-
- (3) Particulars of any disclosure made under this clause must be recorded by the members of the Committee or the Council in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the members of the Committee or the Council. 5
- (4) After a member of the Committee or the Council has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the other members of the Committee or the Council otherwise determine: 10
- (a) be present during any deliberation of the Committee or the Council with respect to the matter, or
- (b) take part in any decision of the Committee or the Council with respect to the matter.
- (5) For the purposes of the making of a determination by the members of the Committee or the Council under subclause (4), a member of the Committee or the Council who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not: 15
- (a) be present during any deliberation of the other members of the Committee or the Council for the purpose of making the determination, or 20
- (b) take part in the making by the other members of the Committee or the Council of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Committee or the Council. 25

8 Effect of certain other Acts

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member.
- (2) If by or under any Act provision is made: 30
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

Threatened Species Conservation Bill 1995

Schedule 6 Provisions relating to Advisory Committee and Council

- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as such a member. 5

- (3) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.

9 Proof of certain matters not required

In any legal proceedings, proof is not required (until evidence is given to the contrary) of: 10

- (a) the constitution of the Committee or the Council, or
(b) any resolution of the Committee or the Council, or
(c) the appointment of, or holding of office by, any member of the Committee or the Council, or 15
(d) the presence or nature of a quorum at any meeting of the Committee or the Council.

Part 2 Procedure

10 General procedure

The procedure for the calling of meetings of the Committee or the Council and for the conduct of business at those meetings is, subject to this Act, to be as determined by the Committee or the Council. 20

11 Quorum

The quorum for a meeting of the Committee or the Council is 6 members. 25

12 Presiding member

- (1) The Chairperson or, in the absence of the Chairperson, another member elected to chair the meeting by the members present is to preside at a meeting of the Committee or the Council. 30

- (2) The person presiding at any meeting of the Committee or the Council has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

13 Voting

A decision supported by a majority of the votes cast at a meeting of the Committee or the Council at which a quorum is present is the decision of the Committee or the Council. 5

14 Transaction of business outside meetings or by telephone etc

- (1) The Committee or the Council may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Committee or the Council for the time being, and a resolution in writing approved in writing by a majority of those members is to be regarded as a decision of the Committee or the Council. 10
- (2) The Committee or the Council may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members. 15
- (3) For the purpose of: 20
- (a) the approval of a resolution under subclause (1), or
- (b) a meeting held in accordance with subclause (2),
- the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Committee or the Council. 25
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Committee or the Council.
- (5) Papers may be circulated among members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned. 30

Threatened Species Conservation Bill 1995

Schedule 6 Provisions relating to Advisory Committee and Council

15 Minutes

The Committee or the Council must cause full and accurate minutes to be kept of the proceedings of each meeting of the Committee or the Council.

16 First meeting

5

The Minister may call the first meeting of the Committee or the Council in such manner as the Minister thinks fit and is to call that meeting within 3 months after the commencement of this Act.

Schedule 7 Amendment of Acts

(Section 64)

7.1 Bush Fires Act 1949 No 31

[1] Section 41AC

Insert after section 41AB:

5

41AC Public exhibition of draft bush fire management plans

- (1) A Bush Fire Management Committee must, after the commencement of this section, give notice, as specified by the regulations, of the preparation of any draft bush fire management plan that is prepared after that commencement. 10
- (2) The Bush Fire Management Committee must specify in the notice:
 - (a) the address of the place at which copies of the plan may be inspected, and 15
 - (b) the address to which representations about the plan may be forwarded.
- (3) Any person interested may, within one month or such longer period as may be specified in the notice, make representations to the Bush Fire Management Committee about the plan. 20
- (4) The Bush Fire Management Committee must, when submitting the plan to the Co-ordinating Committee for approval, refer any representations received by it about the plan to the Co-ordinating Committee for its consideration. 25
- (5) The Co-ordinating Committee must, before approving a bush fire management plan, consider any representations received about the plan.

[2] Section 41AAA

Insert after section 41A:

41AAA Operation of Part 5 of Environmental Planning and Assessment Act 1979

The approval, after the commencement of this section, of
a draft bush fire management plan under section 41A by
the Co-ordinating Committee constitutes the approval of
an activity within the meaning of Part 5 of the
Environmental Planning and Assessment Act 1979 and
the Co-ordinating Committee is taken to be the
determining authority in relation to the activity.

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**7.2 Environmental Planning and Assessment Act 1979
No 203**

[1] Section 4 Definitions

Omit the definition of "endangered fauna" from section 4 (1). 15

**[2] Section 4A Significant effect on the environment of certain
species and communities**

Omit "endangered fauna" where firstly occurring.
Insert instead "a species or community listed in Schedule 2 to the
Threatened Species Conservation Act 1995". 20

[3] Section 4A (b)

Omit "fauna". Insert instead "species or community".

[4] Section 4A (c)

Omit " , namely, the whole or any part of the habitat which is
essential for the survival of that species of fauna". 25

[5] Section 4A (d)

Omit "fauna population". Insert instead "species population or community".

[6] Section 4A (d)

Omit "population" where secondly occurring. Insert instead 5
"population or community".

[7] Section 4A (g)

Omit the paragraph. Insert instead:

- (g) any adverse effect on the survival of that species
or community or of populations of that species or 10
community.

[8] Section 77 Making of development applications

Omit "endangered fauna" from section 77 (3) (d1).
Insert instead "a species or community listed in Schedule 2 to the
Threatened Species Conservation Act 1995". 15

[9] Section 77 (3) (d1)

Omit "fauna impact statement in accordance with section 92D of the
National Parks and Wildlife Act 1974".
Insert instead "threatened species impact statement in accordance
with section 36 of the *Threatened Species Conservation Act 1995*". 20

[10] Section 77 (4A)

Omit "fauna impact statement".
Insert instead "threatened species impact statement".

[11] Section 90 Matters for consideration

Insert after section 90 (1) (b):

- (b1) any relevant recovery plan or action plan made under the *Threatened Species Conservation Act 1995*,

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[12] Section 90 (1) (c2)

Omit "endangered fauna".

Insert instead "a species or community listed in Schedule 2 to the *Threatened Species Conservation Act 1995*".

[13] Section 112 Decision of determining authority in relation to certain activities

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Omit "endangered fauna unless a fauna impact statement has been prepared in accordance with section 92D of the *National Parks and Wildlife Act 1974*" from section 112 (1B).

Insert instead "a species or community listed in Schedule 2 to the *Threatened Species Conservation Act 1995* unless a threatened species impact statement has been prepared in accordance with section 36 of that Act".

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[14] Section 112 (1C)

Omit "section 92D (1) of the *National Parks and Wildlife Act 1974*, no separate fauna impact statement".

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Insert instead "section 36 (1) of the *Threatened Species Conservation Act 1995*, no separate threatened species impact statement".

[15] Section 112 (1D)

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Omit "fauna impact statement".

Insert instead "threatened species impact statement".

7.3 Land and Environment Court Act 1979 No 204

[1] Section 20 Class 4—environmental planning and protection and development contract civil enforcement

Insert after section 20 (1) (cj):

- (ck) proceedings under sections 53, 54 and 56 of the *Threatened Species Conservation Act 1995*. 5

[2] Section 20 (3) (a)

Insert in alphabetical order:

Threatened Species Conservation Act 1995,

[3] Section 21 Class 5—environmental planning and protection summary enforcement 10

Insert after section 21 (ca):

- (cb) proceedings under section 59 of the *Threatened Species Conservation Act 1995*,

7.4 National Parks and Wildlife Act 1974 No 80 15

[1] Section 92A Scientific Committee

Omit section 92A (1) and (2). Insert instead:

- (1) On and from the commencement of the *Threatened Species Conservation Act 1995*, the Scientific Advisory Committee established under that Act is to be regarded as the Scientific Committee referred to in this section. 20

[2] Sections 92B–92D

Omit the sections.

Threatened Species Conservation Bill 1995

Schedule 7 Amendment of Acts

[3] Section 145 Acquisition of land for reservation etc

Insert “, of protecting threatened species or communities identified in Schedule 2 or 3 of the *Threatened Species Conservation Act 1995*” after “Part 4”.

[4] Schedule 8B Scientific Committee procedures and conditions 5

Omit the Schedule.

**Schedule 8 Amendment of Environmental
Planning and Assessment Regulation
1994**

(Section 65)

Clause 82 What factors must be taken into account concerning 5
the impact of an activity on the environment?

Insert after clause 82 (2) (f):

(f1) any impact on a recovery plan or action plan made
under the *Threatened Species Conservation Act*
1995, 10

Schedule 9 Savings and transitional provisions

(Section 66)

1 Licence to take vulnerable flora

Despite section 28 (1), a licence is not required to take a species of flora listed in Schedule 2 as a vulnerable species until 12 months after the commencement of this Act. 5

2 Licence to take rare flora

Despite section 28 (1), a licence is not required to take a species of flora listed in Schedule 2 as a rare species until 3 years after the commencement of this Act. 10



New South Wales

Threatened Species Conservation Act 1995 No 101

Act No 101, 1995

An Act to conserve threatened species, populations and ecological communities of animals and plants; to amend the *National Parks and Wildlife Act 1974*, the *Environmental Planning and Assessment Act 1979* and certain other Acts; to repeal the *Endangered Fauna (Interim Protection) Act 1991*; and for other purposes. [Assented to 22 December 1995]

The Legislature of New South Wales enacts:

Part 1 Preliminary

Introductory note

This Part contains provisions that set out the objects of this Act and define terms used in this Act. The Part also contains machinery provisions.

1 Name of Act

This Act is the *Threatened Species Conservation Act 1995*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided in this section.
- (2) Section 155 (2) commences on the date of assent to this Act.

3 Objects of Act

The objects of this Act are as follows:

- (a) to conserve biological diversity and promote ecologically sustainable development, and
- (b) to prevent the extinction and promote the recovery of threatened species, populations and ecological communities, and
- (c) to protect the critical habitat of those threatened species, populations and ecological communities that are endangered, and
- (d) to eliminate or manage certain processes that threaten the survival or evolutionary development of threatened species, populations and ecological communities, and
- (e) to ensure that the impact of any action affecting threatened species, populations and ecological communities is properly assessed, and
- (f) to encourage the conservation of threatened species, populations and ecological communities by the adoption of measures involving co-operative management.

4 Definitions

- (1) In this Act:

Advisory Council means the Biological Diversity Advisory Council established under this Act.

animal means any animal-life that is indigenous to New South Wales or is known to periodically or occasionally migrate to New South Wales, whether vertebrate or invertebrate and in any stage of biological development, but does not include:

- (a) humans, or
- (b) fish within the meaning of the *Fisheries Management Act 1994*.

biological diversity means the diversity of life and is made up of the following 3 components:

- (a) genetic diversity—the variety of genes (or units of heredity) in any population,
- (b) species diversity—the variety of species,
- (c) ecosystem diversity—the variety of communities or ecosystems.

council has the same meaning as in the *Local Government Act 1993*.

critical habitat means habitat declared to be critical habitat under Part 3.

Director-General means the Director-General of National Parks and Wildlife appointed under the *National Parks and Wildlife Act 1974*.

ecological community means an assemblage of species occupying a particular area.

ecologically sustainable development has the same meaning as under section 6 (2) of the *Protection of the Environment Administration Act 1991*.

endangered ecological community means an ecological community specified in Part 3 of Schedule 1.

endangered population means a population specified in Part 2 of Schedule 1.

endangered species means a species specified in Part 1 of Schedule 1.

endangered species, populations and ecological communities means species, populations and ecological communities specified in Schedule 1 and ***endangered species, population or ecological community*** means a species, population or ecological community respectively specified in that Schedule.

exercise a function includes perform a duty.

function includes a power, authority or duty.

habitat means an area or areas occupied, or periodically or occasionally occupied, by a species, population or ecological community and includes any biotic or abiotic component.

harm has the same meaning as in the *National Parks and Wildlife Act 1974*.

joint management agreement means an agreement entered into under Division 2 of Part 7.

key threatening process means a threatening process specified in Schedule 3.

land includes:

- (a) buildings and other structures permanently fixed to land, and
- (b) land covered with water, and
- (c) the sea or an arm of the sea, and
- (d) a bay, inlet, lagoon, lake or body of water, whether inland or not and whether tidal or not, and
- (e) a river, stream or watercourse, whether tidal or not.

landholder of land means a person who owns land or who, whether by reason of ownership or otherwise, is in lawful occupation or possession, or has lawful management or control, of land.

list means a list set out in Schedule 1, 2 or 3 and includes a list in one or more of those Schedules that does not contain any entries.

pick has the same meaning as in the *National Parks and Wildlife Act 1974*.

plant means any plant-life that is indigenous to New South Wales, whether vascular or non-vascular and in any stage of biological development, and includes fungi and lichens, but does not include marine vegetation within the meaning of the *Fisheries Management Act 1994*.

population means a group of organisms, all of the same species, occupying a particular area.

public authority means any public or local authority constituted by or under an Act, a government department, a statutory body representing the Crown, or a State owned corporation, and includes a person exercising any function on behalf of the authority, department, body or corporation and any person prescribed by the regulations to be a public authority.

recovery plan means a plan prepared and approved under Part 4.

region means, for the purposes of the provision in which it is used, a bioregion defined in a national system of bioregionalisation that is determined (by the Director-General by order published in the Gazette) to be appropriate for those purposes. If the bioregion occurs partly within and partly outside New South Wales, the region consists only of so much of the bioregion as occurs within New South Wales.

Scientific Committee means the Scientific Committee constituted under Part 8.

species of animal or plant includes any defined sub-species and taxon below a sub-species and any recognisable variant of a sub-species or taxon.

species impact statement means a statement referred to in Division 2 of Part 6 and includes an environmental impact statement, prepared under the *Environmental Planning and Assessment Act 1979*, that contains a species impact statement.

species presumed extinct means a species specified in Part 4 of Schedule 1.

Strategy means the Biological Diversity Strategy referred to in section 140.

threat abatement plan means a plan prepared and approved under Part 5.

threatened species means a species specified in Part 1 or 4 of Schedule 1 or in Schedule 2.

threatened species, populations and ecological communities means species, populations and ecological communities specified in Schedules 1 and 2 and ***threatened species, population or ecological community*** means a species, population or ecological community specified in either of those Schedules.

threatening process means a process that threatens, or may have the capability to threaten, the survival or evolutionary development of species, populations or ecological communities.

vulnerable species means a species specified in Schedule 2.

- (2) A reference in this Act to animal-life or plant-life indigenous to New South Wales is a reference to animal-life or plant-life of a species that was established in New South Wales before European settlement.
- (3) A reference in this Act to New South Wales includes a reference to the coastal waters of the State.

Note. ***Coastal waters of the State*** is defined in section 58 of the *Interpretation Act 1987*.

5 Notes in text

Introductory notes to Parts and other notes do not form part of this Act.

Part 2 Listing of threatened species, populations and ecological communities and key threatening processes

Introductory note

This Part provides for the identification, and classification, of the species, populations and ecological communities with which this Act is concerned. It also provides for the identification of key threatening processes that are most likely to jeopardise the survival of those species, populations and ecological communities. To this end, this Part provides for the listing:

- in Schedule 1, of endangered species, endangered populations and ecological communities and species that are presumed to be extinct, and
- in Schedule 2, of vulnerable species, and
- in Schedule 3, of key threatening processes.

The initial lists of threatened species, that is, species that are endangered, presumed extinct or vulnerable are contained in this Act on its commencement. Responsibility for inserting lists of endangered populations and endangered ecological communities and threatening processes, and for adding items to, omitting items from or amending items in the lists of threatened species, populations and ecological communities and threatening processes rests with the Scientific Committee.

Division 1 makes provision with respect to Schedules 1–3 that are to contain lists of the species, populations and ecological communities and key threatening processes with which this Act is concerned.

Division 2 deals with eligibility for listing.

Division 3 describes the process by which the items may be added to or omitted from lists and by which items in lists may be amended, and makes provision for public participation in that process.

Division 4 describes the process by which species that are endangered may be listed provisionally in Schedule 1, on an emergency basis, before the formal listing process described in Division 3 has been undertaken or completed, and makes provision for public participation in that process.

Offences relating to the harming of threatened species, populations and ecological communities (being animals) and the picking of threatened species, populations and ecological communities (being plants) are contained in the *National Parks and Wildlife Act 1974*.

Division 1 Lists of threatened species, populations and ecological communities and key threatening processes

6 Schedule 1 list of endangered species, populations and ecological communities

- (1) Part 1 of Schedule 1 contains a list of endangered species for the purposes of this Act.

- (2) Part 2 of Schedule 1 contains a list of endangered populations for the purposes of this Act.
- (3) Part 3 of Schedule 1 contains a list of endangered ecological communities for the purposes of this Act.
- (4) Part 4 of Schedule 1 contains a list of species presumed extinct for the purposes of this Act.
- (5) Endangered species or ecological communities listed in Schedule 1 that are also listed in Part 1 of Schedule 1 or in Schedule 2 to the *Endangered Species Protection Act 1992* of the Commonwealth are marked with asterisks to show that they are endangered nationally.
- (6) Species presumed extinct listed in Schedule 1 that are also listed in Part 3 of Schedule 1 to the *Endangered Species Protection Act 1992* of the Commonwealth are marked with asterisks to show that they are presumed extinct nationally.

7 Schedule 2 list of vulnerable species

- (1) Schedule 2 contains a list of vulnerable species for the purposes of this Act.
- (2) Vulnerable species listed in Schedule 2 that are also listed in Part 2 of Schedule 1 to the *Endangered Species Protection Act 1992* of the Commonwealth are marked with an asterisk to show that they are vulnerable nationally.

8 Schedule 3 list of key threatening processes

Schedule 3 contains a list of key threatening processes for the purposes of this Act.

9 Listing of nationally threatened species and ecological communities

- (1) As soon as practicable after a species or ecological community that is or was indigenous to New South Wales is inserted in Schedule 1 or 2 to the *Endangered Species Protection Act 1992* of the Commonwealth, the Scientific Committee is to consider whether, in accordance with Divisions 2 and 3, the species or ecological community should be listed as a threatened species or endangered ecological community in Schedule 1 or 2 to this Act.

- (2) Any species or ecological community that is inserted in a Schedule pursuant to this section is to be marked with an asterisk to show its national status.
- (3) If a threatened species or endangered ecological community is omitted from Schedule 1 or 2 to the *Endangered Species Protection Act 1992* of the Commonwealth:
 - (a) the Minister is, by order published in the Gazette, to amend Schedule 1 or 2 to this Act to omit the asterisk showing its national status, and
 - (b) the Scientific Committee is to consider, in accordance with Division 3, whether the species or ecological community should be omitted from Schedule 1 or 2 to this Act.

Division 2 Eligibility for listing

10 Species eligible for listing as endangered species

A species is eligible to be listed as an endangered species if, in the opinion of the Scientific Committee:

- (a) it is likely to become extinct in nature in New South Wales unless the circumstances and factors threatening its survival or evolutionary development cease to operate, or
- (b) its numbers have been reduced to such a critical level, or its habitats have been so drastically reduced, that it is in immediate danger of extinction, or
- (c) it might already be extinct, but is not presumed extinct.

11 Populations eligible for listing as endangered populations

A population is eligible to be listed as an endangered population if, in the opinion of the Scientific Committee, its numbers have been reduced to such a critical level, or its habitat has been so drastically reduced, that it is in immediate danger of extinction and it is not a population of a species already listed in Schedule 1, and:

- (a) it is disjunct and at or near the limit of its geographic range, or
- (b) it is or is likely to be genetically distinct, or
- (c) it is otherwise of significant conservation value.

12 Ecological communities eligible for listing as endangered ecological communities

An ecological community is eligible to be listed as an endangered ecological community if, in the opinion of the Scientific Committee:

- (a) it is likely to become extinct in nature in New South Wales unless the circumstances and factors threatening its survival or evolutionary development cease to operate, or
- (b) it might already be extinct.

13 Species eligible for listing as species presumed extinct

A species is eligible to be listed as a species that is presumed extinct at a particular time if, to the knowledge of the Scientific Committee, it has not been definitely located in nature during the preceding 50 years despite searching of known and likely habitats during that period.

14 Species eligible for listing as vulnerable species

A species is eligible to be listed as a vulnerable species if, in the opinion of the Scientific Committee, the species is likely to become endangered unless the circumstances and factors threatening its survival or evolutionary development cease to operate.

15 Threatening processes eligible for listing as key threatening processes

A threatening process is eligible to be listed as a key threatening process if, in the opinion of the Scientific Committee, it:

- (a) adversely affects 2 or more threatened species, populations or ecological communities, or
- (b) could cause species, populations or ecological communities that are not threatened to become threatened.

Division 3 Procedure for listing

16 Operation of Division

- (1) This Division sets out the procedure to be adopted for the purposes of inserting matter in, omitting matter from or amending matter in Schedule 1, 2 or 3.

- (2) The procedure set out in this Division does not apply to the provisional listing of endangered species, populations or ecological communities, on an emergency basis, by the Scientific Committee under Division 4.

17 Scientific Committee responsible for lists

- (1) The Scientific Committee is responsible for determining whether any species, population, ecological community or threatening process should be inserted in or omitted from Schedule 1, 2 or 3 or whether any matter in those Schedules should be amended.
- (2) Accordingly, the Scientific Committee must keep the lists in those Schedules under review and must, at least bi-annually, determine whether any changes to the lists are necessary.

18 Who may initiate action for listing

- (1) The Scientific Committee may make a determination for the purposes of this Division on its own initiative.
- (2) The Scientific Committee may also make a determination:
 - (a) following a request by the Minister, or
 - (b) on a nomination, made in accordance with this Division, of any other person.

19 Making nomination for inclusion on, omission from or amendment of list

- (1) Any person may nominate any species, population or ecological community for insertion in or omission from Schedule 1 or 2.
- (2) Any person may nominate any matter in Schedule 1 or 2 for amendment.
- (3) Any person may nominate any threatening process for insertion in or omission from Schedule 3.
- (4) Any person may nominate any matter in Schedule 3 for amendment.
- (5) A nomination must be in writing addressed to the Chairperson of the Scientific Committee and must include any information prescribed by the regulations.

20 Scientific Committee may request additional information

The Scientific Committee may request a person who makes a nomination to provide additional information about the subject matter of the nomination within a specified period.

21 Consideration of nomination by Scientific Committee

- (1) The Scientific Committee is to consider each nomination as soon as practicable after it is made or, if additional information has been requested, after that information has been provided or the period specified for its provision has expired.
- (2) The Scientific Committee may consider different nominations about the same subject together.
- (3) The Scientific Committee may reject a nomination if:
 - (a) the subject of the nomination has already been dealt with, or
 - (b) the nomination is vexatious, or
 - (c) the nomination is not accompanied by the information prescribed by the regulations, or
 - (d) any additional information requested by the Scientific Committee is not provided within the period specified for its provision, or
 - (e) any additional information provided is inadequate and does not satisfy the Scientific Committee's request.
- (4) If the Scientific Committee rejects a nomination, it is to notify the Minister, the Director-General and the person who made the nomination and is to give reasons for the rejection.
- (5) A person must not deliberately and wilfully make a vexatious nomination of any species, population or ecological community for insertion in or omission from Schedule 1 or 2.

Maximum penalty: 20 penalty units.

22 Scientific Committee's preliminary determination

- (1) The Scientific Committee, after considering a proposal raised on its own initiative or in response to a request from the Minister or a nomination by another person, must make a preliminary determination as to whether the proposal should be supported or not supported.
- (2) As soon as possible after making a preliminary determination, the Scientific Committee must:
 - (a) in a case involving a nomination, notify the person who made the nomination, the Minister and the Director-General, and
 - (b) in a case of a proposal raised on its own initiative or in response to a request from the Minister, notify the Minister and the Director-General, and
 - (c) publish notice of its preliminary determination and the reasons for it in a newspaper circulating generally throughout the State and, if the determination is likely to affect a particular area or areas (other than the State as a whole), in a newspaper circulating generally in that area or areas, and
 - (d) publish notice of the making of the preliminary determination in the Gazette.
- (3) The notice must:
 - (a) state that the preliminary determination has been prepared, and
 - (b) specify the address of the place at which copies of the determination may be inspected, and
 - (c) invite persons to make written submissions to the Director-General about the determination, and
 - (d) specify the address of the place to which submissions about the determination may be forwarded and the date by which submissions must be made.
- (4) The notice must specify the date by which and the address of the place to which any person may forward written submissions to the Scientific Committee about a preliminary determination.

- (5) The Scientific Committee must consider all written submissions received by it on or before the date specified in the notice, being a date occurring not more than 150 days after the date on which the notice was first published under this section.

23 Scientific Committee's final determination

- (1) The Scientific Committee must either accept or reject a proposal for inclusion, or amendment, of matter in or omission of matter from Schedule 1, 2 or 3, and must give reasons for the determination.
- (2) In a case involving a nomination, the Scientific Committee must make a determination under this section within 6 months after:
- (a) the making of the nomination, or
 - (b) if additional information has been requested by the Scientific Committee, after that information has been provided or the period specified for its provision has expired.

24 Publication of final determination

On making a final determination, the Scientific Committee must, as soon as practicable:

- (a) in a case involving a nomination, notify the person who made the nomination of the determination, and
- (b) notify the Minister and the Director-General of the determination, and
- (c) publish notice of the determination and the reasons for it in a newspaper circulating generally throughout the State and, if the determination is likely to affect a particular area or areas (other than the State as a whole), in a newspaper circulating generally in that area or areas, and
- (d) publish notice of the making of the determination in the Gazette.

25 Revision of Schedule on publication of final determination

On the publication of a final determination in the Gazette that:

- (a) a species, population, ecological community or threatening process be inserted in Schedule 1, 2 or 3—the relevant Schedule is amended by inserting the species, population, ecological community or threatening process, or
- (b) a species, population, ecological community or threatening process be omitted from Schedule 1, 2 or 3—the relevant Schedule is amended by omitting the species, population, ecological community or threatening process, or
- (c) a species, population, ecological community or threatening process listed in Schedule 1, 2 or 3 be amended—the relevant Schedule is amended by omitting the species, population, ecological community or threatening process that is set out in the Schedule and by inserting instead a description of the species, population, ecological community or threatening process in the manner required by the determination.

Division 4 Procedure for provisional listing of endangered species on emergency basis**26 Operation of Division**

This Division sets out the procedure to be adopted for the purposes of enabling matter to be provisionally listed in Schedule 1 on an emergency basis.

Note. Only species that are likely to be endangered may be provisionally listed.

27 Scientific Committee responsible for provisional listing

The Scientific Committee is responsible for determining whether any species should be provisionally listed in Schedule 1 as an endangered species on an emergency basis.

28 Eligibility for provisional listing

A species is eligible to be provisionally listed in Schedule 1 as an endangered species if, in the opinion of the Scientific Committee:

- (a) the species:
 - (i) although not previously known to have existed in New South Wales, is believed on current knowledge to be indigenous to New South Wales, or
 - (ii) was presumed to be extinct in New South Wales but has been rediscovered, and
- (b) the species is not listed in Part 1 of Schedule 1.

29 Who may initiate action for provisional listing

- (1) The Scientific Committee may make a determination for the purposes of this Division on its own initiative.
- (2) The Scientific Committee may also make a determination:
 - (a) following a request by the Minister, or
 - (b) on a nomination, made in accordance with this Division, of any other person.

30 Making nomination for provisional listing

- (1) Any person may nominate any species for provisional listing in Schedule 1.
- (2) A nomination must be in writing addressed to the Chairperson of the Scientific Committee and must include any information prescribed by the regulations.

31 Scientific Committee may request additional information

The Scientific Committee may request a person who makes a nomination for provisional listing to provide additional information about the subject matter of the nomination within a specified period.

32 Consideration of nomination for provisional listing by Scientific Committee

- (1) The Scientific Committee is to consider each nomination as soon as practicable after it is made or, if additional information has been requested, after that information has been provided or the period specified for its provision has expired.
- (2) In any event, the Scientific Committee must make a determination about a nomination within 6 months after it is made or, if additional information has been requested, after that information has been provided or the period specified for its provision has expired.
- (3) The Scientific Committee may consider different nominations about the same subject together.
- (4) The Scientific Committee may reject a nomination if:
 - (a) the subject of the nomination has already been dealt with, or
 - (b) the nomination is vexatious, or
 - (c) the nomination is not accompanied by the information prescribed by the regulations, or
 - (d) any additional information requested by the Scientific Committee is not provided within the period specified for its provision, or
 - (e) any additional information provided is inadequate and does not satisfy the Scientific Committee's request.
- (5) If the Scientific Committee rejects a nomination, it is to notify the Minister, the Director-General and the person who made the nomination and is to give reasons for the rejection.

33 Publication of determination for provisional listing

On making a determination for provisional listing, the Scientific Committee must, as soon as practicable:

- (a) in a case involving a nomination, notify the person who made the nomination of the determination, and
- (b) notify the Minister and the Director-General of the determination, and

- (c) publish notice of the determination and the reasons for it in a newspaper circulating generally throughout the State and, if the determination is likely to affect a particular area or areas (other than the State as a whole), in a newspaper circulating generally in that area or areas, and
- (d) publish notice of the making of the determination in the Gazette.

34 Effect of publication of determination for provisional listing

On the publication of the determination that a species be provisionally listed in Schedule 1, Schedule 1 is taken for all purposes to have been amended by the insertion of the description of the species that is the subject of the determination until such time as the provisional listing ceases to have effect in accordance with this Division.

35 Scientific Committee to review status of provisionally listed species

- (1) As soon as practicable after the publication of a determination under this Division, the Scientific Committee must review the status of a provisionally listed species, population or ecological community to determine whether or not the species should be listed as a threatened species.
- (2) The requirements of sections 22–25 apply to the review of a provisional listing.

36 Termination of provisional listing

The provisional listing of a species in Schedule 1 ceases to have effect:

- (a) if the Scientific Committee makes a final determination in accordance with Division 3 that the species should be listed in Schedule 1 or 2—when that determination is published in the Gazette, or
 - (b) if the Scientific Committee makes a final determination in accordance with Division 3 that the species should not be listed in Schedule 1 or 2—when the Scientific Committee publishes a notice to that effect in the Gazette, or
 - (c) within 12 months after the provisional listing,
- whichever first occurs.

Part 3 Critical habitat of endangered species, populations and ecological communities

Introductory note

This Part makes the Director-General responsible for identifying (where this is possible) habitat that is critical to the survival of endangered species, populations and ecological communities (that is, those species, populations and ecological communities listed for the time being in Schedule 1) and for recommending to the Minister that the habitat so identified be declared critical habitat. The Director-General must consult with the Scientific Committee before preparing a recommendation and must have regard to any advice given by the Scientific Committee concerning identification of critical habitat of endangered populations and ecological communities.

Division 1 describes the process by which critical habitat is identified by the Director-General and declared by the Minister and makes provision for public participation in that process.

Division 2 deals with the preparation, publication and other dissemination of maps of critical habitat, and the maintenance of a register of critical habitat by the Director-General.

An offence relating to the damaging of critical habitat is contained in the *National Parks and Wildlife Act 1974*. That Act also makes it an offence for a person to damage the habitat of a threatened species, population or ecological community.

Division 1 Identification and declaration of critical habitat

37 Habitat eligible to be declared to be critical habitat

- (1) The whole or any part or parts of the area or areas of land comprising the habitat of an endangered species, population or ecological community that is critical to the survival of the species, population or ecological community is eligible to be declared under this Part to be the critical habitat of the species, population or ecological community.
- (2) The regulations may provide that a specified habitat, or habitat of a specified kind, may, or may not, be declared to be critical habitat for the purposes of this Part.

38 Director-General responsible for identifying critical habitat

The Director-General is responsible for identifying (where this is possible) the area or areas of land comprising the critical habitat of each endangered species, population and ecological community.

39 Director-General to consult with Scientific Committee

- (1) The Director-General must consult with the Scientific Committee before preparing a recommendation for the identification of an area or areas of land comprising critical habitat for the purposes of this Act.
- (2) In particular, the Director-General must consult with the Scientific Committee concerning the identification of the area or areas of land comprising the critical habitat of endangered populations and endangered ecological communities and must have regard to its advice in preparing any recommendation for that purpose.

40 Preparation of recommendation for identification of critical habitat

- (1) After considering the Scientific Committee's advice, the Director-General must, if the Director-General considers that it is possible to identify the critical habitat of a species, population or ecological community, prepare a recommendation for identification of the area or areas of land comprising the critical habitat of that species, population or ecological community.
- (2) In so doing, the Director-General must consider the likely social and economic consequences of the making of the recommendation in the manner proposed.

41 Publication of recommendation

- (1) After preparing a recommendation for identification of the area or areas of land comprising the critical habitat of a species, population or ecological community, the Director-General must:
 - (a) give a copy of it to the Scientific Committee, and

- (b) give notice of the recommendation to all persons known by the Director-General, following the making of reasonable searches and inquiries, to be affected by the recommendation, being:
 - (i) landholders (including public authorities who are landholders), and
 - (ii) other public authorities known to the Director-General to exercise relevant functions in relation to the land, and
 - (iii) if the land is subject to a mortgage, charge or positive covenant—the mortgagee, chargee or person entitled to the benefit of the covenant, and
 - (iv) holders of leases and other interests granted by the Crown, and
 - (c) publish notice of the recommendation in a newspaper circulating generally throughout the State and, if the recommendation is likely to affect a particular area or areas (other than the State as a whole), in a newspaper circulating generally in that area or areas, and
 - (d) publish notice of the recommendation in the Gazette.
- (2) The notice must:
- (a) state that the recommendation has been prepared, and
 - (b) specify the address of the place at which copies of the recommendation may be inspected, and
 - (c) invite persons to make written submissions to the Director-General about the recommendation, and
 - (d) specify the address of the place to which submissions about the recommendation may be forwarded and the date by which submissions must be made.

42 Consideration of submissions by Director-General

- (1) The Director-General must consider all written submissions received by the Director-General on or before the date specified in the notice.

- (2) The Director-General may amend the recommendation to take account of any of those submissions or any advice given by the Scientific Committee.

43 Director-General to refer recommendation to Minister

After considering the submissions and making amendments (if any) to the recommendation, the Director-General:

- (a) must forward the recommendation, identifying the area or areas of land comprising the critical habitat of the species, population or ecological community concerned, to the Minister, and
- (b) must also provide the Minister with a summary of any advice given by the Scientific Committee concerning the matter and of all submissions received about the recommendation, and details of any amendments made to the recommendation by the Director-General to take account of that advice or those submissions.

44 Consideration of recommendation by Minister

- (1) On receiving a recommendation from the Director-General, the Minister must consider the recommendation and have regard to the following:
- (a) the likely social and economic consequences of a declaration of critical habitat in the manner indicated in the recommendation,
 - (b) without limiting paragraph (a), the likely consequences of a declaration of critical habitat in the manner indicated in the recommendation for landholders of, or other persons having an interest in, or on lawful uses of, the land,
 - (c) the advice of the Scientific Committee concerning the matter,
 - (d) any submissions made about the recommendation and, in particular, any submissions received from public authorities exercising relevant functions in relation to the land.

- (2) In so doing, the Minister must also consider whether, consistent with the principles of ecologically sustainable development, the recommendation might be amended to avoid or lessen any adverse consequences of the making of a declaration of critical habitat.

45 Consultation between Ministers

If a submission from a public authority indicates that a recommendation is likely to affect the exercise of functions by the public authority, the Minister is to consult with the responsible Minister for the public authority concerning the recommendation before making a decision about the recommendation.

46 Minister may return recommendation to Director-General for amendment

- (1) If the Minister thinks that a recommendation should be amended in some respect, the Minister may request the Director-General to amend the recommendation.
- (2) On receiving such a request, the Director-General must:
 - (a) amend the recommendation in the manner requested by the Minister, and
 - (b) return the recommendation, as so amended, to the Minister.

47 Declaration of critical habitat by Minister

- (1) The Minister may:
 - (a) approve a recommendation, without amendment or with any amendments that the Minister considers appropriate, or
 - (b) refuse a recommendation (on the basis of one or more of the factors referred to in section 44 (1) or otherwise), or
 - (c) refer it back to the Director-General for further consideration.

- (2) Despite the other provisions of this Division, the Minister must approve or refuse a recommendation within 6 months after the date specified in the notice referred to in section 41 (2) as the date by which submissions about the recommendation must be made.
- (3) If the Minister approves of a recommendation, with or without amendments, the Minister may, by notification published in the Gazette, declare the area or areas of land identified in the recommendation (with any appropriate amendment) and described in the notification to be the critical habitat of the endangered species, population or ecological community concerned.
- (4) Section 53 (2) applies to the publication of a map of the critical habitat.

48 Publication of declaration of critical habitat

As soon as practicable after the declaration of critical habitat by the Minister, the Director-General must:

- (a) give notice of the declaration to all persons known by the Director-General, following the making of reasonable searches and inquiries, to be affected by the declaration, being:
 - (i) landholders (including public authorities who are landholders), and
 - (ii) other public authorities known by the Director-General to exercise relevant functions in relation to the land, and
 - (iii) if the land is subject to a mortgage, charge or positive covenant—the mortgagee, chargee or person entitled to the benefit of the covenant, and
- (b) publish notice of the declaration in a newspaper circulating generally throughout the State and, if the declaration is likely to affect a particular area or areas (other than the State as a whole), in a newspaper circulating generally in that area or areas, and
- (c) publish notice of the declaration in the Gazette.

49 Amendment or revocation of declaration of critical habitat

- (1) The Minister may amend or revoke a declaration of critical habitat by a further notification published in the Gazette. However, the Minister must not amend or revoke a declaration unless the Minister has obtained from, and considered, the advice of the Director-General.
- (2) Before providing advice about a proposed amendment or revocation, the Director-General must:
 - (a) consult the Scientific Committee concerning the proposed amendment or revocation and have regard to its advice, and
 - (b) give and publish notice of the proposed amendment or revocation as if it were a recommendation referred to in section 41, and consider all written submissions concerning the proposed amendment or revocation that are received on or before the date specified in the notice.
- (3) If a declaration is amended or revoked by the Minister, the Director-General must:
 - (a) give notice of the amendment or revocation to:
 - (i) those persons who were given notice of the making of the declaration and who retain the requisite interest in the land, and
 - (ii) any other person known by the Director-General, following the making of reasonable searches and inquiries, to have become a landholder, public authority exercising relevant functions in relation to the land, mortgagee, chargee or person entitled to the benefit of a positive covenant in the land after notice of the making of the declaration was given, and
 - (b) publish notice of the amendment or revocation in the Gazette.
- (4) A notice under subsection (3) must give the reasons for the amendment or revocation of the declaration.

50 Public authorities to have regard to critical habitat

A public authority must, on and after publication of a declaration of critical habitat (whether or not a map of the critical habitat is published at the same time), have regard to the existence of critical habitat:

- (a) in relation to use of land that it owns or controls that is within or contains critical habitat, or
- (b) in exercising its functions in relation to land that is within or contains critical habitat.

51 Regulations may prohibit certain actions on critical habitat

The regulations may prohibit or regulate, for the purposes of this Act, the carrying out of specified actions, or actions of a specified class or description, on specified critical habitat.

52 Effect of failure to comply with procedural requirements

A declaration of critical habitat is not open to challenge because of a failure to comply with the procedural requirements of this Division after the declaration has been published in the Gazette.

Division 2 Maps and register of critical habitat

53 Map of critical habitat to be prepared and published

- (1) On or as soon as practicable after the publication of a declaration, or an amendment of a declaration, of critical habitat, the Director-General must arrange for the preparation of a map that shows the location of the critical habitat as so declared or amended.
- (2) A copy of the map is to be published in the Gazette on the publication of the declaration of the critical habitat.

54 Maps of critical habitat to be served

The Director-General must serve a copy of a map of critical habitat on the following:

- (a) the Director-General of the Department of Land and Water Conservation,
- (b) the Director of Planning,
- (c) each council within whose area the whole or part of the critical habitat is located,
- (d) landholders of land on which critical habitat is located (including public authorities who are landholders),
- (e) holders of leases and other interests granted by the Crown,
- (f) other public authorities known by the Director-General to exercise relevant functions in relation to the land.

55 Director-General to keep register of critical habitat

- (1) The Director-General must keep a register containing copies of declarations of critical habitat as in force from time to time, and maps of the critical habitat that are published in the Gazette, and must make that register available to public authorities.
- (2) The register is to be open for public inspection, without charge, during ordinary business hours, and copies of or extracts from the register are to be made available to the public on request, on payment of the fee fixed by the Director-General.

Part 4 Recovery plans for threatened species, populations and ecological communities

Introductory note

This Part is the first of 4 Parts that address responses to threats to the survival of threatened species, populations and ecological communities, and their habitats. This Part deals with recovery plans for threatened species, populations and ecological communities and makes further provision as to the protection of their critical habitats (if any).

The Director-General must prepare recovery plans for endangered species (other than species presumed extinct), populations and ecological communities and for vulnerable species. The object of a recovery plan is to promote the recovery of the threatened species, population or ecological community to which it relates to a position of viability in nature. If critical habitat has been declared for the species, population or ecological community, the plan must include reference to that fact.

Division 1 deals with the preparation, contents, publication and adoption of recovery plans.

Division 2 deals with the implementation of recovery plans, and includes procedures for public authorities to report on their implementation of, or on proposed departures from, measures specified to be taken in recovery plans.

In accordance with the *Environmental Planning and Assessment Act 1979*, the terms of recovery plans are to be taken into account by consent authorities and determining authorities (within the meaning of that Act) when they are considering development applications under Part 4, or the carrying out, or applications for approval for the carrying out, of activities under Part 5, of that Act.

Division 1 Preparation of recovery plans

56 Director-General to prepare recovery plans

- (1) The Director-General is required to prepare a recovery plan for each endangered species (other than a species presumed extinct), population and ecological community, as soon as practicable after it is listed in Schedule 1, to promote the recovery of the species, population or ecological community to a position of viability in nature.
- (2) The Director-General must also prepare recovery plans for vulnerable species.

- (3) A recovery plan under this Act must be prepared within the same time limits as a recovery plan (within the meaning of the *Endangered Species Protection Act 1992* of the Commonwealth) must be prepared under that Act.

57 Guidelines for recovery plans

- (1) The Director-General must, in preparing a recovery plan and in deciding which measures to include in it, have regard to the following:
- (a) the objects of this Act,
 - (b) the likely social and economic consequences of the making of the plan,
 - (c) the most efficient and effective use of available resources for the conservation of threatened species, populations and ecological communities,
 - (d) the minimising of any significant adverse social and economic consequences.
- (2) The Director-General is to consider, when preparing a recovery plan, any measures by which the public may co-operate in the conservation of a threatened species, population or ecological community.

58 Priorities for recovery plans

- (1) The Director-General must, after consulting with the Scientific Committee, determine priorities in the preparation of recovery plans.
- (2) The highest priority is to be given to the preparation of recovery plans for species, populations and ecological communities that are identified by asterisks in Schedule 1 as being endangered nationally.

- (3) After complying with subsection (2), priorities in the preparation of recovery plans are to be determined in accordance with the following criteria and any other criteria that the Director-General, after consultation with the Scientific Committee, considers relevant:
- (a) likelihood of extinction—whether the species, population or ecological community has a greater likelihood of extinction than other species, populations or ecological communities,
 - (b) likelihood of recovery—whether the species, population or ecological community is more likely to recover, if it is the subject of a recovery plan, than other species, populations or ecological communities,
 - (c) keystone species—whether many other species are dependant for survival on the species,
 - (d) indicator species—whether the relative abundance of the species is a measure of the overall health of its ecosystem.

59 Contents of recovery plans

A recovery plan must:

- (a) identify the threatened species, population or ecological community to which it applies, and
- (b) identify any critical habitat declared in relation to the threatened species, population or ecological community, and
- (c) identify any threatening process or processes threatening the threatened species, population or ecological community, and
- (d) identify methods by which adverse social and economic consequences of the making of the plan can be minimised, and
- (e) state what must be done to ensure the recovery of the threatened species, population or ecological community, and
- (f) state what must be done to protect the critical habitat (if any) identified in the plan, and

- (g) state, with reference to the objects of this Act:
 - (i) the way in which those objects are to be implemented or promoted for the benefit of the threatened species, population or ecological community, and
 - (ii) the method by which progress towards achieving those objects is to be assessed, and
- (h) identify the persons or public authorities who are responsible for the implementation of the measures included in the plan, and
- (i) state the date by which the recovery plan should be subject to review by the Director-General.

60 Consultation between Ministers

- (1) The Minister must, if the Director-General informs the Minister that the Director-General considers that a public authority should be responsible for the implementation of a measure to be included in a recovery plan, consult with the Minister responsible for the public authority before completing the preparation of the draft recovery plan.
- (2) A measure must not be included in a recovery plan for implementation by a public authority unless the Minister responsible for the public authority approves of the inclusion of the measure.

61 Publication of draft recovery plan

- (1) As soon as practicable after preparing a draft recovery plan, the Director-General must:
 - (a) give a copy of the draft recovery plan to the Scientific Committee, and
 - (b) give notice of the preparation of the draft recovery plan to any public authority that the Director-General knows is likely to be affected by the recovery plan, and

- (c) publish notice of the preparation of the draft recovery plan in a newspaper circulating generally throughout the State and, if the recovery plan is likely to affect a particular area or areas (other than the State as a whole), in a newspaper circulating generally in that area or areas, and
 - (d) publish notice of the preparation of the draft recovery plan in the Gazette.
- (2) The notice must:
 - (a) state that the draft recovery plan has been prepared, and
 - (b) specify the address of the place at which copies of the draft recovery plan may be inspected, and
 - (c) invite persons to make written submissions to the Director-General about the draft recovery plan, and
 - (d) specify the address of the place to which submissions about the draft recovery plan may be forwarded and the date by which submissions must be made.

62 Consideration of submissions by Director-General

- (1) The Director-General must consider all written submissions received by the Director-General on or before the date specified in the notice.
- (2) The Director-General may amend the draft recovery plan to take account of those submissions or any advice given by the Scientific Committee.

63 Director-General to refer draft recovery plan to Minister

After considering the submissions and making amendments (if any) to the draft recovery plan, the Director-General must:

- (a) forward the draft recovery plan to the Minister, and
- (b) provide the Minister with a summary of any advice given by the Scientific Committee and of all submissions received about the draft recovery plan, and details of any amendments made to the draft recovery plan by the Director-General to take account of that advice or those submissions.

64 Minister may return draft recovery plan to Director-General for amendment

- (1) If the Minister thinks that a draft recovery plan should be amended in some respect, the Minister may request the Director-General to amend the plan.
- (2) On receiving such a request, the Director-General must:
 - (a) amend the proposal in the manner requested by the Minister, and
 - (b) return the plan, as so amended, to the Minister.

65 Approval of recovery plan by Minister

- (1) In considering whether to approve or to refuse to approve a draft recovery plan, the Minister must have regard to the likely social and economic consequences of the approval of the plan.
- (2) The Minister may:
 - (a) approve a draft recovery plan without amendment or with any amendments that the Minister considers appropriate, or
 - (b) refuse to approve the plan (on the basis of the likely social or economic consequences of the plan or otherwise), or
 - (c) refer it back to the Director-General for further consideration.

66 Reasons for departure from draft recovery plan to be stated

If a recovery plan approved by the Minister is not in the form of the draft recovery plan submitted to the Minister by the Director-General, the recovery plan approved must state the reasons for any departures from the draft plan.

67 Recovery plans to be published

- (1) As soon as practicable after the Minister approves a draft recovery plan, the Director-General must:
 - (a) give a copy of the recovery plan to the Scientific Committee, and

- (b) publish notice of the approval of the plan in a newspaper circulating generally throughout the State and, if the recovery plan is likely to affect a particular area or areas (other than the State as a whole), in a newspaper circulating generally in that area or areas, and
 - (c) notify any public authority likely to be affected by the plan, and
 - (d) publish notice of the approval of the plan in the Gazette.
- (2) The Director-General must also make a copy of the recovery plan available for public inspection, without charge, during business hours and copies of or extracts from the recovery plan are to be made available to the public on request, on payment of the fee fixed by the Director-General.

68 Review of recovery plans

- (1) The Director-General is required to keep each recovery plan under review and, if a date by which a plan is to be reviewed is stated in it, is to review the plan by that date.
- (2) The Director-General is also to consider any submissions about recovery plans received from public authorities or the public.
- (3) If the Director-General considers that any change (other than a minor change) should be made to a recovery plan, the Director-General is to prepare a new plan in accordance with this Part.

Division 2 Implementation of recovery plans

69 Ministers and public authorities to implement recovery plans

- (1) Ministers and public authorities (including the Director-General) are to take any appropriate action available to them to implement those measures included in a recovery plan for which they are responsible and must not make decisions that are inconsistent with the provisions of a recovery plan.

- (2) If the implementation of a recovery plan affects a statutory discretion of a Minister or public authority, this section does not operate to exclude the discretion, but the Minister or authority must take the recovery plan into account.
- (3) This section does not operate to require or authorise any action by a Minister or public authority that is inconsistent with any statutory or other legal obligation of the Minister or public authority.

70 Public authorities to report on implementation of recovery plans

- (1) A public authority (including the Director-General but not including a council) identified in a recovery plan as responsible for the implementation of measures included in the plan must report on action taken by it to implement those measures in its annual report to Parliament.
- (2) A council identified in a recovery plan as responsible for the implementation of measures included in the plan must report on action taken by it to implement those measures in its annual report as to the state of the environment of its area.

71 Notification of proposed departures from recovery plan

- (1) A public authority must not exercise a function in a manner that is inconsistent with the implementation of measures included in a recovery plan unless:
 - (a) in the case of a public authority other than the Director-General—it has given written notice of the proposed exercise of the function to the Director-General, or
 - (b) in the case of the Director-General—the Director-General has given written notice of the proposed exercise of the function to the Minister.
- (2) The Director-General must comply with any directions given by the Minister concerning a proposed departure from a recovery plan.

- (3) This section does not apply in relation to anything authorised to be done by or under the *Bush Fires Act 1949* or the *State Emergency and Rescue Management Act 1989* that is reasonably necessary in order to avoid a threat to life or property.

72 Consultations with Director-General concerning proposed departures

- (1) The Director-General must, on receiving notice of a proposed departure from a recovery plan from a public authority, determine whether exercise of the function in the manner proposed is acceptable or whether it is likely to jeopardise the effective implementation of the plan.
- (2) If the Director-General considers that the departure is acceptable, the Director-General must notify the public authority accordingly.
- (3) If the Director-General considers that the departure is unacceptable because it is likely to jeopardise the effective implementation of the recovery plan, the Director-General must consult with the public authority in an endeavour to resolve the matter by modification of the action proposed or by other mutually acceptable means.

73 Reference of proposed departures to Ministers and Premier

- (1) A matter that has not been resolved after consultation between the Director-General and the public authority concerned must be referred by the parties to their respective Ministers.
- (2) In the case of a council, the reference is to the Minister administering the *Local Government Act 1993* unless the matter relates, in whole or in part, to the exercise of functions under the *Environmental Planning and Assessment Act 1979*. In that event, the reference is to be to the Minister administering the *Environmental Planning and Assessment Act 1979*.
- (3) The Ministers, on receiving a reference, are to consult in an endeavour to resolve the matter by means that the Ministers consider to be appropriate.

- (4) If the Ministers are unable to resolve the matter after consultation, it is to be referred to the Premier for resolution.
- (5) A public authority (including the Director-General) must give effect to any decision of, or directions made or given by, the Premier on the matter and is, despite the requirements of any other Act or law, empowered to comply with any such decision or directions.

Part 5 Threat abatement plans to manage key threatening processes

Introductory note

Part 2 provides for the identification of key threatening processes by the Scientific Committee. This Part deals with the preparation and implementation of threat abatement plans to manage key threatening processes with a view to their abatement, amelioration or elimination.

Division 1 deals with the preparation, contents, publication and adoption of threat abatement plans.

Division 2 deals with the implementation of threat abatement plans, and includes procedures for public authorities to report on their implementation of, or on proposed departures from, measures specified to be taken in threat abatement plans.

In accordance with the *Environmental Planning and Assessment Act 1979*, the terms of threat abatement plans are to be taken into account by consent authorities and determining authorities (within the meaning of that Act) when they are considering development applications under Part 4, or the carrying out, or applications for approval for the carrying out, of activities under Part 5, of that Act.

Division 1 Preparation of threat abatement plans

74 Director-General may prepare threat abatement plans

- (1) The Director-General must prepare a threat abatement plan for each key threatening process to manage the threatening process so as to abate, ameliorate or eliminate its adverse effects on threatened species, populations or ecological communities.
- (2) A threat abatement plan under this Act must be prepared within the same time limits as a threat abatement plan (within the meaning of the *Endangered Species Protection Act 1992* of the Commonwealth) must be prepared under that Act.

75 Guidelines for threat abatement plans

- (1) The Director-General must, in preparing threat abatement plans and in deciding which measures to include in those plans, have regard to the following:
 - (a) the objects of this Act,
 - (b) the likely social and economic consequences of the making of the plan,

- (c) the most efficient and effective use of available resources for the conservation of threatened species, populations and ecological communities,
 - (d) the desirability of minimising any significant adverse social and economic consequences.
- (2) The Director-General is to consider, when preparing a threat abatement plan, any measures by which the public may co-operate in the abatement, amelioration or elimination of the adverse effects of key threatening processes on the prospects of survival of threatened species, populations or ecological communities and their recovery to a position of viability in nature.

76 Priorities for threat abatement plans

The Director-General must, after consulting with the Scientific Committee, determine priorities in the preparation of threat abatement plans.

77 Contents of threat abatement plans

A threat abatement plan must:

- (a) state the criteria for assessing the achievement of the objective, and
- (b) identify the actions needed to abate, ameliorate or eliminate the effects of the key threatening process, and
- (c) identify the persons or public authorities who are responsible for the implementation of the measures included in the plan, and
- (d) where practicable, provide a proposed timetable for the implementation of the plan, and
- (e) state the estimated cost of the measures included in the plan, and
- (f) state the date by which the plan should be subject to review by the Director-General, and
- (g) include any other matter relating to the impact of the plan as the Director-General considers appropriate.

78 Consultation between Ministers

- (1) The Minister must, if the Director-General informs the Minister that the Director-General considers that a public authority should be responsible for the implementation of a measure to be included in a threat abatement plan, consult with the Minister responsible for the public authority before completing the preparation of the draft threat abatement plan.
- (2) A measure must not be included in a threat abatement plan for implementation by a public authority unless the Minister responsible for the public authority approves of the inclusion of the measure.

79 Publication of draft threat abatement plan

- (1) As soon as practicable after preparing a draft threat abatement plan, the Director-General must:
 - (a) give a copy of the draft threat abatement plan to the Scientific Committee, and
 - (b) give notice of the preparation of the draft threat abatement plan to any public authority that the Director-General knows is likely to be affected by the threat abatement plan, and
 - (c) publish notice of the preparation of the draft threat abatement plan in a newspaper circulating generally throughout the State and, if the threat abatement plan is likely to affect a particular area or areas (other than the State as a whole), in a newspaper circulating generally in that area or areas, and
 - (d) publish notice of the preparation of the draft threat abatement plan in the Gazette.
- (2) The notice must:
 - (a) state that the draft threat abatement plan has been prepared, and
 - (b) specify the address of the place at which copies of the draft threat abatement plan may be inspected, and

- (c) invite persons to make written submissions to the Director-General about the draft threat abatement plan, and
- (d) specify the address of the place to which submissions about the draft threat abatement plan may be forwarded and the date by which submissions must be made.

80 Consideration of submissions by Director-General

- (1) The Director-General must consider all written submissions received by the Director-General on or before the date specified in the notice.
- (2) The Director-General may amend the draft threat abatement plan to take into account any of those submissions or any advice given by the Scientific Committee.

81 Director-General to refer draft threat abatement plan to Minister

After considering the submissions and making amendments (if any) to the draft threat abatement plan, the Director-General must:

- (a) forward the draft threat abatement plan to the Minister, and
- (b) provide the Minister with a summary of any advice given by the Scientific Committee and of all submissions received about the draft threat abatement plan, and details of any amendments made to the draft threat abatement plan by the Director-General to take account of that advice or those submissions.

82 Minister may return draft threat abatement plan to Director-General for amendment

- (1) If the Minister thinks that a draft threat abatement plan should be amended in some respect, the Minister may request the Director-General to amend the plan.
- (2) On receiving such a request, the Director-General must:
 - (a) amend the plan in the manner requested by the Minister, and
 - (b) return the plan, as so amended, to the Minister.

83 Approval of threat abatement plan by Minister

- (1) In considering whether to approve or to refuse to approve a draft threat abatement plan, the Minister must have regard to the likely social and economic consequences of the approval of the plan.
- (2) The Minister may:
 - (a) approve a threat abatement plan without amendment or with any amendments that the Minister considers appropriate, or
 - (b) refuse to approve the plan (on the basis of the likely social or economic consequences of the plan or otherwise), or
 - (c) refer it back to the Director-General for further consideration.

84 Threat abatement plans to be published

- (1) As soon as practicable after the Minister approves a threat abatement plan, the Director-General must:
 - (a) give a copy of the threat abatement plan to the Scientific Committee, and
 - (b) publish notice of the approval of the plan in a newspaper circulating generally throughout the State and, if the threat abatement plan is likely to affect a particular area or areas (other than the State as a whole), in a newspaper circulating generally in that area or areas, and
 - (c) notify any public authority that the Director-General knows is likely to be affected by the plan, and
 - (d) publish notice of the approval of the plan in the Gazette.
- (2) The Director-General must also make a copy of the threat abatement plan available for public inspection, without charge, during ordinary business hours and copies of or extracts from the threat abatement plan are to be made available to the public on request, on payment of the fee fixed by the Director-General.

85 Review of threat abatement plans

- (1) The Director-General is required to keep each threat abatement plan under review and, if a date by which a plan is to be reviewed is stated in it, is to review the plan by that date.

- (2) The Director-General is also to consider any submissions about threat abatement plans received from public authorities or the public.
- (3) If the Director-General considers that any change (other than a minor change) should be made to a threat abatement plan, the Director-General is to prepare a new plan in accordance with this Part.

Division 2 Implementation of threat abatement plans

86 Ministers and public authorities to implement threat abatement plans

- (1) Ministers and public authorities (including the Director-General) are to take any appropriate action available to them to implement those measures included in a threat abatement plan for which they are responsible and must not make decisions that are inconsistent with the provisions of a threat abatement plan.
- (2) If the implementation of a threat abatement plan affects a statutory discretion of a Minister or public authority, this section does not operate to exclude the discretion, but the Minister or authority must take the plan into account.
- (3) This section does not operate to require or authorise any action by a Minister or public authority that is inconsistent with any statutory or other legal obligation of the Minister or public authority.

87 Public authorities to report on implementation of threat abatement plans

- (1) A public authority (including the Director-General but not including a council) identified in a threat abatement plan as responsible for the implementation of measures included in the plan must report on action taken by it to implement those measures in its annual report to Parliament.
- (2) A council identified in a threat abatement plan as responsible for the implementation of measures included in the plan must report on action taken by it to implement those measures in its annual report as to the state of the environment of its area.

88 Notification of proposed departures from threat abatement plan

- (1) A public authority must not exercise a function in a manner that is inconsistent with the implementation of measures included in a threat abatement plan unless:
 - (a) in the case of a public authority other than the Director-General—it has given written notice of the proposed exercise of the function to the Director-General, or
 - (b) in the case of the Director-General—the Director-General has given written notice of the proposed exercise of the function to the Minister.
- (2) The Director-General must comply with any directions given by the Minister concerning a proposed departure from a threat abatement plan.
- (3) This section does not apply in relation to anything authorised to be done by or under the *Bush Fires Act 1949* or the *State Emergency and Rescue Management Act 1989* that is reasonably necessary in order to avoid a threat to life or property.

89 Consultations with Director-General concerning proposed departures

- (1) The Director-General must, on receiving notice of a proposed departure from a threat abatement plan from a public authority, determine whether exercise of the function in the manner proposed is acceptable or whether it is likely to jeopardise the effective implementation of the plan.
- (2) If the Director-General considers that the departure is acceptable, the Director-General must notify the public authority accordingly.
- (3) If the Director-General considers that the departure is unacceptable because it is likely to jeopardise the effective implementation of the threat abatement plan, the Director-General must consult with the public authority in an endeavour to resolve the matter by modification of the action proposed or by other mutually acceptable means.

90 Reference of proposed departures to Ministers and Premier

- (1) A matter that has not been resolved after consultation between the Director-General and the public authority concerned must be referred by the parties to their respective Ministers.
- (2) In the case of a council, the reference is to the Minister administering the *Local Government Act 1993* unless the matter relates, in whole or in part, to the exercise of functions under the *Environmental Planning and Assessment Act 1979*. In that event, the reference is to be to the Minister administering the *Environmental Planning and Assessment Act 1979*.
- (3) The Ministers, on receiving a reference, are to consult in an endeavour to resolve the matter by means that the Ministers consider to be appropriate.
- (4) If the Ministers are unable to resolve the matter after consultation, it is to be referred to the Premier for resolution.
- (5) A public authority (including the Director-General) must give effect to any decision of, or directions made or given by, the Premier on the matter and is, despite the requirements of any other Act or law, empowered to comply with any such decision or directions.

Part 6 Licensing

Introductory note

This Part deals with the licensing by the Director-General of actions that are likely:

- to harm threatened species, populations or ecological communities (in so far as animals are concerned) or to result in the picking of threatened species, populations or ecological communities (in so far as plants are concerned), or
- to damage critical habitat or other habitat of those species, populations or ecological communities.

Harm and **pick** are defined in the *National Parks and Wildlife Act 1974*.

A person does not commit an offence under Part 8A of the *National Parks and Wildlife Act 1974* of harming or picking threatened species, populations or ecological communities or damaging a critical habitat or the habitat of threatened species, populations or ecological communities if the action taken by the person is essential for the carrying out of:

- (a) development in accordance with a development consent within the meaning of the *Environmental Planning and Assessment Act 1979*, or
- (b) an activity, whether by a determining authority or pursuant to an approval of a determining authority, within the meaning of Part 5 of that Act if the determining authority has complied with that Part.

Accordingly, a licence under this Act is not required for the taking of action that is so authorised under the *Environmental Planning and Assessment Act 1979*. However, the same tests are applied (with the involvement of the Minister administering this Act or the Director-General of National Parks and Wildlife) to assess the consequences of a development or an activity under that Act before a decision is made concerning it as are applied by the Director-General in determining whether a licence should be granted under this Part.

The Part also contains provisions about species impact statements. These statements are employed to measure the significance of the effect of actions on threatened species, populations or ecological communities, or their habitats. A species impact statement must be lodged with an application for a licence under this Part if the Director-General determines that the action proposed is likely to significantly affect threatened species, populations or ecological communities, or their habitats. A similar requirement applies when a development application is lodged, or an activity proposed, under the *Environmental Planning and Assessment Act 1979* over critical habitat or that is likely to significantly affect threatened species, populations or ecological communities, or their habitats.

Division 1 deals with the grant of licences, including the making of applications, fees, determinations as to whether actions proposed will significantly affect threatened species, populations or ecological

communities, publication of applications and the making of submissions concerning them, and matters that the Director-General must take into account before granting licences and appeals.

Division 2 deals with the form and content of species impact statements and the notification of the Director-General's requirements as to their preparation. It also makes provision for the accreditation of persons to prepare assessments of species impact statements.

Division 1 Grant of licences

91 Licence to harm or pick threatened species, population or ecological communities or damage habitat

- (1) The Director-General may grant a licence authorising a person to take action that is likely to result in one or more of the following:
 - (a) harm to a threatened species, population or ecological community (so far as animals are concerned),
 - (b) picking of a threatened species, population or ecological community (so far as plants are concerned),
 - (c) damage to a critical habitat,
 - (d) damage to a habitat of a threatened species, population or ecological community.
- (2) A general licence under section 120 of the *National Parks and Wildlife Act 1974* may only be issued for a purpose referred to in subsection (1):
 - (a) for scientific purposes, or
 - (b) for the welfare of an animal, or
 - (c) if there is a threat to life or property.
- (3) Despite subsection (1), a licence under this Part is not required for the carrying out of routine agricultural activities unless the actions are, or are of a class of actions, that the regulations prescribe may be carried out only under the authority of a licence under this Part.
- (4) The Minister must not recommend the making of a regulation that identifies actions, or actions of a class of actions, that may be carried out only under the authority of a licence under this Part

unless the Minister certifies that the Director-General has consulted with the Director-General of the Department of Agriculture concerning the making of the regulation.

- (5) The Director-General may, for the purposes of this Act, approve of a property management plan for land prepared by a landholder. Any action identified in, and carried out in accordance with, a property management plan so approved by the Director-General does not require a licence under this Part even if the action is, or is of a class of actions, that may, in accordance with the regulations, be carried out only under the authority of a licence under this Part.
- (6) It is a defence to a prosecution for an offence under Part 8A of the *National Parks and Wildlife Act 1974* if the accused proves that the action constituting the alleged offence:
 - (a) was a routine agricultural activity, or
 - (b) is identified in, and carried out in accordance with, a property management plan approved by the Director-General for the purposes of this Act.

92 Application for licence

- (1) An application for a licence must be in a form approved, and be accompanied by an application fee of the amount prescribed, by the Director-General.
- (2) If the action proposed to be taken under the authority of the licence is on land that is critical habitat, the application must be accompanied by a species impact statement prepared in accordance with Division 2.
- (3) If the action proposed is not on land that is critical habitat, the application must include the following:
 - (a) details of the types, and condition, of habitats in and adjacent to the land to be affected by the action,
 - (b) particulars of any known records of a threatened species in the same or similar known habitats in the locality,
 - (c) details of any known or potential habitat for a threatened species on the land to be affected by the action,

- (d) details of the amount of such habitat to be affected by the action proposed in relation to the known distribution of the species and its habitat in the locality and region,
 - (e) an assessment of the likely nature and intensity of the effect of the action on the life cycle and habitat of the species,
 - (f) details of possible measures to avoid or ameliorate the effect of the action.
- (4) An applicant may lodge a species impact statement with an application even if the action proposed is not on land that is critical habitat. In that event, the application need not include the information referred to in subsection (3).

93 Payment of licence processing fee

- (1) The Director-General is to levy a processing fee, being not more than the costs (including on-costs) incurred by the National Parks and Wildlife Service in the assessment and processing of a licence application (whether or not the application is successful).
- (2) The fee is recoverable by the Director-General as a debt due to the Crown in a court of competent jurisdiction.
- (3) The Director-General may, before dealing with an application, require the applicant to pay an amount not exceeding one-half of the estimated processing fee.
- (4) The Director-General may reduce the amount of a processing fee levied for any licence application having regard to the following:
 - (a) the extent of scientific examination necessary for the processing of the application,
 - (b) the adequacy of any species impact statement or environmental impact statement that includes a species impact component supplied by the applicant,
 - (c) the capacity of the applicant or persons with whom the applicant is associated to meet the fee levied,
 - (d) whether and to what extent the activity sought to be licensed may confer a commercial benefit on the applicant if the licence is granted.

- (5) Before a prospective applicant for a licence lodges an application, the Director-General must advise the applicant of the maximum fee payable in respect of the application.

94 Significant effect on threatened species, populations or ecological communities, or their habitats

- (1) If the action proposed to be taken by the applicant is not on land that is critical habitat and the application is not accompanied by a species impact statement, the Director-General must determine whether the action proposed is likely to significantly affect threatened species, populations or ecological communities, or their habitats.
- (2) For that purpose, the Director-General must take into account the following:
- (a) in the case of a threatened species, whether the life cycle of the species is likely to be disrupted such that a viable local population of the species is likely to be placed at risk of extinction,
 - (b) in the case of an endangered population, whether the life cycle of the species that constitutes the endangered population is likely to be disrupted such that the viability of the population is likely to be significantly compromised,
 - (c) in relation to the regional distribution of the habitat of a threatened species, population or ecological community, whether a significant area of known habitat is to be modified or removed,
 - (d) whether an area of known habitat is likely to become isolated from currently interconnecting or proximate areas of habitat for a threatened species, population or ecological community,
 - (e) whether critical habitat will be affected,
 - (f) whether a threatened species, population or ecological community, or their habitats, are adequately represented in conservation reserves (or other similar protected areas) in the region,

- (g) whether the action proposed is of a class of action that is recognised as a threatening process,
- (h) whether any threatened species or ecological community is at the limit of its known distribution.

95 Determination by Director-General as to significant effect

- (1) If the Director-General determines that an action proposed by an applicant for a licence is likely to significantly affect threatened species, populations or ecological communities, or their habitats, the Director-General must notify the applicant that, if the application is to proceed, a species impact statement prepared in accordance with Division 2 must be provided.
- (2) If the Director-General determines that an action proposed is not likely to significantly affect threatened species, populations or ecological communities, or their habitats, a licence under this Act is not required and the Director-General must, as soon as practicable after making the determination, issue to the applicant a certificate to that effect.

Note. An action that is not required to be licensed under this Act may however be required to be licensed under the *National Parks and Wildlife Act 1974* if it is likely to affect protected fauna or protected native plants or may otherwise constitute an offence under that Act.

96 Publication of licence application

On the receipt of a licence application accompanied by a species impact statement or a species impact statement provided in response to a notification from the Director-General that a statement is required, the Director-General must cause to be placed in a newspaper circulating throughout the State a notice:

- (a) outlining the nature of the application, and
- (b) specifying the address of the place at which copies of the species impact statement may be inspected or purchased, and
- (c) inviting written submissions within a period of not less than 28 days after the date of the notice.

97 Matters that Director-General must take into account

- (1) In considering whether to grant or to refuse to grant a licence application, the Director-General must take into account the following:
 - (a) any species impact statement,
 - (b) any written submissions received concerning the application within the period, and at the address for submissions, specified in the notice,
 - (c) the factors specified in sections 10–15,
 - (d) any relevant recovery plan or threat abatement plan,
 - (e) the principles of ecologically sustainable development,
 - (f) whether the action proposed is likely to irretrievably reduce the long-term viability of the species, population or ecological community in the region,
 - (g) whether the action proposed is likely to accelerate the extinction of the species or ecological community or place it at risk of extinction.
- (2) The Director-General must also consider the likely social and economic consequences of granting or refusing to grant a licence application.

98 Director-General may request additional information

The Director-General may request the applicant to provide additional information in support of an application for a licence.

99 Determination of licence application

- (1) After considering an application for a licence and accompanying material, the Director-General may:
 - (a) grant the application, unconditionally or subject to conditions or restrictions, or
 - (b) refuse the application.

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- (2) The Director-General must, subject to subsection (3), make a decision about an application within 120 days after the Director-General receives a species impact statement or within such further period as may be agreed with the applicant for the licence.
 - (3) The Director-General must not grant an application until the processing fee levied in respect of it has been paid.
 - (4) A licence may authorise specified persons in addition to the person to whom the licence is granted to do the things authorised by the licence. In any such case, the specified persons are taken to be the holders of the licence for the purposes of this Act.
 - (5) For the avoidance of doubt, it is declared that the Director-General is not a determining authority for the purposes of Part 5 of the *Environmental Planning and Assessment Act 1979* when granting a licence.

100 Licence may extend to protected fauna or protected native plants

- (1) The Director-General may, in a licence granted under this Part, authorise a person to take action that is likely to result in either or both of the following:
 - (a) harm to protected fauna,
 - (b) picking of protected native plants.
- (2) In this section, *protected fauna* and *protected native plant* have the same meanings as in the *National Parks and Wildlife Act 1974*.

101 Conditions and restrictions to licence

- (1) Without limiting section 99 (1) (a), the Director-General may grant an application for a licence subject to a condition that the applicant:
 - (a) make specified modifications to the action proposed, whether in relation to the area of land proposed to be affected or otherwise, or

- (b) make a monetary contribution towards the cost of preparation of a recovery plan for any threatened species, population or ecological community, or any of their habitats, likely to be affected by the action proposed.
- (2) The Director-General may, by notice in writing served on the holder of a licence:
 - (a) attach any conditions or restrictions to the licence after its issue, or
 - (b) vary or remove any conditions or restrictions attached to any licence, or
 - (c) otherwise vary the licence.

Note. Section 133 of the *National Parks and Wildlife Act 1974* requires that the holder of a licence under this Part must not contravene or fail to comply with any condition or restriction attached to the licence.

102 Proposed variation of licence to be publicly notified

- (1) Despite section 101 (2), the Director-General must, before removing or varying any condition or restriction attached to a licence:
 - (a) cause to be placed in a newspaper circulating throughout the State a notice:
 - (i) outlining the nature of the proposed variation to the licence, and
 - (ii) specifying the address of the place at which copies of any species impact statement relating to the licence may be inspected or purchased, and
 - (iii) inviting written submissions within a period of not less than 28 days after the date of the notice, and
 - (b) take into account the matters specified in section 97.
- (2) This section does not apply if the proposed variation to the licence constitutes a minor amendment only of that licence.

103 Notification of licence determination

The Director-General is to notify an applicant and any person who has made submissions of the Director-General's determination of a licence application.

104 Director-General to keep register of licences

- (1) The Director-General must keep a register containing copies of licences issued under this Division as in force from time to time.
- (2) The register is to be open for public inspection, without charge, during ordinary business hours, and copies of or extracts from the register are to be made available to the public on request, on payment of the fee fixed by the Director-General.

105 Cancellation of licence

- (1) A licence granted under this Part may be cancelled by the Director-General.
- (2) The Director-General is to notify the holder of a licence of its cancellation and is to include the reasons for the cancellation in that notification.

106 Appeal by applicant or person commenting on licence application

- (1) An applicant for a licence or a person who has made written submissions (within the period specified in this Division) about an application for a licence, or a person to whose licence conditions or restrictions have been attached or whose licence has been varied or cancelled may, if dissatisfied with the Director-General's decision, appeal to the Land and Environment Court.
- (2) In determining an appeal about an application for a licence, the Court must take into account the matters set out in section 97, but this requirement does not limit the operation of section 39 of the *Land and Environment Court Act 1979*.

107 Time for appeal, and deemed approval

- (1) An appeal may be made by a person within 28 days after notification has been given to the person under section 101 (2), 103 or 105 (2) or, if the appellant is dissatisfied with any condition or restriction attached to a licence when it is granted, within 28 days after the licence is granted.

- (2) If the Director-General fails to grant, but does not refuse, a licence application by the expiry of the period of 120 days referred to in section 99 (2) or of any extension of that period agreed to by the Director-General and the applicant for the licence, the application is taken to have been granted.

108 Stay of operation of licence pending appeal

- (1) If an appeal relates to the grant of a licence, the licence has no operation until the expiration of the period within which a person entitled to lodge an appeal may do so or, if an appeal has been lodged, until the appeal is finally determined.
- (2) If no written submissions about an application of a licence are received at the specified place and by the specified date and the applicant informs the Director-General in writing that the applicant does not wish to lodge an appeal but that the applicant wishes the licence to commence, the licence is to operate from a date stipulated by the Director-General.

Division 2 Species impact statements

109 Form of species impact statements

- (1) A species impact statement must be in writing.
- (2) A species impact statement must be signed by the principal author of the statement and by:
 - (a) the applicant for the licence, or
 - (b) if the species impact statement is prepared for the purposes of the *Environmental Planning and Assessment Act 1979*, the applicant for development consent or the proponent of the activity proposed to be carried out (as the case requires).

110 Content of species impact statements

- (1) A species impact statement must include a full description of the action proposed, including its nature, extent, location, timing and layout and, to the fullest extent reasonably practicable, the information referred to in this section.

- (2) A species impact statement must include the following information as to threatened species and populations:
- (a) a general description of the threatened species or populations known or likely to be present in the area that is the subject of the action and in any area that is likely to be affected by the action,
 - (b) an assessment of which threatened species or populations known or likely to be present in the area are likely to be affected by the action,
 - (c) for each species or population likely to be affected, details of its local, regional and State-wide conservation status, the key threatening processes generally affecting it, its habitat requirements and any recovery plan or threat abatement plan applying to it,
 - (d) an estimate of the local and regional abundance of those species or populations,
 - (e) a general description of the threatened species or populations known or likely to be present in the area that is the subject of the action and in any area that is likely to be affected by the action,
 - (f) a full description of the type, location, size and condition of the habitat (including critical habitat) of those species and populations and details of the distribution and condition of similar habitats in the region,
 - (g) a full assessment of the likely effect of the action on those species and populations, including, if possible, the quantitative effect of local populations in the cumulative effect in the region,
 - (h) a description of any feasible alternatives to the action that are likely to be of lesser effect and the reasons justifying the carrying out of the action in the manner proposed, having regard to the biophysical, economic and social considerations and the principles of ecologically sustainable development,
 - (i) a full description and justification of the measures proposed to mitigate any adverse effect of the action on the species and populations, including a compilation (in a single section of the statement) of those measures,

- (j) a list of any approvals that must be obtained under any other Act or law before the action may be lawfully carried out, including details of the conditions of any existing approvals that are relevant to the species or population.
- (3) A species impact statement must include the following information as to ecological communities:
- (a) a general description of the ecological community present in the area that is the subject of the action and in any area that is likely to be affected by the action,
 - (b) for each ecological community present, details of its local, regional and State-wide conservation status, the key threatening processes generally affecting it, its habitat requirements and any recovery plan or any threat abatement plan applying to it,
 - (c) a full description of the type, location, size and condition of the habitat of the ecological community and details of the distribution and condition of similar habitats in the region,
 - (d) a full assessment of the likely effect of the action on the ecological community, including, if possible, the quantitative effect of local populations in the cumulative effect in the region,
 - (e) a description of any feasible alternatives to the action that are likely to be of lesser effect and the reasons justifying the carrying out of the action in the manner proposed, having regard to the biophysical, economic and social considerations and the principles of ecologically sustainable development,
 - (f) a full description and justification of the measures proposed to mitigate any adverse effect of the action on the ecological community, including a compilation (in a single section of the statement) of those measures,
 - (g) a list of any approvals that must be obtained under any other Act or law before the action may be lawfully carried out, including details of the conditions of any existing approvals that are relevant to the ecological community.

- (4) A species impact statement must include details of the qualifications and experience in threatened species conservation of the person preparing the statement and of any other person who has conducted research or investigations relied on in preparing the statement.
- (5) The requirements of subsections (2) and (3) in relation to information concerning the State-wide conservation status of any species or population, or any ecological community, are taken to be satisfied by the information in that regard supplied to the principal author of the species impact statement by the National Parks and Wildlife Service, which information that Service is by this subsection authorised and required to provide.

111 Director-General's requirements

- (1) The person applying for the licence (or, if the species impact statement is being prepared for the purposes of the *Environmental Planning and Assessment Act 1979*, the applicant for development consent or the proponent of the activity) must request from the Director-General and must, in preparing the species impact statement, comply with any requirements notified to the person by the Director-General concerning the form and content of the statement.
- (2) The Director-General must notify any requirements under this section within 28 days after having been requested to provide them.
- (3) Despite the other provisions of this Division, the Director-General may, having regard to the circumstances of a particular case, limit or modify (or limit and modify) the matters to be included in a species impact statement in such manner as may be specified by the Director-General in the particular case.
- (4) Despite anything in this Act or the *Environmental Planning and Assessment Act 1979*, the Director-General may, having regard to the circumstances of a particular case, dispense with the requirement for a species impact statement in the particular case if the Director-General is satisfied that the impact of the activity concerned will be trivial or negligible.

112 Regulations

The regulations may make further provision for or with respect to the form and contents of species impact statements.

113 Director-General may accredit persons to prepare assessments of species impact statements

- (1) The Director-General is to institute arrangements for the accreditation of suitably qualified and experienced persons to prepare assessment reports on species impact statements for the purposes of this Act.
- (2) An applicant for accreditation must furnish the Director-General with such information as the Director-General requires to effectively determine the application and must be accompanied by the fee fixed by the Director-General for the consideration of the application.
- (3) An accreditation is to be for the period 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.
- (4) The Director-General may vary conditions or restrictions (if any) attaching to an accreditation and may suspend or cancel an accreditation.

Part 7 Other conservation measures

Introductory note

This Part deals with certain other measures that may be taken to conserve threatened species, populations and ecological communities, and their habitats. These involve the making of stop work orders by the Director-General or the making of joint management agreements between the Director-General and other public authorities to manage or regulate actions on land that may jeopardise the survival of threatened species, populations or ecological communities, or their habitats.

Measures available under the *National Parks and Wildlife Act 1974*, involving the making of interim protection orders by the Minister or the entering into of conservation agreements by the Minister with land owners, may also be employed for the conservation of threatened species, populations or ecological communities, or their habitats.

Division 1 deals with the making of stop work orders by the Director-General, appeals, consultations about modification of detrimental action and recommendations for the making of interim protection orders under the *National Parks and Wildlife Act 1974*.

Division 2 deals with the preparation, contents and publication of joint management agreements, and provides for review of joint management agreements, and the performance of parties to them, by the Scientific Committee.

Division 1 Stop work orders

114 Director-General may make stop work order

- (1) If the Director-General is of the opinion that any action is being, or is about to be, carried out that is likely to result in one or more of the following:
 - (a) harm to a threatened species, population or ecological community (so far as animals are concerned),
 - (b) picking of a threatened species, population or ecological community (so far as plants are concerned),
 - (c) damage to critical habitat,
 - (d) damage to habitats of threatened species, populations or ecological communities,

the Director-General may order that the action is to cease and that no action, other than such action as may be specified in the order, is to be carried out in or in the vicinity of the critical

habitat or the habitat of the threatened species, population or ecological community within a period of 40 days after the date of the order.

- (2) An order takes effect on and from the date on which:
 - (a) a copy of the order is affixed in a conspicuous place in the critical habitat or other habitat the subject of the order, or
 - (b) the person performing or about to perform the action is notified that the order has been made,whichever is the sooner.
- (3) This section does not apply in relation to anything authorised to be done by or under:
 - (a) a license granted under this Act or the *National Parks and Wildlife Act 1974*, or
 - (b) the *Bush Fires Act 1949* or the *State Emergency and Rescue Management Act 1989* that is reasonably necessary in order to avoid a threat to life or property.
- (4) This section does not apply in relation to anything that is essential for the carrying out of:
 - (a) development in accordance with a development consent within the meaning of the *Environmental Planning and Assessment Act 1979*, or
 - (b) an activity, whether by a determining authority or pursuant to an approval of a determining authority within the meaning of Part 5 of that Act if the determining authority has complied with that Part.
- (5) In this Division, a reference to action being, or about to be, carried out includes a reference to action that should be, but is not being, carried out and the Director-General may make an order, in accordance with this Division, that any such action is to be carried out.

115 Prior notification of making of stop work order not required

The Director-General is not required, before making an order under this Division, to notify any person who may be affected by the order.

116 Appeal to Minister

- (1) A person against whom an order is made under this Division may appeal to the Minister against the making of the order.
- (2) After hearing an appeal, the Minister may:
 - (a) confirm the order, or
 - (b) modify or rescind the order, but only if this is consistent with the principles of ecologically sustainable development.

117 Extension of stop work order

The Director-General may extend an order under this Division for such further period or periods of 40 days as the Director-General thinks fit.

118 Consultation about modification of proposed detrimental action

- (1) After making an order under this Division, the Director-General must immediately consult with the person proposing to perform the action to determine whether any modification of the action may be sufficient to protect the threatened species, populations or ecological communities, critical habitat or other habitat concerned.
- (2) The Director-General may, for the purposes of making such determination and considering whether the adoption of any other steps, such as the grant of a licence under Part 6, may be appropriate, request the person proposing to perform the action to provide the information referred to in section 92 (3).
- (3) After considering any information provided under subsection (2) in accordance with the requirements of section 94, the Director-General may, if appropriate and if the person concerned wishes to apply for a licence under Part 6, request the person to provide an application for a licence and a species impact statement for determination under that Part.

119 Recommendation for making of interim protection order

- (1) The Director-General must recommend to the Minister the making of an interim protection order under Part 6A of the *National Parks and Wildlife Act 1974* if, after consulting with the person proposing to perform the action, the Director-General is of the opinion that satisfactory arrangements cannot be made to protect the threatened species, populations or ecological communities, critical habitat or other habitat that is the subject of an order under this Division.
- (2) The Director-General must not recommend the making of an interim protection order in relation to anything that is authorised to be done by or under an authority referred to in section 114 (3) or that is essential for a purpose referred to in section 114 (4).

120 Stop work order prevails over other instruments

- (1) An approval, notice, order or other instrument made or issued by or under any other Act or law that requires or permits critical habitat, the subject of an order in force under this Division, to be significantly affected is inoperative to the extent of any inconsistency with the order under this Division.
- (2) This section has effect whether the approval, notice, order or other instrument concerned was made or issued before or after the making of the order under this Division.

Division 2 Joint management agreements

121 Joint management agreements

The Director-General may enter into a joint management agreement with one or more public authorities for the management, control, regulation or restriction of an action that is jeopardising the survival of a threatened species, population or ecological community.

122 Role of Scientific Committee

- (1) Before a joint management agreement is entered into, the Scientific Committee must review the draft joint management agreement and provide the Director-General with comments on the review by the date specified for the making of public submissions on the draft agreement.
- (2) The Scientific Committee must also:
 - (a) conduct an annual review of the performance of all parties to a joint management agreement, and
 - (b) advise the Director-General of any deficiencies in implementation of any joint management agreement by any party to it.
- (3) The Director-General is to incorporate the Scientific Committee's advice on the annual review of joint management agreements in the Director-General's annual report to Parliament under the *National Parks and Wildlife Act 1974*.

123 Contents of joint management agreements

- (1) A joint management agreement is to contain terms, binding on all parties, that:
 - (a) identify the threatened species, population or ecological community to which the agreement applies, and
 - (b) identify the action that it manages, controls, regulates or restricts, and
 - (c) state its objective (for example, maintenance of a habitat in a state that will contribute to the long-term survival of the species, population or ecological community), and
 - (d) state the way in which the objective is to be achieved, and
 - (e) specify the measures by which progress towards achieving the objective is to be assessed, and
 - (f) identify the parties who are responsible for the implementation of those measures.

- (2) A joint management agreement entered into with a council or a consent authority (within the meaning of the *Environmental Planning and Assessment Act 1979*) is void to the extent to which it fetters any discretion of the council or consent authority in the granting or refusal of a consent or approval under the *Environmental Planning and Assessment Act 1979* or the *Local Government Act 1993*.

124 Publication of draft joint management agreement

- (1) As soon as practicable after preparing a draft joint management agreement, the Director-General must:
- (a) give a copy of the draft joint management agreement to the Scientific Committee for review, and
 - (b) publish notice of the preparation of the draft joint management agreement in a newspaper circulating generally throughout the State and in a newspaper circulating generally in the area or areas likely to be affected by the agreement, and
 - (c) publish notice of the preparation of the draft agreement in the Gazette.
- (2) The notice must:
- (a) state that the draft joint management agreement has been prepared, and
 - (b) specify the address of the place at which copies of the draft joint management agreement may be inspected, and
 - (c) invite persons to make written submissions to the Director-General about the draft joint management agreement, and
 - (d) specify the address of the place to which submissions about the draft joint management agreement may be forwarded and the date by which submissions must be made.

125 Consideration of submissions by Director-General

- (1) The Director-General must consider all written submissions received by the Director-General on or before the date specified in the notice.
- (2) The Director-General may, with the consent of the other parties to the agreement, amend the draft joint management agreement to take into account any of those submissions and any comments made by the Scientific Committee about the draft agreement.

126 Amendment of joint management agreement

A joint management agreement may only be amended by a joint management agreement.

Part 8 Scientific Committee

Introductory note

This Part establishes, and describes the functions, membership and procedure of, and the manner of service of documents on, the Scientific Committee. The Part provides that the Scientific Committee is not subject to Ministerial control or direction.

127 Establishment of Scientific Committee

There is established by this Act a body corporate with the corporate name "Scientific Committee".

128 Functions of Scientific Committee

- (1) The Scientific Committee has the functions conferred or imposed on it by or under this or any other Act or law.
- (2) The principal functions of the Scientific Committee are as follows:
 - (a) to determine which species are to be listed under this Act as threatened species,
 - (b) to determine which populations are to be listed under this Act as endangered populations and to advise the Director-General on the identification of their critical habitat,
 - (c) to determine which ecological communities are to be listed under this Act as endangered ecological communities and to advise the Director-General on the identification of their critical habitat,
 - (d) to determine which threatening processes are to be listed under this Act as key threatening processes,
 - (e) to review draft joint management agreements and the performance of parties under executed joint management agreements,
 - (f) to advise the Director-General on the exercise of the Director-General's functions under this Act,
 - (g) to advise the Minister on any matter relating to the conservation of threatened species, populations or ecological communities that is referred to the Committee by the Minister or that the Committee considers appropriate.

- (3) The Scientific Committee may, in the exercise of its functions, make use of consultants or obtain assistance or advice from other persons.

129 Members of Scientific Committee

- (1) The Scientific Committee is to consist of 10 members appointed by the Minister.
- (2) Of the members of the Scientific Committee:
- (a) two are to be scientists employed by the National Parks and Wildlife Service nominated by the Director-General,
 - (b) one is to be a scientist employed by a public authority, having expertise in one or more of the areas of study referred to in subsection (3), selected by the Minister,
 - (c) one is to be a scientist nominated by the Commonwealth Scientific and Industrial Research Organisation,
 - (d) one is to be a scientist employed and nominated by the Australian Museum Trust,
 - (e) one is to be a scientist employed and nominated by the Royal Botanic Gardens and Domain Trust,
 - (f) one is to be a scientist nominated by the Ecological Society of Australia,
 - (g) one is to be a scientist nominated by the Entomological Society of Australia,
 - (h) one is to be a scientist who is employed by a tertiary educational institution and who is selected by the Minister,
 - (i) one is to be a scientist having expertise in agricultural science and natural resource management who is selected by the Minister.
- (3) A person appointed as a member of the Scientific Committee is to have expertise in one or more of the following areas of study:
- (a) vertebrate biology,
 - (b) invertebrate biology,
 - (c) plant biology,
 - (d) terrestrial ecology,
-

- (e) plant community ecology,
- (f) limnology,
- (g) marine ecology,
- (h) genetics of small populations,
- (i) population dynamics (including population viability analysis or evolutionary ecology).

130 Provisions relating to members of Scientific Committee

- (1) Subject to this Act, a member of the Scientific Committee holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (2) A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.
- (3) The office of a member becomes vacant if the member:
 - (a) dies, or
 - (b) completes a term of office and is not reappointed, or
 - (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) is removed from office by the Minister under this section or by the Governor under Part 8 of the *Public Sector Management Act 1988*, or
 - (e) is absent from 4 consecutive meetings of the Scientific Committee of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Scientific Committee or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Scientific Committee for having been absent from those meetings, or
 - (f) becomes a mentally incapacitated person, or
 - (g) ceases to have the qualification required for the member's appointment.
- (4) The Minister may remove a member from office.

- (5) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member.
- (6) If by or under any Act provision is made:
 - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

131 Chairperson and Deputy Chairperson

A Chairperson and a Deputy Chairperson of the Scientific Committee are to be appointed by the Minister from among the members of the Scientific Committee.

132 Disclosure of pecuniary interests

- (1) If:
 - (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Scientific Committee, and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Scientific Committee.
- (2) A disclosure by a member at a meeting of the Scientific Committee that the member:
 - (a) is a member, or is in the employment, of a specified company or other body, or
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subsection (1).

- (3) Particulars of any disclosure made under this section must be recorded by the Scientific Committee in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee (if any) determined by the Scientific Committee.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Scientific Committee otherwise determines:
 - (a) be present during any deliberation of the Scientific Committee with respect to the matter, or
 - (b) take part in any decision of the Scientific Committee with respect to the matter.
- (5) For the purposes of the making of a determination by the Scientific Committee under subsection (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
 - (a) be present during any deliberation of the Scientific Committee for the purpose of making the determination, or
 - (b) take part in the making by the Scientific Committee of the determination.
- (6) A contravention of this section does not invalidate any decision of the Scientific Committee.

133 Procedure of Scientific Committee

- (1) The procedure for the calling of meetings of the Scientific Committee and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Scientific Committee.
- (2) The quorum for a meeting of the Scientific Committee is 6 members.

- (3) The Chairperson of the Scientific Committee or, in the absence of the Chairperson, the Deputy Chairperson or, in the absence of both the Chairperson and the Deputy Chairperson, another member elected to chair the meeting, is to preside at a meeting of the Scientific Committee. The person presiding at a meeting has a deliberative vote but not a casting vote.
- (4) A decision supported by a majority of the votes cast at a meeting of the Scientific Committee at which a quorum is present is the decision of the Scientific Committee.
- (5) The Scientific Committee may invite suitably qualified persons to attend meetings to advise or inform the Scientific Committee on any matter.

134 Transaction of business outside meeting or by telephone or other means

- (1) The Scientific Committee may, if it thinks fit, transact any of its business by the circulation of papers among all the members for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Scientific Committee.
- (2) The Scientific Committee may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
 - (a) the approval of a resolution under subsection (1), or
 - (b) a meeting held in accordance with subsection (2),the Chairperson and each other member have the same voting rights as they have at an ordinary meeting of the Scientific Committee.
- (4) A resolution approved under subsection (1) is, subject to the regulations, to be recorded in the minutes of the meeting of the Scientific Committee.

- (5) Papers may be circulated among the members for the purposes of subsection (1) by facsimile or other transmission of the information in the papers concerned.

135 Scientific Committee not subject to Ministerial control

The Scientific Committee is not subject to the control or direction of the Minister.

136 Service of documents on Scientific Committee

For the purposes of this Act, a nomination for listing under Part 2 or any other document is made, issued or given to the Scientific Committee if it is addressed to the Scientific Committee and is:

- (a) lodged at the head office of the National Parks and Wildlife Service, or
- (b) sent by post to the head office of the National Parks and Wildlife Service, or
- (c) sent by facsimile transmission or other electronic means notified by the Scientific Committee as being an available means of communication, or
- (d) sent by any means provided for the service of documents by another Act or law.

Part 9 Biological Diversity Strategy

137 Biological Diversity Advisory Council

- (1) There is to be a Biological Diversity Advisory Council.
- (2) The Advisory Council is to consist of the following 10 members:
 - (a) one scientist appointed by the Minister, who is to be the Chairperson of the Advisory Council,
 - (b) one person with expertise in industry appointed by the Minister,
 - (c) 3 scientists, one each to be selected by the Minister from 3 nominees of the Ecological Society of Australia, 3 nominees of the Australian Museum and 3 nominees of the National Biodiversity Council,
 - (d) 3 representatives of the environment movement selected by the Minister from 6 nominees of the Nature Conservation Council of New South Wales,
 - (e) one Aboriginal person selected by the Minister from 3 nominees of the New South Wales Aboriginal Land Council,
 - (f) one councillor within the meaning of the *Local Government Act 1993* selected by the Minister from 3 nominees of the Local Government Association of New South Wales.

138 Provisions relating to Advisory Council and members of Advisory Council

The provisions of sections 130 (Provisions relating to members of Scientific Committee), 131 (Chairperson and Deputy Chairperson), 132 (Disclosure of pecuniary interests), 133 (Procedure of Scientific Committee) and 134 (Transaction of business outside meeting or by telephone or other means) apply to and in respect of the Advisory Council and the members of the Advisory Council as if references in those sections to the Scientific Committee were references to the Advisory Council.

139 Functions of Advisory Council

The Advisory Council has the following functions:

- (a) to advise the Minister and the Director-General on the draft Strategy,
- (b) to devise and to assist in the implementation of a comprehensive consultation process for preparation of the Strategy,
- (c) to advise on the status of, and threats to, the biological diversity of the State,
- (d) to undertake a review of existing legislation for implementing biological diversity programs and of existing legislation that may directly or indirectly result in the loss of biodiversity, and to advise on the necessity for future legislative action,
- (e) to advise the Minister and the Director-General on matters relating to the conservation of biological diversity, including the monitoring of the implementation of the Strategy.

140 The Strategy

- (1) The Director-General is to prepare a Biological Diversity Strategy within 9 months after the commencement of this Part setting out how the objects of this Act are to be achieved.
- (2) The Strategy is to include proposals for:
 - (a) ensuring the survival and evolutionary development in nature of all species, populations and communities of plants and animals, including appropriate protection under the *Wilderness Act 1987* or the *National Parks and Wildlife Act 1974*, and
 - (b) preparing or contributing to the preparation of strategies for ecologically sustainable development in New South Wales, including the integration of biological diversity conservation and natural resource management, and
 - (c) an education program targeted at the community and public authorities, and

- (d) a biological diversity research program, and
 - (e) encouraging greater community involvement in decision making affecting biological diversity.
- (3) The Strategy must also include:
- (a) the objectives and performance targets of the Strategy, and
 - (b) a statement of the means by which these objectives and performance targets are to be achieved, and
 - (c) a statement of the manner in which the National Parks and Wildlife Service constituted by the *National Parks and Wildlife Act 1974* proposes to assess its performance with respect to attainment of the objectives and performance targets of the Strategy.
- (4) The Director-General may amend the Strategy.

141 Procedure for making or amending Strategy

- (1) The Director-General is to prepare a draft Strategy and publish notice of the draft Strategy in a newspaper circulating generally throughout the State.
- (2) A notice is to:
 - (a) be in the form prescribed by the regulations, and
 - (b) state the date by which submissions may be made to the Director-General, which is to be at least 30 days after the date on which the notice is published, and
 - (c) specify the manner in which submissions may be made, and
 - (d) fix a time and place at which a copy of the draft Strategy will be available to the public for inspection.
- (3) Any person may make submissions to the Director-General about the draft Strategy.
- (4) The Director-General may, after the expiration of the period referred to in subsection (2) (b) and after examination of submissions received, amend the Strategy. The Director-General is to refer the Strategy and any submissions received to the Scientific Committee for its consideration and advice.

- (5) Before adopting the Strategy, the Director-General is to consider the comments and suggestions of the Scientific Committee and is to seek the advice of any other relevant public authority.
- (6) The Director-General may adopt the Strategy without alteration or with such alterations as the Director-General thinks fit.
- (7) After the Strategy has been adopted, the Director-General is to publish notice of its making in the Gazette and in a newspaper circulating generally throughout the State.
- (8) The procedures applicable to the making of the Strategy apply to the making of an amendment to the Strategy that is not a minor amendment.

Part 10 Miscellaneous

Introductory note

This Part makes provision for a number of miscellaneous matters relating to the operation of the Act. These include:

- a statement that the Act binds the Crown
- a requirement that the Director-General report on the operation of the Act in the Director-General's annual report to Parliament
- a provision enabling third parties to bring proceedings in the Land and Environment Court for orders remedying or restraining breaches of the Act
- a statement that the Act is not intended to affect native title rights and interests
- a provision providing that the Director-General may decline to disclose the location of critical habitat (or proposed critical habitat) other than to specified persons if the Director-General is of the opinion that disclosure would be likely to expose the critical habitat (or proposed critical habitat) to a significant risk and that withholding of the location is in the public interest, and if affected landholders have requested, or are agreeable to, the withholding of the location
- a provision enabling third parties to bring proceedings in the Land and Environment Court for orders remedying or restraining breaches of the Act
- provisions as to the form and service of notices and other documents under the proposed Act
- a provision concerning review of the operation of the Act as soon as possible after the period of 18 months after the date of assent to the proposed Act.

The Part also authorises the making of regulations, and contains formal provisions giving effect to the Schedules amending other Acts and inserting savings, transitional and other provisions.

142 Act binds Crown

This Act binds the Crown, not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its capacities.

143 Annual report by Director-General on operation of Act

The Director-General is to report on the operation of this Act in the annual report of the National Parks and Wildlife Service.

144 Relationship of Act to National Parks and Wildlife Act 1974

Except as otherwise provided by this Act, nothing in this Act affects the operation of the *National Parks and Wildlife Act 1974* in relation to animals and plants.

145 Native title rights and interests

This Act does not affect the operation of the *Native Title Act 1993* of the Commonwealth or the *Native Title (New South Wales) Act 1994* in respect of the recognition of native title rights and interests within the meaning of the Commonwealth Act or in any other respect.

146 Decision not to disclose location of critical habitat

- (1) Despite the other provisions of this Act, the Director-General may decline:
 - (a) to give public notice (by publication in a newspaper or in the Gazette) of a proposal (or amended proposal) to identify an area or areas of land as critical habitat, the approval of such a proposal, a declaration of critical habitat or the amendment or revocation of such a declaration, and
 - (b) to serve a copy of a map of critical habitat on any one or more of the persons or bodies referred to in section 54 (Maps of critical habitat to be served), and
 - (c) to include a copy of a declaration of critical habitat or a map of critical habitat in the register kept under section 55 (Director-General to keep register of critical habitat).
- (2) The Director-General may exercise the function under subsection (1) only if:
 - (a) the Director-General is of the opinion that:
 - (i) not to exercise the function would be likely to expose the critical habitat (or the proposed critical habitat) and the endangered species, population or ecological community that occupies it to a significant threat, and

- (ii) the public interest requires the function to be exercised, and
- (b) each landholder of land concerned has requested or is agreeable to the exercise of the function.
- (3) Nothing in this section prevents the Director-General from disclosing the location of critical habitat to:
 - (a) landholders or other persons having any legal or equitable estate, interest, easement, servitude, privilege or right in or over the land, or
 - (b) public authorities exercising functions in relation to the land, or
 - (c) any other person entitled by or under this or any other Act or law to notice of the declaration of critical habitat or the existence of interests in or proposals affecting the land.

147 Restraint of breaches of Act

- (1) Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of this Act, whether or not any right of that person has been or may be infringed by or as a consequence of that breach.
- (2) Proceedings under this section may be brought by a person on the person's own behalf or on behalf of the person and other persons (with their consent), or a body corporate or unincorporated (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings.
- (3) 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.
- (4) Proceedings under this section may not be brought in connection with development carried out by, for or on behalf of the Olympic Co-ordination Authority in accordance with the *Olympic Co-ordination Authority Act 1995*.

148 Form of notices

Any notice or other document issued, made or given for the purposes of this Act or the regulations must be in writing, except where this Act expressly authorises another means of giving notice.

149 Service of documents

- (1) Any notice or other document that is authorised or required under this Act or the regulations to be served on any person may be served:
 - (a) personally or by post, or
 - (b) by leaving it with a person apparently of or above the age of 16 years at, or by posting it to, the person's place of business or, in the case of a corporation, the registered office of the corporation.
- (2) This section does not apply with respect to the service of documents in accordance with section 136 (Service of documents on Scientific Committee).

150 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for the carrying out or giving effect to this Act.
- (2) A regulation may create an offence punishable by a penalty not exceeding 50 penalty units.

151 Proceedings for offences

Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

152 Amendment of National Parks and Wildlife Act 1974 No 80

The *National Parks and Wildlife Act 1974* is amended as set out in Schedule 4.

153 Amendment of Environmental Planning and Assessment Act 1979 No 203

The *Environmental Planning and Assessment Act 1979* is amended as set out in Schedule 5.

154 Amendment of other Acts and regulations

The Acts and regulations specified in Schedule 6 are amended as set out in that Schedule.

155 Repeal of Endangered Fauna (Interim Protection) Act 1991 No 66 and amending Acts

- (1) The *Endangered Fauna (Interim Protection) Act 1991* is repealed.
- (2) Section 7 of the *Endangered Fauna (Interim Protection) Act 1991* has no operation and is taken never to have had any operation. This subsection applies whether or not it commences before or after 31 December 1995.
- (3) The following Acts are also repealed:

Endangered Fauna (Interim Protection) Amendment Act 1992
No 97

Endangered Fauna (Interim Protection) Amendment Act 1993
No 53

Endangered Fauna (Interim Protection) Amendment Act 1995
No 33.

156 Savings, transitional and other provisions

Schedule 7 has effect.

157 Review of Act

- (1) A Parliamentary Committee established for that purpose is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 18 months from the date of assent to this Act.
- (3) A report of the outcome of the review is to be tabled in each House of Parliament within 6 months after the end of the period of 18 months.

Schedule 1 Endangered species, populations and ecological communities

(Section 6)

Part 1 Endangered species

Animals

Amphibians

Hylidae

<i>Litoria aurea</i>	Green and Golden Bell Frog
<i>Litoria castanea</i>	
<i>Litoria raniformis</i>	
<i>Litoria spenceri</i>	

Birds

Falconiformes

<i>Erythroriorchis radiatus</i>	Red Goshawk
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Anseriformes

<i>Nettapus coromandelianus</i>	Cotton Pygmy-Goose
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Galliformes

<i>Leipoa ocellata</i>	Malleefowl
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Gruiformes

<i>Ardeotis australis</i>	Australian Bustard
<i>Tricholimnas sylvestris</i>	Woodhen
<i>Tumix melanogaster</i>	Black-breasted Button Quail

Charadriiformes

<i>Burhinus magnirostris</i>	Bush Thick-knee
<i>Burhinus neglectus</i>	Beach Thick-knee
<i>Charadrius rubricollis</i>	Hooded Plover
<i>Pedionomus torquatus</i>	Plains-wanderer
<i>Sterna albifrons</i>	Little Tern

Part 1 Endangered species—continued

Animals

Columbiformes*Geophaps scripta**Phaps histrionica*

Squatter Pigeon

Flock Bronzewing

Psittaciformes*Polytelis anthopeplus**Psittaculirostris diophthalma coxeni*

Regent Parrot

Double-eyed Fig Parrot

Passeriformes*Amytornis textilis**Manorina melanotis**Pachycephala rufogularis**Poephila cincta**Xanthomyza phrygia*

Thick-billed Grasswren

Black-eared Miner

Red-lored Whistler

Black-throated Finch

Regent Honeyeater

Mammals**Dasyuridae***Antechinomys laniger**Dasyurus viverrinus*

Kultarr

Eastern Quoll

Macropodidae*Macropus dorsalis**Petrogale xanthopus*

Black-striped Wallaby

Yellow-footed Rock-Wallaby

Muridae*Pseudomys apodemoides**Pseudomys bolami**Pseudomys fumeus**Pseudomys oralis*

Silky Mouse

Bolam's Mouse

Smoky Mouse

Hastings River Mouse

Peramelidae*Isodon obesulus*

Southern Brown Bandicoot

Part 1 Endangered species—continued

Animals

Potoroidae

Potorous longipes

Long-footed Potoroo

Marine mammals

Cetacea

Balaenoptera musculus musculus

Blue Whale

Reptiles

Elapidae

Hoplocephalus bungaroides

Broad-headed Snake

Scincidae

Anomalopus mackayi

Eulamprus leuraensis

Plants

Acanthaceae

Calophanoides hygrophiloides (F. Muell.) R. Barker

Dipteracanthus australasicus subsp. *corynothecus* (F. Muell. ex Benth.) R. Barker

**Isoglossa eranthemoides* (F. Muell.) R. Barker

Xerothamnella parvifolia C. White

Anthericaceae

Caesia parviflora var. *minor* R.J.F. Hind.

Apiaceae

Gingidia montana (Forster & Forster f.) J. Wyndham Dawson

Trachymene saniculifolia Stapf

Part 1 Endangered species—continued

Plants

Apocynaceae

Ochrosia moorei (F. Muell.) F. Muell. ex Benth.

Araliaceae

**Astrotricha roddii* Makinson

Araucariaceae

Wollemia noblei W. Jones & K. Hill ms

Asclepiadaceae

**Cynanchum elegans* (Benth.) Domin

**Marsdenia longiloba* Benth.

**Tylophora linearis* P. Forster

**Tylophora woollsii* Benth.

Asteraceae

Calotis moorei P. Short

Cratystylis conocephala (F. Muell.) S. Moore

Erodiophyllum elderi F. Muell.

Kippistia suaedifolia F. Muell.

Leptorhynchos waitzia Sonder

**Olearia flocktoniae* Maiden & E. Betche

**Rutidosia leptorrhynchoides* F. Muell.

Senecio spathulatus A. Rich.

Senecio squarrosus A. Rich.

Brassicaceae

Irenepharsus magicus Hewson

Irenepharsus trypherus Hewson

**Lepidium hyssopifolium* Desv.

**Lepidium monoplocoides* F. Muell.

Lepidium pseudopapillosum Thell.

Part 1 Endangered species—continued

Plants

Campanulaceae

Wahlenbergia scopulicola Carolin ex P.J. Smith

Capparaceae

Capparis loranthifolia var. *loranthifolia* Lindley

Caryophyllaceae

Polycarpaea spirostylis subsp. *glabra* (C. White & Francis) Pedley

Casuarinaceae

**Allocasuarina defungens* L. Johnson

Allocasuarina glareicola L. Johnson

**Allocasuarina portuensis* L. Johnson

Casuarina obesa Miq.

Celastraceae

**Apatophyllum constablei* McGillivray

Chenopodiaceae

Atriplex rhagodioides F. Muell.

Atriplex sturtii S. Jacobs

Dysphania platycarpa Paul G. Wilson

Dysphania plantaginella F. Muell.

Osteocarpum scleropterum (F. Muell.) Volkens

Threlkeldia inchoata (J. Black) J. Black

Convolvulaceae

Ipomoea diamentinensis J. Black

Ipomoea polymorpha Roemer & Schultes

Cupressaceae

Callitris baileyi C. White

Part 1 Endangered species—continued

Plants

Cyperaceae

- Carex raleighii* Nelves
- Cyperus aquatilis* R. Br.
- Cyperus conicus* (R. Br.) Boeck

Davalliaceae

- Arthropteris palisotii* (Desv.) Alston

Davidsoniaceae

- Davidsonia pruriens* var. *jerseyana* Bailey
- **Davidsonia* sp. A Mullumbimby-Currimbin Ck (A.G. Floyd 1595)

Dilleniaceae

- Hibbertia hexandra* C. White
- Hibbertia procumbens* (Labill.) DC.

Droseraceae

- Aldrovanda vesiculosa* L.

Dryopteridaceae

- Lastreopsis hispida* (Sw.) Tind.

Ebenaceae

- **Diospyros mabacea* (F. Muell.) F. Muell.
- Diospyros major* var. *ebenus* (Sprengel) Bakh.

Elaeocarpaceae

- Elaeocarpus* sp. Rocky Creek (G. Read AQ 562114)
- **Elaeocarpus williamsianus* Guymer

Part 1 Endangered species—continued

Plants

Epacridaceae

Epacris hamiltonii Maiden & E. Betcher

Leucopogon confertus Benth.

Melichrus hirsutus J.B. Williams ms

Monotoca rotundifolia J.H. Willis

Eriocaulaceae

**Eriocaulon carsonii* F. Muell.

Euphorbiaceae

Acalypha eremorum Muell. Arg.

Bertya ingramii T. James

Euphorbia sarcostemmoides J.H. Willis

**Fontainea oraria* Jessup & Guymer

Monotaxis macrophylla Benth.

Phyllanthus maderaspatanus L.

Pseudanthus ovalifolius F. Muell.

Sauropus albiflorus subsp. *microcladus* (Muell. Arg.) Airy Shaw

Fabaceae

Acacia acanthoclada F. Muell.

Acacia acrionastes Pedley

Acacia jucunda Maiden & Blakely

Acacia macnuttiana Maiden & Blakely

Acacia notabilis F. Muell.

Acacia petraea Pedley

Acacia pubifolia Pedley

Acacia rivalis J. Black

Acacia ruppii Maiden & E. Betcher

Almaleea cambagei (Maiden & E. Betcher) Crisp & P. Weston

Crotalaria cunninghamii R. Br.

Desmodium campylocaulon F. Muell.

Indigofera efoliata F. Muell.

Part 1 Endangered species—continued

Plants

Indigofera helmsii Peter G. Wilson

Indigofera leucotricha E. Pritzel

Indigofera longibractea J. Black

**Psoralea parva* F. Muell.

Pultenaea parrisiae subsp. *elusa* J.D. Briggs & Crisp

Pultenaea parviflora Sieber ex DC.

Senna acclinis (F. Muell.) Randell

Swainsona adenophylla J. Black

Swainsona colutoides F. Muell.

Swainsona flavicarinata J. Black

**Swainsona recta* A. Lee

Swainsona viridis J. Black

Gentianaceae

**Gentiana baeuerlenii* L. Adams

**Gentiana wingecarribiensis* L. Adams

Goodeniaceae

Goodenia occidentalis Carolin

Scaevola collaris F. Muell.

Velleia perfoliata R. Br.

Grammitaceae

Grammitis stenophylla B.S. Parris

Haloragaceae

Haloragodendron lucasii (Maiden & E. Betcher) Orch.

Lamiaceae

Plectranthus allopectus S.T. Blake

Plectranthus nitidus P. Forst.

Prostanthera sp. Somersby (B.J. Conn 4024)

Westringia kydrenis Conn

Part 1 Endangered species—continued

Plants

Lauraceae

**Endiandra floydii* B. Hyland

Endiandra muelleri subsp. *bracteata* B. Hyland

Lindsaeaceae

Lindsaea brachypoda (Baker) Salomon

Lindsaea fraseri Hook.

Lindsaea incisa Prent.

Loranthaceae

Amyema scandens (Tieghem) Danser

Muellerina myrtifolia (Cunn. ex Benth.) Barlow

Malvaceae

Sida rohlenae Domin

Marattiaceae

Angiopteris evecta Hoffm.

Marsileaceae

Pilularia novae-hollandiae A. Braun

Menispermaceae

Tinospora smilacina Benth.

Monimiaceae

Daphnandra sp. C Illawarra (R. Schodde 3475)

Myrtaceae

**Austromyrtus fragrantissima* (F. Muell. ex Benth.) Burret

Baeckea camphorata R. Br.

Choricarpia subargentea (C. White) L. Johnson

Eucalyptus approximans Maiden

Part 1 Endangered species—continued

Plants

- Eucalyptus camphora* subsp. *relicta* L. Johnson & K. Hill
- Eucalyptus copulans* L. Johnson & K. Hill
- Eucalyptus imlayensis* Crisp & Brooker
- Eucalyptus microcodon* L. Johnson & K. Hill
- Eucalyptus pachycalyx* Maiden & Blakely
- **Eucalyptus recurva* Crisp
- Eucalyptus saxatilis* Kirkpatr. & Brooker
- Eucalyptus* sp. Howes Swamp Creek (M. Doherty 19/7/85, NSW 207054)
- **Kunzea rupestris* Blakely
- **Uromyrtus australis* A.J. Scott

Orchidaceae

- **Caladenia rosella* G.W. Carr
- Diuris pedunculata* R. Br.
- **Genoplesium rhyoliticum* D.L. Jones & M.A. Clem.
- Phaius tankervilleae* (Banks ex L'Her.) Blume
- Prasophyllum affine* Lindl.
- **Prasophyllum petilum* D.L. Jones & R.J. Bates
- **Prasophyllum uroglossum* Rupp
- **Pterostylis gibbosa* R. Br.
- Pterostylis* sp. Botany Bay (A. Bishop J221/1-13)

Platyzomataceae

- Platyzoma microphyllum* R. Br.

Poaceae

- Deyeuxia appressa* Vickery
- **Digitaria porrecta* S.T. Blake
- Stipa nullanulla* J. Everett & S.W.L. Jacobs
- Stipa wakoolica* Vickery, S.W.L. Jacobs & J. Everett

Podocarpaceae

- Microstrobos fitzgeraldii* (F. Muell.) J. Garden & L. Johnson

Part 1 Endangered species—continued

Plants

Polygalaceae

Polygala linariifolia Willd.

Primulaceae

Lysimachia vulgaris var. *davurica* (Ledeb.) Knuth

Proteaceae

Grevillea acanthifolia subsp. *paludosa* Makinson & Albrecht

**Grevillea beadleana* McGillivray

**Grevillea caleyi* R. Br.

Grevillea guthrieana P. Olde & N. Marriott

**Grevillea iaspicula* McGillivray

Grevillea masonii P. Olde & N. Marriott

Grevillea mollis P. Olde & Molyneux

Grevillea molyneuxii McGillivray

Grevillea obtusiflora R. Br.

Grevillea rivularis L. Johnson & McGillivray

**Grevillea wilkinsonii* R. Makinson

**Hakea pulvinifera* L. Johnson

Hakea sp. B Kowmung River (M. Doherty 17-24)

Persoonia mollis subsp. *maxima* Krauss & L. Johnson

**Persoonia nutans* R. Br.

Psilotaceae

Psilotum complanatum Sw.

Rhamnaceae

Discaria nitida Tortosa

**Pomaderris cotoneaster* Wakef.

Pomaderris elachophylla F. Muell.

Pomaderris queenslandica C. White

Pomaderris sericea Wakef.

Part 1 Endangered species—continued

Plants

Rubiaceae

- Dentella minutissima* C. White & Francis
- Hedyotis galioides* F. Muell.
- **Randia moorei* F. Muell. ex Benth.
- Tarenna cameronii* (C.T. White) Ali & Robbr.

Rutaceae

- **Acronychia littoralis* T. Hartley & J. Williams
- **Asterolasia elegans* McDougall & Porteners
- **Boronia granitica* Maiden & E. Betche
- **Boronia repanda* (F. Muell. ex E. Betche) Maiden & E. Betche
- Geijera paniculata* (F. Muell.) Druce
- Phebalium glandulosum* subsp. *eglandulosum* (Blakely) Paul G. Wilson
- **Phebalium lachnaeoides* Cunn.
- Zieria adenodonta* (F. Muell.) J.A. Armstrong ms
- Zieria adenophora* Blakely
- **Zieria baeuerlenii* J.A. Armstrong ms
- **Zieria buxijugum* J. Briggs & J.A. Armstrong ms
- Zieria covenyi* J.A. Armstrong ms
- Zieria floydii* J.A. Armstrong ms
- **Zieria formosa* J. Briggs & J.A. Armstrong ms
- Zieria granulata* (F. Muell.) C. Moore ex Benth.
- Zieria ingramii* J.A. Armstrong ms
- Zieria lasiocaulis* J.A. Armstrong ms
- **Zieria obcordata* Cunn.
- **Zieria parrisiae* J. Briggs & J.A. Armstrong ms
- **Zieria prostrata* J.A. Armstrong ms

Santalaceae

- Santalum murrayanum* (Mitchell) Gardner

Part 1 Endangered species—continued

Plants

Sapindaceae

- **Diploglottis campbellii* Cheel
- Dodonaea microzyga* var. *microzyga* F. Muell.
- Dodonaea sinuolata* subsp. *acrodentata* J. West

Scrophulariaceae

- **Euphrasia collina* subsp. *muelleri* (Wettst.) W.R. Barker

Simaroubaceae

- **Quassia* sp. *Mooney Creek* (J. King s.n., 1949)

Sinopteridaceae

- Cheilanthes sieberi* subsp. *pseudovellea* H. Quirk & T.C. Chambers

Stackhousiaceae

- Stackhousia clementii* Domin

Sterculiaceae

- Rulingia prostrata* Maiden & Betche

Thymelaeaceae

- Pimelea elongata* Threlfall
- Pimelea serpyllifolia* subsp. *serpyllifolia* R. Br.
- **Pimelea spicata* R. Br.
- Pimelea venosa* Threlfall

Tiliaceae

- **Corchorus cunninghamii* F. Muell.

Urticaceae

- Dendrocnide moroides* (Wedd.) Chew

Violaceae

- Viola cleistogamoides* (L. Adams) Seppelt

Part 1 Endangered species—continued

Plants

Zamiaceae

Macrozamia moorei F. Muell.

Part 2 Endangered populations

Part 3 Endangered ecological communities

Part 4 Species presumed extinct

Animals

Birds

Gruiformes

Notornis alba

White Gallinule

Columbiformes

Columba vitiensis godmanae

Lord Howe Pigeon

Part 4 Species presumed extinct—continued

Animals

Psittaciformes

<i>Cyanorhamphus novaezelandiae</i> <i>subflavescens</i>	Lord Howe Parrakeet
<i>Geopsittacus occidentalis</i>	Night Parrot
<i>Psephotus pulcherrimus</i>	Paradise Parrot

Strigiformes

<i>Ninox novaeseelandiae albaria</i>	Lord Howe Boobook Owl
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Passeriformes

<i>Aplonis fuscus hullivanus</i>	Lord Howe Starling
<i>Gerygone insularis</i>	Lord Howe Warbler
<i>Neochmia ruficauda</i>	Star Finch
<i>Rhipidura cervina</i>	Lord Howe Fantail
<i>Turdus xanthopus vinitinetus</i>	Vinous-tinted Thrush
<i>Zosterops strenua</i>	Robust silvereye

Mammals**Dasyuridae**

<i>Dasycercus cristicauda</i>	Mulgara
<i>Dasyurus geoffroii</i>	Western Quoll
<i>Phascogale calura</i>	Red-tailed Phascogale

Macropodidae

<i>Lagorchestes leporides</i>	Eastern Hare-wallaby
<i>Onychogalea fraenata</i>	Bridled Nailtail Wallaby
<i>Onychogalea lunata</i>	Crescent Nailtail Wallaby

Muridae

<i>Conilurus albipes</i>	White-footed Rabbit-rat
<i>Leporillus apicalis</i>	Lesser Stick-nest Rat
<i>Leporillus conditor</i>	Greater Stick-nest Rat
<i>Notomys cervinus</i>	Fawn Hopping-mouse

Part 4 Species presumed extinct—continued

Animals

<i>Notomys fuscus</i>	Dusky Hopping-mouse
<i>Notomys longicaudatus</i>	Long-tailed Hopping-mouse
<i>Notomys mitchellii</i>	Mitchell's Hopping-mouse
<i>Pseudomys australis</i>	Plain's Rat
<i>Pseudomys desertor</i>	Desert Mouse
<i>Pseudomys gouldii</i>	Gould's Mouse

Myrmecobiidae

<i>Myrmecobius fasciatus</i>	Numbat
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Peramelidae

<i>Chaeropus ecaudatus</i>	Pig-footed Bandicoot
<i>Isoodon auratus</i>	Golden Bandicoot
<i>Perameles bougainville</i>	Western Barred Bandicoot

Potoroidae

<i>Bettongia gaimardi</i>	Tasmanian Bettong
<i>Bettongia lesueur</i>	Burrowing Bettong
<i>Bettongia penicillata</i>	Brush-tailed Bettong
<i>Bettongia tropica</i>	

Thylacomyidae

<i>Macrotis lagotis</i>	Bilby
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Vespertilionidae

<i>Nyctophilus howensis</i>	
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Vombatidae

<i>Lasiorninus krefftii</i>	Northern Hairy-nosed Wombat
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Reptiles**Elapidae**

<i>Oxyuranus microlepidota</i>	Fierce Snake
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Part 4 Species presumed extinct—continued

Plants

Acanthaceae

Rhaphidospora bonneyana (F. Muell.) R. Barker

Aizoaceae

Glinus orygioides F. Muell.

**Trianthema cypseloides* (Fenzl) Benth.

Amaranthaceae

Ptilotus extenuatus Benl

Asteraceae

Acanthocladium dockeri F. Muell.

Blumea lacera (Burman f.) DC.

**Olearia oliganthema* F. Muell. ex Benth.

Senecio behrianus Sonder & F. Muell.

**Senecio georgianus* DC.

Stemmacantha australis (Gaudich.) Dittr.

Brassicaceae

Lepidium foliosum Desv.

**Lepidium peregrinum* Thell.

Stenopetalum velutinum F. Muell.

Chenopodiaceae

Atriplex acutiloba R. Anderson

Maireana lanosa (Lindley) Paul G. Wilson

Osteocarpum pentapterum (F. Muell. & Tate) Volkens

Cyperaceae

Eleocharis tetraquetra Nees

Dennstaedtiaceae

Hypolepis elegans Carruth.

Part 4 Species presumed extinct—continued

Plants

Euphorbiaceae

Amperea xiphioclada var. *pedicellata* R.F.J. Hend.

Gyrostemonaceae

Codonocarpus pyramidalis (F. Muell.) F. Muell.

Haloragaceae

Haloragis stricta R. Br. ex Benth.

Myriophyllum implicatum Orch.

Lamiaceae

Prostanthera marifolia R. Br.

Lobeliaceae

**Hypsela sessiliflora* F. Wimmer

Myrsinaceae

**Rapanea* sp. A Richmond River (J.H. Maiden & J.L. Boorman NSW 26751)

Orchidaceae

Diuris bracteata Fitzg.

Thelymitra epipactoides F. Muell.

Polygalaceae

Comesperma scoparium Drummond

Polypodiaceae

Drynaria rigidula (Sw.) Beddome

Proteaceae

Grevillea nematophylla F. Muell.

Persoonia laxa L. Johnson & P. Weston

Part 4 Species presumed extinct—continued

Plants

Rhamnaceae

Pomaderris oraria F. Muell. ex Reisseck

Rosaceae

Aphanes pentamera Rothm.

Rubiaceae

Galium australe DC.

Knoxia sumatrensis (Retz.) DC.

Rutaceae

Eriostemon angustifolius subsp. *angustifolius* Paul G. Wilson

Micromelum minutum (Forster f.) Wight & Arn.

Sapindaceae

Dodonaea stenophylla F. Muell.

Scrophulariaceae

**Euphrasia arguta* R. Br.

**Euphrasia* sp. Tamworth (Rupp s.n., -/09/1904)

Tremandraceae

Tetratheca pilosa subsp. *pilosa* Labill.

Schedule 2 Vulnerable species

(Section 7)

Animals

Amphibians**Hylidae**

Litoria brevipalmata
Litoria olongburensis
Litoria piperata
Litoria subglandulosa

Green Thighed Frog

Myobatrachidae

Assa darlingtoni
Crinia tinnula
Heleioporus australiacus
Mixophyes balbus
Mixophyes fleayi
Mixophyes iteratus
Philoria kundagungan
Philoria loveridgei
Philoria sphagnicolus
Pseudophryne australis
Pseudophryne corroboree

Pouched Frog

Giant Burrowing Frog

Giant Barred Frog

Loveridge's Frog

Sphagnum Frog

Red-crowned Toadlet

Corroboree Frog

Birds**Procellariiformes**

Diomedea exulans
Fregetta grallaria
Pterodroma leucoptera
Pterodroma neglecta
Pteroderma nigripennis
Pteroderma solandri
Puffinus assimilus
Puffinis carneipes

Wandering Albatross

White-bellied Storm-petrel

Gould's Petrel

Kermadec Petrel

Black-winged Petrel

Providence Petrel

Little Shearwater

Fleshy-footed Shearwater

Schedule 2 Vulnerable species

Animals

Pelecaniformes

Phaeton rubricauda

Red-tailed Tropic-bird

Sula dactylatra

Masked Booby

Ciconiiformes

Botaurus poiciloptilus

Australasian Bittern

Dupetor flavicollis

Black Bittern

Xenorhynchus asiaticus

Black-necked Stork

Falconiformes

Falco hypoleucos

Grey Falcon

Hamirostra melanosternon

Black-breasted Buzzard

Lophoictinia isura

Square-tailed Kite

Pandion haliaetus

Osprey

Anseriformes

Anseranas semipalmata

Magpie Goose

Oxyura australis

Blue-billed Duck

Stictonetta naevosa

Freckled Duck

Gruiformes

Gallinula olivacea

Bush Hen

Grus rubicundus

Brolga

Charadriiformes

Calidris alba

Sanderling

Calidris tenuirostris

Great Knot

Charadrius leschenaulti

Large Sand-Plover

Charadrius mongolus

Mongolian Plover

Gygis ciba

White Tern

Haematopus fuliginosus

Sooty Oystercatcher

Haematopus longirostris

Pied Oystercatcher

Irediparra gallinacea

Comb-crested Jacana

Limicola falcinellus

Broad-billed Sandpiper

Limosa limosa

Black-tailed Godwit

Procelsterna cerulea

Grey Ternlet

Animals

*Rostratula benghalensis**Sterna fuscata**Tringa terek*

Painted Snipe

Sooty Tern

Terek Sandpiper

Columbiformes*Ptilinopus magnificus**Ptilinopus regina**Ptilinopus superbus*

Wompoo Fruit-dove

Rose-crowned Fruit-dove

Superb Fruit-dove

Psittaciformes*Cacatua leadbeateri**Calyptorhynchus lathamii**Calyptorhynchus magnificus**Glossopsitta porphyrocephala**Lathamus discolor**Neophema pulchella**Neophema splendida**Pezoporus wallicus**Polytelis swainsonii*

Pink Cockatoo

Glossy Black-Cockatoo

Red-tailed Black-Cockatoo

Purple-crowned Lorikeet

Swift Parrot

Turquoise Parrot

Scarlet-chested Parrot

Ground Parrot

Superb Parrot

Strigiformes*Ninox strenua**Tyto longimembris**Tyto novaehollandiae**Tyto tenebricosa*

Powerful Owl

Eastern Grass Owl

Masked Owl

Sooty Owl

Caprimulgiformes*Podargus ocellatus*

Marbled Frogmouth

Coraciiformes*Halcyon chloris*

Collared Kingfisher

Passeriformes*Amytornis barbatus**Amytornis striatus*

Grey Grasswren

Striated Grasswren

Schedule 2 Vulnerable species

Animals

<i>Atrichornis rufescens</i>	Rufous Scrub-bird
<i>Certhionyx variegatus</i>	Pied Honeyeater
<i>Cinclosoma castanotum</i>	Chestnut Quail-thrush
<i>Coracina lineata</i>	Yellow-eyed Cuckoo-shrike
<i>Dasyornis brachypterus</i>	Eastern Bristlebird
<i>Drymodes brunneopygia</i>	Southern Scrub-robin
<i>Grantiella picta</i>	Painted Honeyeater
<i>Lichenostomus cratitius</i>	Purple-gaped Honeyeater
<i>Lichenostomus fasciolaris</i>	Mangrove Honeyeater
<i>Menura alberti</i>	Albert's Lyrebird
<i>Monarcha leucotis</i>	White-eared Monarch
<i>Pachycephala inornata</i>	Gilbert's Whistler
<i>Pachycephala olivacea</i>	Olive Whistler
<i>Pachycephala pectoralis contempta</i>	Lord Howe Golden Whistler
<i>Petroica rodinogaster</i>	Pink Robin
<i>Pomatostomus halli</i>	Hall's Babbler
<i>Sericornis brunneus</i>	Redthroat
<i>Sericornis cautus</i>	Shy Hylacola
<i>Sericornis fuliginosus</i>	Calamanthus
<i>Stipiturus ruficeps</i>	Rufous-crowned Emu-Wren
<i>Strepera graculina crissalis</i>	Lord Howe Pied Currawong
<i>Zosterops tephroleura</i>	Lord Howe Silvereye

Mammals

Burramyidae

<i>Burramys parvus</i>	Mountain Pygmy-possum
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Dasyuridae

<i>Dasyurus maculatus</i>	Tiger Quoll
<i>Ningaui yvonneae</i>	
<i>Phascogale tapoatafa</i>	Brush-tailed Phascogale
<i>Planigale maculata</i>	Common Planigale
<i>Sminthopsis leucopus</i>	White-footed Dunnart
<i>Sminthopsis macroura</i>	Stripe-faced Dunnart

Animals

Emballonuridae*Saccolaimus flaviventris*

Yellow-bellied Sheath-tail-Bat

Macropodidae*Macropus parma*

Parma Wallaby

Petrogale penicillata

Brush-tailed Rock Wallaby

Thylogale stigmatica

Red-legged Pademelon

Molossidae*Mormopterus beccarii*

Beccari's Mastiff-bat

Mormopterus norfolkensis

Eastern Little Mastiff-bat

Muridae*Leggadina forresti*

Forrest's Mouse

Mastacomys fuscus

Broad-toothed Rat

Pseudomys gracilicaudatus

Eastern Chestnut Mouse

Pseudomys hermannsburgensis

Sandy Inland Mouse

Pseudomys pilligaensis

Pilliga Mouse

Rattus villosissimus

Long-haired Rat

Petauridae*Petaurus australis*

Yellow-bellied Glider

Petaurus norfolcensis

Squirrel Glider

Phascolarctidae*Phascolarctos cinereus*

Koala

Pteropodidae*Nyctimene robinsoni*

Queensland Tube-nosed Bat

Pteropus alecto

Black Flying-fox

Syconycteris australis

Queensland Blossom Bat

Potoroidae*Aepyprymnus rufescens*

Rufous Bettong

Potorous tridactylus

Long-nosed Potoroo

Schedule 2 Vulnerable species

Animals

Vespertilionidae

<i>Chalinolobus dwyeri</i>	Large Pied Bat
<i>Chalinolobus nigrogriseus</i>	Hoary Bat
<i>Chalinolobus picatus</i>	Little Pied Bat
<i>Eptesicus baverstocki</i>	
<i>Eptesicus troughtoni</i>	
<i>Falsistrellus tasmaniensis</i>	Great Pipistrelle
<i>Kerivoula papuensis</i>	Golden-tipped Bat
<i>Miniopterus australis</i>	Little Bent-wing Bat
<i>Miniopterus schreibersii</i>	Common Bent-wing Bat
<i>Myotis adversus</i>	Large-footed Mouse-eared Bat
<i>Nyctophilus bifax</i>	Queensland Long-eared Bat
<i>Nyctophilus timoriensis</i>	Greater Long-eared Bat
<i>Scoteanax rueppellii</i>	Greater Broad-nosed Bat

Marine Mammals

Cetacea

<i>Eubalaena australis</i>	Southern Right Whale
<i>Megaptera novaeangliae</i>	Humpback Whale
<i>Balaenoptera borealis</i>	Sei Whale
<i>Balaenoptera physalus</i>	Fin Whale
<i>Sousa chinensis</i>	Indo-Pacific Humpback Dolphin
<i>Stenella longirostris</i>	Spinner Dolphin
<i>Physeter macrocephalus</i>	Sperm Whale

Reptiles

Boidae

<i>Aspidites ramsayi</i>	Woma
<i>Liasis stimsoni</i>	Stimson's Python

Cheloniidae

<i>Caretta caretta</i>	Loggerhead Turtle
<i>Chelonia mydas</i>	Green Turtle

Animals

Dermochelyidae*Dermochelys coriacea*

Leathery Turtle

Elapidae*Cacophis harriettae*

White Crowned Snake

Demansia torquata

Collared Whip Snake

*Echiopsis curta**Hoplocephalus bitorquatus*

Pale-headed Snake

Hoplocephalus stephensi

Stephen's Banded Snake

Simoselaps fasciolatus

Narrow-banded Snake

*Suta flagellum***Gekkonidae***Christinus guentheri**Underwoodisaurus sphyrurus***Pygopodidae***Aprasia inaurita**Aprasia parapulchella**Delma impar***Scincidae***Coeranoscincus reticulatus**Cyclodomorphus branchialis**Pseudemoia lichenigera**Tiliqua multifasciata*

Centralian Blue-tongued Lizard

Tiliqua occipitalis

Western Blue-tongued Lizard

Varanidae*Varanus rosenbergi*

Schedule 2 Vulnerable species

Plants

Apocynaceae

Parsonsia dorrigensis J.B. Williams ms

Araliaceae

Astrotricha crassifolia Blakely

Asteliaceae

Neoastelia spectabilis J.B. Williams

Asteraceae

Ammobium craspedioides Benth.

Brachycome muelleroides G. Davis

Brachycome papillosa G. Davis

Calotis glandulosa F. Muell.

Euchiton nitidulus (Hook. f.) A. Anderb.

Olearia cordata Lander

Ozothamnus tessellatus (Maiden & R. Baker) Anderberg

Picris evae Lack

Rutidosia heterogama Philipson

Rutidosia leiolepis F. Muell.

Senecio garlandii F. Muell. ex Belcher

Brassicaceae

Lepidium aschersonii Thell.

Callitrichaceae

Callitriche cyclocarpa Hegelm.

Casuarinaceae

Allocasuarina simulans L. Johnson

Chenopodiaceae

Atriplex infrequens Paul G. Wilson

Maireana cheelii (R. Anderson) Paul G. Wilson

Sclerolaena napiformis Paul G. Wilson

Plants

Corokiaceae

Corokia whiteana L.S. Smith

Corynocarpaceae

Corynocarpus rupestris subsp. *rupestris* Guymer

Cunoniaceae

Acrophyllum australe (Cunn.) Hoogl.

Cupressaceae

Callitris oblonga A. Rich. & Rich.

Cyperaceae

Eleocharis obicis L.A.S. Johnson & O.D. Evans

Dilleniaceae

Hibbertia marginata Conn

Epacridaceae

Budawangia gnidioides (Summerh.) Telford

Epacris sparsa R. Br.

Leucopogon exolasius (F. Muell.) F. Muell. ex Benth.

Styphelia perileuca J. Powell

Ericaceae

Gaultheria viridicarpa subsp. *merinoensis* J.B. Williams ms

Gaultheria viridicarpa subsp. *viridicarpa* J.B. Williams ms

Eriocaulaceae

Eriocaulon australasicum (F. Muell.) Korn.

Euphorbiaceae

Baloghia marmorata C. White

Bertya sp. A Cobar-Coolabah (Cunningham & Milthorpe s.n., 2/8/73)

Fontainea australis Jessup & Guymer

Schedule 2 Vulnerable species

Plants

Fabaceae

- Acacia baueri* subsp. *aspera* (Maiden & E. Betcher) Pedley
- Acacia bynoeana* Benth.
- Acacia carnei* Maiden
- Acacia clunies-rossiae* Maiden
- Acacia constablei* Tind.
- Acacia courtii* Tind. & Henscovitch
- Acacia curranii* Maiden
- Acacia flocktoniae* Maiden
- Acacia georgensis* Tind.
- Acacia phasmoides* J.H. Willis
- Acacia pubescens* (Vent.) R. Br.
- Acacia pycnostachya* F. Muell.
- Bossiaea oligosperma* A. Lee
- Desmodium acanthocladum* F. Muell.
- Dillwynia tenuifolia* Sieber ex DC.
- Kennedia retrorsa* Hemsley
- Phyllota humifusa* Benth.
- Pultenaea aristata* Sieber ex DC.
- Pultenaea baeuerlenii* F. Muell.
- Pultenaea campbellii* Maiden & E. Betcher
- Pultenaea glabra* Benth.
- Pultenaea parrisiae* subsp. *parrisiae* J.D. Briggs & Crisp
- Pultenaea stuartiana* Williamson
- Sophora fraseri* Benth.
- Swainsona murrayana* Wawra
- Swainsona plagiotropis* F. Muell.
- Swainsona pyrophila* J. Thompson

Gentianaceae

- Gentiana bredboensis* L. Adams
- Gentiana wissmannii* J. Williams

Goodeniaceae

- Goodenia macbarronii* Carolin

Plants

Haloragaceae

Haloragis exalata subsp. *exalata* F. Muell.

Haloragis exalata subsp. *velutina* Orch.

Lamiaceae

Prostanthera cineolifera R. Baker & H.G. Smith

Prostanthera cryptandroides Cunn. ex Benth.

Prostanthera densa A.A. Ham.

Prostanthera discolor R. Baker

Prostanthera staurophylla F. Muell.

Prostanthera stricta R. Baker

Prostanthera sp. Strickland State Forest (J.H. Maiden s.n., 07/1915)

Prostanthera sp. Bundjalung National Park (B.J. Conn 3471)

Westringia davidii Conn

Lauraceae

Cryptocarya foetida R. Baker

Endiandra hayesii Kosterm.

Meliaceae

Owenia cepiodora F. Muell.

Menispermaceae

Tinospora tinosporoides (F. Muell.) Forman

Myrtaceae

Angophora robur L. Johnson & K. Hill

Baeckea sp. Pyramids (W.J. McDonald 357)

Darwinia biflora (Cheel) B. Briggs

Eucalyptus alligatrix subsp. *miscella* Brooker, Slee & J.D. Briggs ms

Eucalyptus aquatica (Blakely) L. Johnson & K. Hill

Eucalyptus benthamii Maiden & Cabbage

Eucalyptus caleyi subsp. *ovendenii* L. Johnson & K. Hill

Eucalyptus camfieldii Maiden

Eucalyptus cannonii R. Baker

Schedule 2 Vulnerable species

Plants

Eucalyptus glaucina Blakely
Eucalyptus kartzoffiana L. Johnson & Blaxell
Eucalyptus langleyi L. Johnson & Blaxell
Eucalyptus mckieana Blakely
Eucalyptus nicholii Maiden & Blakely
Eucalyptus parramattensis subsp. *decadens* L. Johnson & Blaxell
Eucalyptus parvula L. Johnson & K. Hill
Eucalyptus pulverulenta Sims
Eucalyptus pumila Cabbage
Eucalyptus robertsonii subsp. *hemisphaerica* L. Johnson & K. Hill
Eucalyptus rubida subsp. *barbigerorum* L. Johnson & K. Hill
Eucalyptus rubida subsp. *canobolensis* L. Johnson & K. Hill
Eucalyptus sturgissiana L. Johnson & Blaxell
Eucalyptus tetrapleura L. Johnson
Homoranthus darwinoides (Maiden & E. Bettle) Cheel
Homoranthus lunatus Craven & S.R. Jones
Homoranthus prolixus Craven & S.R. Jones
Kunzea cabbagei Maiden & E. Bettle
Leptospermum deanei J. Thompson
Leptospermum thompsonii J. Thompson
Melaleuca groveana Cheel & C. White
Micromyrtus blakelyi J. Green
Micromyrtus minutiflora (F. Muell.) Benth.
Syzygium hodgkinsoniae (F. Muell.) L. Johnson
Syzygium moorei (F. Muell.) L. Johnson
Syzygium paniculatum Gaertner

Olacaceae

Olax angulata A.S. George

Orchidaceae

Bulbophyllum globuliforme Nicholls
Caladenia concolor Fitzg.
Caladenia tessellata Fitzg.
Cryptostylis hunteriana Nicholls

Plants

Diuris aequalis F. Muell. ex Fitzg.
Diuris praecox D.L. Jones
Diuris shaeaffiana Fitzg.
Diuris venosa Rupp
Phaius australis F. Muell.
Prasophyllum fuscum R. Br.
Prasophyllum morganii Nicholls
Pterostylis cobarensis M.A. Clem.
Pterostylis cucullata R. Br.
Pterostylis nigricans L. Jones & M.A. Clem.
Pterostylis pulchella Messmer
Sarcochilus fitzgeraldii F. Muell.
Sarcochilus hartmannii F. Muell.
Sarcochilus weinthalii (F.M. Bailey) Dockrill

Poaceae

Amphibromus fluitans Kirk
Arthraxon hispidus (Thunb.) Makino
Bothriochloa biloba S.T. Blake
Dichanthium setosum S.T. Blake
Erythranthera pumila (Kirk) Zotov
Plinthanthesis rodwayi (C.E. Hubb.) S.T. Blake
Stipa metatoris J. Everett & S.W.L. Jacobs

Polygonaceae

Persicaria elatior (R. Br.) Sojak

Proteaceae

Floydia praealta (F. Muell.) L. Johnson & B. Briggs
Grevillea banyabba P. Olde & N. Marriott
Grevillea evansiana McKee
Grevillea kennedyana F. Muell.
Grevillea quadricauda P. Olde & N. Marriott
Grevillea rhizomatosa P. Olde & N. Marriott
Grevillea scortechinii subsp. *sarmentosa* (Blakely & McKie) McGillivray

Schedule 2 Vulnerable species

Plants

Grevillea shiressii Blakely

Hakea fraseri R. Br.

Hakea trineura F. Muell.

Hakea sp. Manning River SF—Broken Bago SF (P. Hind 4662)

Hicksbeachia pinnatifolia F. Muell.

Isopogon fletcheri F. Muell.

Macadamia tetraphylla L. Johnson

Persoonia acerosa Sieber ex Schultes & Schultes f.

Persoonia bargoensis P. Weston & L. Johnson

Persoonia glaucescens Sieber ex Sprengel

Persoonia marginata Cunn. ex R. Br.

Ranunculaceae

Clematis fawcettii F. Muell.

Ranunculus anemoneus F. Muell.

Restionaceae

Restio longipes L.A.S Johnson & O.D. Evans

Rhamnaceae

Pomaderris brunnea Wakef.

Pomaderris gilmourii var. *cana* N. Walsh

Pomaderris pallida Wakef.

Pomaderris parrisiae N. Walsh

Rubiaceae

Asperula asthenes Airy Shaw & Turrill

Rutaceae

Boronia deanei Maiden & E. Betcher

Boronia umbellata P. Weston

Bosistoa selwynii T. Hartley

Bosistoa transversa J. Bailey & C. White

Correa baeuerlenii F. Muell.

Eriostemon ericifolius Cunn. ex Benth.

Plants

- Phebalium ralstonii* (F. Muell.) Benth.
- Phebalium rhytidophyllum* Albrecht & N. Walsh
- Phebalium sympetalum* Paul G. Wilson
- Zieria citriodora* J.A. Armstrong ms
- Zieria involucrata* R. Br. ex Benth.
- Zieria murphyi* Blakely
- Zieria tuberculata* J.A. Armstrong unpub

Santalaceae

- Thesium australe* R. Br.

Sapindaceae

- Dodonaea procumbens* F. Muell.

Sapotaceae

- Amorphospermum whitei* Aubrev.

Scrophulaceae

- Euphrasia bella* S. T. Blake
- Euphrasia bowdeniae* W.R. Barker

Solonaceae

- Solanum karsense* Symon

Sterculiaceae

- Lasiopetalum longistamineum* Maiden & Betcher
- Rulingia procumbens* Maiden & Betcher

Surianaceae

- Cadellia pentastylis* F. Muell.

Symplocaceae

- Symplocos baeuerlenii* R. Baker

Schedule 2 Vulnerable species

Plants

Tremandraceae

Tetratheca glandulosa Smith

Tetratheca juncea Smith

Winteraceae

Tasmania glaucifolia J. Williams

Tasmania purpurascens (Vick.) A.C. Smith

Schedule 3 Key threatening processes

(Section 8)

Schedule 4 Amendment of National Parks and Wildlife Act 1974

(Section 152)

[1] Section 5 Definitions

Insert in alphabetical order in section 5 (1):

critical habitat has the same meaning as in the *Threatened Species Conservation Act 1995*.

ecological community has the same meaning as in the *Threatened Species Conservation Act 1995*.

endangered ecological community has the same meaning as in the *Threatened Species Conservation Act 1995*.

endangered population has the same meaning as in the *Threatened Species Conservation Act 1995*.

endangered species has the same meaning as in the *Threatened Species Conservation Act 1995*.

harm an animal (including an animal of a threatened species, population or ecological community) includes hunt, shoot, poison, net, snare, spear, pursue, capture, trap, injure or kill, but does not include harm by changing the habitat of an animal.

population has the same meaning as in the *Threatened Species Conservation Act 1995*.

species has the same meaning as in the *Threatened Species Conservation Act 1995*.

threatened interstate fauna means protected fauna of a species named in Schedule 12.

threatened species, populations and ecological communities and *threatened species, population or ecological community* have the same meanings as in the *Threatened Species Conservation Act 1995*.

vulnerable species has the same meaning as in the *Threatened Species Conservation Act 1995*.

[2] Section 5 (1)

Omit the definition of *endangered fauna*.

[3] Section 5 (1)

Omit the definition of *marine mammal*. Insert instead:

marine mammal means all animals of the orders of Cetacea, Sirenia and Pinnipedia.

[4] Section 5 (1)

Omit the definition of *pick*. Insert instead:

pick a native plant (including a threatened species, population or ecological community) means gather, pluck, cut, pull up, destroy, poison, take, dig up, remove or injure the plant or any part of the plant.

[5] Section 5 (1)

Omit "New South Wales" from the definition of *native plant*.
Insert instead "Australia".

[6] Section 5 (1)

Omit the definition of *take*.

[7] Section 5 (3)

Insert "or a licence under the *Threatened Species Conservation Act 1995*" after "under Part 9".

[8] Section 6 The Service

Insert " , the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995*" after "this Act" in section 6 (b).

[9] Section 8 Miscellaneous powers and functions of Director-General

Omit "taking or killing" from section 8 (2) (c1).
Insert instead "hunting".

[10] Section 8 (7)

Omit "animal and plant life".
Insert instead "and the need to conserve animal and plant life, including to conserve threatened species, populations and ecological communities, and their habitats".

[11] Section 10 Officers and employees

Omit "and the Wilderness Act 1987" from section 10.
Insert instead ", the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995*".

[12] Section 11 Use of services of personnel of public authorities

Omit "and the Wilderness Act 1987" from section 11 (5).
Insert instead ", the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995*".

[13] Section 12 Powers and functions of Service

Insert "(including threatened species, populations and ecological communities, and their habitats)" after "wildlife".

[14] Section 19 Powers and functions of ex-officio rangers

Insert ", the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995*" after "this Act" in section 19 (1).

[15] Section 20 Powers and functions of honorary rangers

Insert “, the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995*” after “this Act” in section 20.

[16] Section 21 Delegation

Omit “on him by this Act, the regulations or any other instrument under this Act” from section 21 (1).

Insert instead “the Minister or the Director-General, as the case may require, by or under this or any other Act”.

[17] Section 45 Provisions respecting animals in parks and sites

Omit “take or kill” from section 45 (1) (a). Insert instead “harm”.

[18] Section 45 (4)

Omit “taking or killing of any animal”.

Insert instead “harming of any animal (other than fauna or an animal of a threatened species)”.

[19] Section 56 Provisions respecting animals in nature reserves

Omit “take or kill” from section 56 (1) (a). Insert instead “harm”.

[20] Section 56 (1) (b)

Omit “taking or killing”. Insert instead “harming”.

[21] Section 56 (5)

Omit “taking or killing of an animal that is within those lands, other than fauna”.

Insert instead “harming of an animal that is within those lands (other than fauna or an animal of a threatened species)”.

[22] Section 57 Restrictions as to timber, vegetation, plants etc in state game reserves

Insert “(not being a plant of a threatened species)” after “native plant” in section 57 (5).

[23] Section 58A Dedication of state game reserves

Omit “taking or killing” wherever occurring from section 58A (3) (d) and (e).

Insert instead “hunting”.

[24] Section 58A (6)

Omit “taken or killed” wherever occurring. Insert instead “hunted”.

[25] Section 58H Provisions respecting animals in state game reserves

Omit “take or kill” from section 58H (1) (a). Insert instead “harm”.

[26] Section 58H (1) (b)

Omit “taking or killing”. Insert instead “harming”.

[27] Section 58H (5)

Omit “taking or killing of an animal that is within those lands, other than fauna”.

Insert instead “harming of an animal that is within those lands (other than fauna or an animal of a threatened species)”.

[28] Section 58I Restrictions as to timber, vegetation, plants etc in state games reserves

Insert “(not being a plant of a threatened species)” after “native plant” in section 58I (5).

[29] Section 58Q Provisions respecting animals in karst conservation reserves

Omit "take or kill" from section 58Q (1) (a). Insert instead "harm".

[30] Section 58Q (1) (b)

Omit "taking or killing". Insert instead "harming".

[31] Section 58Q (5)

Omit "taking or killing of an animal that is within those lands, other than fauna".

Insert instead "harming of an animal that is within those lands (other than fauna or an animal of a threatened species)".

[32] Section 58R Restrictions as to timber, vegetation, plants etc in karst conservation reserves

Insert "(not being a plant of a threatened species)" after "native plant" in section 58R (5).

[33] Section 67 Wildlife districts

Omit "taken or killed" wherever occurring in section 67 (2).
Insert instead "harmed".

[34] Section 69 Wildlife management areas

Omit "taking or killing as" in section 69 (2) (a).

[35] Section 69 (2) (b)

Omit "the taking or killing of". Insert instead "hunting".

[36] Section 69 (3)

Omit "taken or killed" wherever occurring.
Insert instead "hunted".

[37] Section 69C Purpose and content of agreements

Omit "or" where secondly occurring in section 69C (1) (e1).

[38] Section 69C (1) (e2)

Insert after section 69C (1) (e1):

(e2) for the purpose of the conservation of critical habitat or the conservation of threatened species, populations or ecological communities, or their habitats, or

[39] Section 69C (1) (f)

Omit "or (e)". Insert instead ", (e), (e1) or (e2)".

[40] Section 70 Fauna in wildlife districts, wildlife refuges, wildlife management areas, conservation areas and certain wilderness areas

Omit "take or kill" from section 70 (1) (a). Insert instead "harm".

[41] Section 70 (1) (b)

Omit "taking or killing". Insert instead "harming".

[42] Section 70 (3)

Omit "or a trapper's licence under section 123".

Insert instead ", a trapper's licence under section 123 or a licence under Part 6 of the *Threatened Species Conservation Act 1995*".

[43] Section 70 (5) and (6)

Omit "taking or killing" wherever occurring.
Insert instead "harming".

[44] Section 70 (6AA)

Omit "taking or killing". Insert instead "harming".

[45] Section 70 (6A)

Omit "A person".
Insert instead "Subject to subsection (6B), a person".

[46] Section 70 (6B)

Insert after subsection (6A):

(6B) Subsection (6A) does not extend to the damaging of critical habitat or the harming of threatened species, populations or ecological communities.

[47] Section 71 Native plants in wildlife refuges, wildlife management areas, conservation areas and certain wilderness areas

Insert ", a licence under Part 6 of the *Threatened Species Conservation Act 1995*" after "Part 9" in section 71 (2) (a).

[48] Section 71 (3)

Insert "(not being a plant of a threatened species)" after "native plant".

[49] Section 71 (3A)

Omit "A person".
Insert "Subject to subsection (3B), a person".

[50] Section 71 (3B)

Insert after subsection (3A):

- (3B) Subsection (3A) does not extend to the damaging of critical habitat or the harming of threatened species, populations or ecological communities.

[51] Section 72 Plans of management

Insert “(including the conservation of critical habitat and threatened species, populations and ecological communities, and their habitats)” after “wildlife” in section 72 (4) (a).

[52] Part 6A

Omit the heading. Insert instead:

Part 6A Stop work orders and interim protection orders

Division 1 Stop work orders

91AA Director-General may make stop work order

- (1) If the Director-General is of the opinion that any action is being, or is about to be, carried out that is likely to significantly affect protected fauna or native plants or their environment, the Director-General may order that the action is to cease and that no action, other than such action as may be specified in the order, is to be carried out with respect to that environment within a period of 40 days after the date of the order.
- (2) An order takes effect on and from the date on which:
 - (a) a copy of the order is affixed in a conspicuous place in the environment or place the subject of the order, or
 - (b) the person performing or about to perform the action is notified that the order has been made,whichever is the sooner.
- (3) This section does not apply in relation to anything authorised to be done by or under:

-
- (a) a licence granted under this Act or the *Threatened Species Conservation Act 1975*, or
 - (b) the *Bush Fires Act 1949* or the *State Emergency and Rescue Management Act 1989* that is reasonably necessary in order to avoid a threat to life or property.
 - (4) This section does not apply in relation to anything that is essential for the carrying out of:
 - (a) development in accordance with a development consent within the meaning of the *Environmental Planning and Assessment Act 1979*, or
 - (b) an activity whether by a determining authority or pursuant to an approval of a determining authority, within the meaning of Part 5 of that Act if the determining authority has complied with that Part.
 - (5) In this Division, a reference to action being, or about to be, carried out includes a reference to action that should be, but is not being, carried out and an order under this Division may be modified accordingly.

91BB Prior notification of making of stop work order not required

The Director-General is not required, before making an order under this Division, to notify any person who may be affected by the order.

91CC Appeal to Minister

- (1) A person against whom an order is made under this Division may appeal to the Minister against the making of the order.
- (2) After hearing an appeal, the Minister may:
 - (a) confirm the order, or
 - (b) modify or rescind the order, but only if this is consistent with the principles of ecologically sustainable development (as described in section 6 (2) of the *Protection of the Environment Administration Act 1991*).

91DD Extension of stop work order

The Director-General may extend an order under this Division for such further period or periods of 40 days as the Director-General thinks fit.

91EE Consultation about modification of proposed detrimental action

- (1) After making an order under this Division, the Director-General must immediately consult with the person proposing to perform the action to determine whether any modification of the action may be sufficient to protect the environment of any protected fauna or native plants.
- (2) If, in the opinion of the Director-General, satisfactory arrangements cannot be made to protect the environment that is the subject of an order under this Division, the Director-General must recommend the making of an interim protection order under Division 2.
- (3) The Director-General must not recommend the making of an interim protection order in relation to anything that is authorised to be done by or under an authority referred to in section 91AA (3) or that is essential for a purpose referred to in section 91AA (4).

91FF Order prevails over other instruments

- (1) If an order under this Division is in force in relation to an environment, an approval, notice or order (whether made or issued before or after the order pursuant to this Division) under any other Act that requires or permits the environment to be significantly affected is inoperative to the extent of the inconsistency with the order.
- (2) This section has effect whether the approval, notice, order or other instrument concerned was made before or after the making of the order under this Division.

Division 2 Interim protection orders

[53] Section 91A Interim protection of areas having significant values

Insert “or the *Threatened Species Conservation Act 1995*” after “this Act” in section 91A (b).

[54] Section 91A (b)

Omit “fauna or native plants”.

Insert instead “fauna, native plants, threatened species, populations or ecological communities or critical habitat of endangered species, populations or ecological communities”.

[55] Section 91A (c)

Insert at the end of paragraph (b):

, or

- (c) that is critical habitat or the habitat of a threatened species, population or ecological community.

[56] Section 91B Interim protection orders

Omit “fauna and plants”.

Insert instead “fauna, plants, threatened species, populations and ecological communities and critical habitat of endangered species, populations and ecological communities”.

[57] Section 91D Duration of interim protection order

Omit “12 months” from section 91C. Insert instead “2 years”.

[58] Section 91D (3)

Omit the subsection.

[59] Sections 92A–92E

Omit the sections.

[60] Section 93 Amendment of Schedule 11 (unprotected fauna)

Omit “, but only on the recommendation of the Scientific Committee referred to in section 92A”.

[61] Section 94 Amendment of Schedule 12 (threatened interstate fauna)

Omit “, but only on the recommendation of the Scientific Committee referred to in section 92A”.

[62] Section 96 Locally unprotected fauna

Insert after section 96 (3):

- (4) An order under subsection (1) does not apply to, and must not be expressed to apply to, any threatened species, population or ecological community.

[63] Section 98 Harming protected fauna, other than threatened species, populations or ecological communities

Omit “endangered fauna” from subsection (1).

Insert instead “threatened interstate fauna, threatened species, populations or ecological communities,”.

[64] Section 98 (2) (a) and (a1)

Omit “take or kill” wherever occurring. Insert instead “harm”.

[65] Section 98 (2) (b)

Insert "substance," after "any" where firstly occurring.

[66] Section 98 (2) (b)

Omit "taking or killing". Insert instead "harming".

[67] Section 98 (2)

Omit "20 penalty units". Insert instead "30 penalty units".

[68] Section 98 (3) (a)

Insert "or a licence under Part 6 of the *Threatened Species Conservation Act 1995*" before "; or".

[69] Section 98 (4)

Omit the subsection.

[70] Section 99 Harming threatened interstate fauna

Omit section 99 (1) (a). Insert instead:

(a) harm any threatened interstate fauna, or

[71] Section 99 (1) (b)

Insert "substance," after "any" where firstly occurring.

[72] Section 99 (1) (b)

Omit "taking or killing". Insert instead "harming".

[73] Section 99 (1) (c), (1A), (5) and (6)

Omit the provisions.

[74] Section 99 (1)

Omit the penalty provisions. Insert instead:

Penalty: 1,000 penalty units or imprisonment for 1 year or both.

[75] Section 100 Further provisions respecting harming protected fauna (including threatened interstate fauna)

Omit "or 99 (1)". Insert instead ", 99 (1), 112G or 118A".

[76] Section 100 (2)

Insert at the end of the section:

- (2) The regulations may make provision for or with respect to exempting, subject to conditions and restrictions (if any) prescribed by the regulations, any person or class or description of persons from the provisions of section 98 (2).

[77] Section 101 Buying, selling or possessing protected fauna

Omit the penalty provision. Insert instead:

Penalty:

- (a) in respect of any protected fauna other than threatened interstate fauna—100 penalty units or imprisonment for 6 months or both,
- (b) in respect of any threatened interstate fauna—1,000 penalty units or imprisonment for 1 year or both.

[78] Section 103 Harming fauna for sale

Omit "take or kill" from section 103 (1). Insert instead "harm".

[79] Section 103 (3)

Omit "taking or killing". Insert instead "harming".

[80] Section 103 (4)

Omit "endangered fauna".

Insert instead "threatened interstate fauna or threatened species, populations or ecological communities".

[81] Section 110 Use of certain substances for harming fauna

Omit "taking or killing" wherever occurring in section 110 (1) and (2).

Insert instead "harming".

[82] Section 111 Method of shooting fauna

Omit "taking or killing". Insert instead "harming".

[83] Section 112 Harming snakes

Omit "taking or killing". Insert instead "harming".

[84] Section 112F Restriction on issue of licences to take marine mammals for exhibition etc

Omit "take, kill". Insert instead "harm".

[85] Section 112G

Insert after section 112F:

112G Approaching marine mammal

- (1) A person must not approach a marine mammal any closer than such distance as may be prescribed by the regulations or interfere with a marine mammal.
Penalty: 1,000 penalty units or imprisonment for 2 years or both.
- (2) If:
 - (a) a person is convicted by the Land and Environment Court of an offence arising under this section, and
 - (b) the Court is satisfied that the person committed the offence in the course of commercial operations relating to the killing of marine mammals,the maximum penalty that the Court may impose in respect of the offence is 2,000 penalty units.
- (3) A person must not be convicted of an offence under this section if the person proves that the act constituting the offence was done under and in accordance with or by virtue of the authority conferred by a general licence under section 120 or a licence under Part 6 of the *Threatened Species Conservation Act 1995*.
- (4) If the provisions of any other Act or instrument made under any other Act authorise or require anything to be done that would constitute an offence under this section:
 - (a) the provisions of this section prevail, except if the other Act is the *Bush Fires Act 1949* or the *State Emergency and Rescue Management Act 1989*, and
 - (b) a person must not to be convicted of an offence against the other Act or instrument because of the person's failure to comply with the other Act or instrument if compliance with the other Act or instrument would constitute an offence under this section.

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- (5) A reference in section 112F, 120, 129 or 171 to harming any fauna includes, so far as is applicable in relation to a marine mammal, approaching or interfering with the marine mammal as referred to in subsection (1).
- (6) In this section, *interfere with* includes harass, chase, herd, tag, mark and brand.

[86] Part 8A

Insert after Part 8:

Part 8A Threatened species, populations and ecological communities, and their habitats, and critical habitat

118A Harming or picking threatened species, populations or ecological communities

- (1) A person must not:
- (a) harm any threatened species, population or ecological community, being an animal, or
 - (b) use any substance, animal, firearm, explosive, net, trap, hunting device or instrument or means whatever for the purpose of harming any such species, population or ecological community, being an animal.

Penalty:

- (a) in respect of any endangered species, population or ecological community—2,000 penalty units or imprisonment for 2 years or both,
- (b) in respect of any vulnerable species—500 penalty units or imprisonment for 1 year or both.

- (2) A person must not pick any threatened species, population or ecological community, being a plant.

Penalty:

- (a) in respect of any endangered species, population or ecological community—2,000 penalty units or imprisonment for 2 years or both,
 - (b) in respect of any vulnerable species—500 penalty units or imprisonment for 1 year or both.
- (3) It is a defence to a prosecution for an offence against this section if the accused proves that the act constituting the alleged offence:
- (a) was authorised to be done, and was done in accordance with, a general licence under section 120 or a licence granted under Part 6 of the *Threatened Species Conservation Act 1995*, or
 - (b) was essential for the carrying out of:
 - (i) development in accordance with a development consent within the meaning of the *Environmental Planning and Assessment Act 1979*, or
 - (ii) an activity, whether by a determining authority or pursuant to an approval of a determining authority within the meaning of Part 5 of that Act if the determining authority has complied with that Part, or
 - (c) was authorised to be done by or under the *Bush Fires Act 1949* or the *State Emergency and Rescue Management Act 1989* and was reasonably necessary in order to avoid a threat to life or property.
- (4) If the provisions of any other Act or law or of any instrument made under any other Act or law authorise or require anything to be done that would constitute an offence under this section:
- (a) this section prevails (except in relation to a matter referred to in subsection (3) (b) or (c)), and

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- (b) a person is not to be convicted of an offence against the other Act, law or instrument because of the person's failure to comply with the other Act, law or instrument if compliance with the other Act, law or instrument would constitute an offence under this section.

118B Buying, selling or possessing threatened species or endangered population

- (1) A person must not buy, sell or have in possession or control any threatened species or endangered population.

Penalty:

- (a) in respect of any endangered species or endangered population—2,000 penalty units or imprisonment for 2 years or both,
- (b) in respect of any vulnerable species—500 penalty units or imprisonment for 1 year or both.
- (2) The Governor may, by order published in the Gazette, exempt from subsection (1) threatened species named in the order, subject to such conditions and restrictions relating to the buying, selling or having in possession of any such threatened species as may be prescribed in the order.
- (3) A person must not to be convicted of an offence against this section of having in the person's possession or control a plant of any threatened species if the plant is naturally occurring on land that the person owns or of which the person is the lessee or lawful owner.
- (4) It is a defence to a prosecution for an offence against this section if the accused proves that the act constituting the alleged offence was authorised to be done, and was done in accordance with, a general licence under section 120 or a licence granted under Part 6 of the *Threatened Species Conservation Act 1995*.

- (5) A person must not be convicted of an offence under this section in respect of the possession of any threatened species if the person satisfies the court that:
- (a) the species, being an animal, is the progeny of any animal lawfully in the possession of the person pursuant to a licence granted under this Act or under Part 6 of the *Threatened Species Conservation Act 1995* and that progeny is less than 6 months old, or
 - (b) the species, being an animal:
 - (i) was incapable of fending for itself in its natural habitat, and
 - (ii) the person notified the Director-General, in the manner and within the time prescribed by the regulations, that the animal came into the person's possession, and
 - (iii) the person complied with any direction given to the person about the animal by the Director-General, or
 - (c) the species, being a plant, was propagated from a plant lawfully in the possession of a person pursuant to a licence granted under this Act or under Part 6 of the *Threatened Species Conservation Act 1995* and that propagation took place not later than 6 months previously.
- (6) A reference in this section to a person's having threatened species in the person's possession includes a reference to the person having threatened species in a vehicle, building, lodging, apartment, field or other place whether belonging to or occupied by the person, and whether the species is then had or placed for the person's own use or the use of another person.

118C Damage critical habitat

- (1) A person must not, by an act or an omission, do anything that causes damage to any critical habitat.

Maximum penalty: 2,000 penalty units or imprisonment for 2 years or both.

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- (2) If a map of the critical habitat was published in the Gazette before the act constituting the offence was done or omitted to be done, it is not necessary for the prosecution to prove that the person knew that the habitat was declared as critical habitat or that the person knew that it was habitat of an endangered species, population or ecological community.
- (3) If a map of the critical habitat was not published in the Gazette before the act constituting the offence was done or omitted to be done, the prosecution must prove that the person knew that the habitat was declared as critical habitat or that the person knew, or ought to have known, that it was critical habitat.
- (4) It is a defence to a prosecution for an offence against this section in relation to an area of critical habitat that the Director-General has declined to publicly notify under section 146 of the *Threatened Species Conservation Act 1995* that the accused did not know and could not reasonably be expected to have known that the area was critical habitat.
- (5) It is a defence to a prosecution for an offence against this section if the accused proves that the act constituting the offence:
- (a) was authorised to be done, and was done in accordance with, a licence granted under this Act or under Part 6 of the *Threatened Species Conservation Act 1995*, or
 - (b) was essential for the carrying out of:
 - (i) development in accordance with a development consent within the meaning of the *Environmental Planning and Assessment Act 1979*, or
 - (ii) an activity, whether by a determining authority or pursuant to an approval of a determining authority within the meaning of Part 5 of that Act if the determining authority has complied with the Part, or
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- (c) was authorised to be done by or under the *Bush Fires Act 1949* or the *State Emergency and Rescue Management Act 1989* and was reasonably necessary in order to avoid a threat to life or property.
- (6) If the provisions of any other Act or law or of any instrument made under any other Act or law authorise or require anything to be done that would constitute an offence under this section:
 - (a) this section prevails (except in relation to a matter referred to in subsection (5) (b) or (c), and
 - (b) a person is not to be convicted of an offence against the other Act, law or instrument because of the person's failure to comply with the other Act, law or instrument if compliance with the other Act, law or instrument would constitute an offence under this section.

118D Damage habitat of threatened species, population or ecological community

- (1) A person must not, by an act or an omission, do anything that causes damage to any habitat (other than a critical habitat) of a threatened species, population or ecological community if the person knows that the land concerned is habitat of that kind.

Penalty: 1,000 penalty units or imprisonment for 1 year or both.
- (2) It is a defence to a prosecution for an offence against this section if the accused proves that the act constituting the offence:
 - (a) was authorised to be done, and was done in accordance with, a licence granted under this Act or under Part 6 of the *Threatened Species Conservation Act 1995*, or

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- (b) was essential for the carrying out of:
 - (i) development in accordance with a development consent within the meaning of the *Environmental Planning and Assessment Act 1979*, or
 - (ii) an activity, whether by a determining authority or pursuant to an approval of a determining authority within the meaning of Part 5 of that Act if the determining authority has complied with the Part, or
 - (c) was authorised to be done by or under the *Bush Fires Act 1949* or the *State Emergency and Rescue Management Act 1989* and was reasonably necessary in order to avoid a threat to life or property.
- (3) If the provisions of any other Act or law or of any instrument made under any other Act or law authorise or require anything to be done that would constitute an offence under this section:
- (a) this section prevails (except in relation to a matter referred to in subsection (2) (b) or (c)), and
 - (b) a person is not to be convicted of an offence against the other Act, law or instrument because of the person's failure to comply with the other Act, law or instrument if compliance with the other Act, law or instrument would constitute an offence under this section.

118E Court may order offender to restore critical habitat or habitat of threatened species, populations or ecological communities

- (1) If a court convicts a person of an offence under this Part involving damage to any critical habitat or habitat of a threatened species, population or ecological community, the court may, in addition to or in substitution for any pecuniary penalty for the offence, direct the person to take any action to mitigate the damage or to restore that critical habitat or habitat of a threatened species, population or ecological community.

- (2) The court may specify the actions to be taken to mitigate the damage or restore the habitat and may order the person to maintain the habitat until the actions ordered to be done to mitigate the damage or restore the habitat have been fully performed.
- (3) The court may order the person to provide security for the performance of any obligation imposed under this section.
- (4) For the purposes of this section, a *conviction* includes the making of an order under section 556A of the *Crimes Act 1900*.

[87] Section 120 General licence

Omit "take or kill" from section 120 (1) (a). Insert instead "harm".

[88] Section 120 (1) (c) and (4) (a)

Omit "taken or killed" wherever occurring.
Insert instead "harmed".

[89] Section 120 (1) (e)

Omit the paragraph. Insert instead:

- (e) to harm any protected fauna (other than a threatened species, population or ecological community) in the course of carrying out specified development or specified activities.

[90] Section 120 (2)

Omit "taking or killing". Insert instead "harming".

[91] Section 120 (2A)

Omit "taking or killing". Insert instead "harming".

[92] Section 120 (2A)

Omit "take or kill". Insert instead "harm".

[93] Section 121 Occupier's licence

Omit "take or kill" wherever occurring from section 121 (1).
Insert instead "harm".

[94] Section 121 (1) and (2)

Omit "taken or killed" wherever occurring.
Insert instead "harmed".

[95] Section 121 (3)

Omit "endangered fauna".
Insert instead "threatened species, populations or ecological communities".

[96] Section 121 (3)

Omit "taken or killed". Insert instead "harmed".

[97] Section 121 (3)

Omit "take or kill". Insert instead "harm".

[98] Section 122 Game licence

Omit "take or kill" wherever occurring.

[99] Section 122 (2) (a)

Omit "endangered fauna".

Insert instead "threatened species, population or ecological community".

[100] Section 122 (2) (d)

Omit "take or kill". Insert instead "harm".

[101] Section 123 Trapper's licence

Omit "take or kill" from section 123 (1). Insert instead "harm".

[102] Section 123 (2)

Omit "taking or killing". Insert instead "harming".

[103] Section 123 (3)

Insert after subsection (2):

- (3) A trapper's licence must not be issued with respect to threatened species, populations or ecological communities.

[104] Section 129 Certain licences authorising shooting etc in national parks etc

Omit "take or kill" wherever occurring. Insert instead "harm".

[105] Section 129

Omit "taking or killing" wherever occurring.

Insert instead "harming".

[106] Section 130 Certain licences and certificates deemed to authorise possession

Omit "take or kill" from section 130. Insert instead "harm".

[107] Section 131 Licence to pick native plants

Omit "for scientific or commercial purposes".

[108] Section 132 Licence to grow native plants for sale

Insert "or plants of a threatened species" after "protected native plants" in section 132.

[109] Section 133 Conditions and restrictions attaching to licences and certificates and variation of licences and certificates

Insert "under this Act or Part 6 of the *Threatened Species Conservation Act 1995*" after "certificate" where secondly occurring in section 133 (4).

[110] Section 138 Payments into the Fund

Insert ", the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995*" after "this Act" in section 138 (1) (a) and (g).

[111] Section 138 (1) (b) (iii)

Insert ", the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995* or the regulations made under those Acts" after "the regulations".

[112] Section 139 Payments out of the Fund

Insert ", the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995*" after "this Act" in section 139 (2) (a), (c) and (d).

[113] Section 143 Charges and fees

Insert “, the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995* or the regulations under those Acts” after “the regulations” in section 143.

[114] Section 144A Overdue community service contributions, charges, fees etc

Insert “, the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995*” after “this Act” in section 144A (1) (c).

[115] Section 145 Acquisition of land for reservation or other purposes

Insert “, of conserving threatened species, populations or ecological communities, or their habitats” after “Part 4” in section 145.

[116] Section 146 Acquisition or occupation of lands for certain purposes

Insert “or acquired” after “dedicated” in section 146 (1) (a).

[117] Section 146 (2)

Insert “, the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995*” after “this Act”.

[118] Section 148 Power of Minister to accept gifts, devises or bequests

Omit “or the *Wilderness Act 1987*” in section 148 (1).

Insert instead “, the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995*”.

[119] Section 149 Disposal of lands, gifts etc

Insert "or the *Threatened Species Conservation Act 1995*" after "this Act" in section 149 (1) (b).

[120] Section 164 Powers of entry and seizure

Insert "or is being" after "has been" wherever occurring in section 164 (1) (a).

[121] Section 164 (1) (b1)

Insert after paragraph (b):

- (b1) may, at all times, on production of the prescribed evidence of authority, enter any premises for the purposes of:
 - (i) identifying and mapping critical habitat, and
 - (ii) inspecting any lands that are the subject of an application for a licence under Part 6 of the *Threatened Species Conservation Act 1995*, and
 - (iii) inspecting any lands that are the subject of proposed development or an activity (within the meaning of the *Environmental Planning and Assessment Act 1979*) and in respect of the grant of development consent or approval to which the Minister or the Director-General has been consulted or is (or is acting as) a concurrence authority in accordance with that Act, and
 - (iv) inspecting any lands for the purpose of investigating the presence or condition of threatened species, populations or ecological communities, and their habitats, for the purposes of the *Threatened Species Conservation Act 1995* or this Act.

[122] Section 169 Impersonating, assaulting, resisting or obstructing an officer etc

Insert “or the *Threatened Species Act 1995* or the regulations under that Act” after “that Act” wherever occurring in section 169 (2) and (3).

[123] Section 171 Authority to harm or pick

Omit “take or kill” from section 171 (1) (a). Insert instead “harm”.

[124] Section 171 (4)

Omit “taking and killing”. Insert instead “harming”.

[125] Section 176 Proceedings for offences

Omit section 176 (1AA) and (1BB). Insert instead:

(1AA) Proceedings for an offence under section 98, 99, 101, 112G or Part 8A may be taken:

- (a) before the Land and Environment Court in its summary jurisdiction, or
- (b) before a Local Court constituted by a Magistrate sitting alone.

[126] Section 176 (1A)

Omit “50 penalty units”. Insert instead “100 penalty units”.

[127] Section 176A Restraint etc of breaches of Act

Insert at the end of the section:

- (4) Proceedings under this section may not be brought in connection with development, or an activity, carried out by, for or on behalf of the Olympic Co-ordination Authority in accordance with the *Olympic Co-ordination Authority Act 1995*.

[128] Section 179 Authority to take proceedings

Insert “or the *Threatened Species Conservation Act 1995* or the regulations under that Act” after “the regulations” in section 179 (1).

[129] Section 181 Evidentiary provisions etc

Insert after section 181 (2):

- (2A) An allegation, in an information in respect of an offence against this Act or the regulations, that an animal or plant is a member of a species, population or ecological community specified in that information is sufficient proof of the matter so alleged unless the defendant proves to the contrary.

[130] Section 181 (9)

Insert after subsection (8):

- (9) A copy of any declaration or map of critical habitat published in the Gazette, being a copy purporting to be certified by the Director-General or an officer of the Service authorised by the Director-General, as being a true copy of the declaration or map so published, is admissible in any legal proceedings and is evidence of the matter or matters contained in the declaration or map.

[131] Schedule 3 Savings, transitional and other provisions

Insert before clause 1:

Part 1 General

1 Regulations

- (1) The Governor may make regulations containing provisions of a saving or transitional nature consequent on the enactment of the following Acts:
Threatened Species Conservation Act 1995
- (2) A provision referred to in subsection (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or at a later date.

- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Special provisions

[132] Schedule 3, clause 1A

Re-number clause 1 as 1A.

[133] Schedule 8B

Omit the Schedule.

[134] Schedule 12 Threatened interstate fauna

Omit the Part headings and other matter from the Schedule.
Insert instead (Sec. 94).

[135] Schedule 13 Protected native plants

Insert “except *Boronia repanda*, *Boronia deanei* and *Boronia umbellata*” after “*Boronia*, all native species” in the list headed “SEED PLANTS”.

[136] Schedule 13

Insert “except *Bulbophyllum globuliforme*” after “*Bulbophyllum*, all native species” in the list headed “SEED PLANTS”.

[137] Schedule 13

Insert “except *Eriostemon ericofolius*” after “*Eriostemon*, all native species” in the list headed “SEED PLANTS”.

[138] Schedule 13

Omit from the list headed “SEED PLANTS”:

Grevillea caleyi..... Caley’s Grevillea.

Microstrobos fitzgeraldii.....

Phaius tancarvilliae..... Orchid.

Wollemia nobilis (proposed name)..... Wollemi Pine

[139] Schedule 13

Insert “except *Sarcophilus fitzgeraldii*, *Sarcophilus hartmannii* and *Sarcophilus weinthalii*” after “*Sarcophilus*, all native species” in the list headed “SEED PLANTS”.

Schedule 5 Amendment of Environmental Planning and Assessment Act 1979

(Section 153)

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

critical habitat has the same meaning as in the *Threatened Species Conservation Act 1995*,

ecological community has the same meaning as in the *Threatened Species Conservation Act 1995*,

endangered ecological community means an endangered ecological community within the meaning of the *Threatened Species Conservation Act 1995*,

endangered population means an endangered population within the meaning of the *Threatened Species Conservation Act 1995*,

endangered species means an endangered species within the meaning of the *Threatened Species Conservation Act 1995*,

habitat has the same meaning as in the *Threatened Species Conservation Act 1995*,

population has the same meaning as in the *Threatened Species Conservation Act 1995*,

recovery plan has the same meaning as in the *Threatened Species Conservation Act 1995*,

species has the same meaning as in the *Threatened Species Conservation Act 1995*,

species impact statement has the same meaning as in the *Threatened Species Conservation Act 1995*,

threat abatement plan has the same meaning as in the *Threatened Species Conservation Act 1995*,

threatened species, populations and ecological communities and *threatened species, population or ecological community* have the same meaning as in the *Threatened Species Conservation Act 1995*,

threatening process has the same meaning as in the *Threatened Species Conservation Act 1995*,

vulnerable species has the same meaning as in the *Threatened Species Conservation Act 1995*,

[2] Section 4 (1)

Omit the definition of *endangered fauna*.

[3] Section 4 (1), definition of "region"

Insert “, except as provided by subsection (6A)” after “a region”.

[4] Section 4 (6A)

Insert after section 4 (6):

(6A) However, for the purposes of sections 5A, 77C and 112D, a region is a bioregion defined in a national system of bioregionalisation, being a system that is determined (by the Director-General of National Parks and Wildlife by order published in the Gazette) to be appropriate for those purposes. If the bioregion occurs partly within and partly outside New South Wales, the region consists only of so much of the bioregions as occurs within New South Wales.

[5] Section 4A

Omit the section.

[6] Section 5 Objects

Insert “, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats” after “environment” in section 5 (a) (vi).

[7] Section 5A

Insert after section 5:

5A Significant effect on threatened species, populations or ecological communities, or their habitats

For the purposes of this Act and, in particular, in the administration of sections 77, 90 and 112, the following factors must be taken into account in deciding whether there is likely to be a significant effect on threatened species, populations or ecological communities, or their habitats:

- (a) in the case of a threatened species, whether the life cycle of the species is likely to be disrupted such that a viable local population of the species is likely to be placed at risk of extinction,
- (b) in the case of an endangered population, whether the life cycle of the species that constitutes the endangered population is likely to be disrupted such that the viability of the population is likely to be significantly compromised,
- (c) in relation to the regional distribution of the habitat of a threatened species, population or ecological community, whether a significant area of known habitat is to be modified or removed,
- (d) whether an area of known habitat is likely to become isolated from currently interconnecting or proximate areas of habitat for a threatened species, population or ecological community,
- (e) whether critical habitat will be affected,
- (f) whether a threatened species, population or ecological community, or their habitats, are adequately represented in conservation reserves (or other similar protected areas) in the region,

- (g) whether the development or activity proposed is of a class of development or activity that is recognised as a threatening process,
- (h) whether any threatened species, population or ecological community is at the limit of its known distribution.

[8] Section 26 Contents of environmental planning instruments

Insert after section 26 (e):

- (e1) protecting and conserving native animals and plants, including threatened species, populations and ecological communities, and their habitats,

[9] Section 26 (2) and (3)

Insert at the end of section 26:

- (2) If land declared to be critical habitat is land to which an environmental planning instrument described in subsection (3) applies, the instrument must be amended as soon as practicable after the declaration to identify the land that is critical habitat.
- (3) The environmental planning instruments described in this subsection are regional environmental plans and local environmental plans that:
 - (a) are principal instruments, as distinct from amending instruments (that is, principal instruments contain provisions apart from citation, commencement, a statement of their relationship with other instruments, a description, by reference or otherwise, of the land to which they apply and savings and transitional provisions), and
 - (b) make provision for the development of land that is identified by a map or a description, and
 - (c) are prepared or made before or after the commencement of Part 3 of the *Threatened Species Conservation Act 1995*.

[10] Section 34A

Insert after section 34:

34A Consultation with Director-General of National Parks and Wildlife about preparation of studies or instruments

- (1) The Director must consult with the Director-General of National Parks and Wildlife before preparing:
 - (a) a draft State environmental planning policy, or
 - (b) an environmental study or a draft regional environmental plan,

if, in the opinion of the Director, critical habitat or threatened species, populations or ecological communities, or their habitats, will or may be affected by the draft policy, environmental study or draft plan.

- (2) A council must consult with the Director-General of National Parks and Wildlife before preparing:
 - (a) an environmental study, or
 - (b) a draft local environmental plan,

if, in the opinion of the council, critical habitat or threatened species, populations or ecological communities, or their habitats, will or may be affected by the environmental study or draft plan.

- (3) For the purpose of the consultation, the Director or council must provide the following information to the Director-General of National Parks and Wildlife:
 - (a) the reasons for deciding to prepare the draft environmental planning instrument or the environmental study,
 - (b) the proposed aims, objectives, policies and strategies whereby the draft instrument is designed to achieve any of the objects of this Act,
 - (c) a description of the land to which the draft instrument or the study is intended to apply,
 - (d) the types of matters to be dealt with in the draft instrument or the study.

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- (4) For the purposes of the consultation, the Director or council may provide any other information that, in the Director's or council's opinion, would assist in understanding the draft environmental planning instrument or the environmental study.
 - (5) The Director-General of National Parks and Wildlife may comment to the Director or council on the preparation of the draft environmental planning instrument or the environmental study within 40 days after the information required to be provided under subsection (3) is provided.
 - (6) The consultation required by this section is completed when the Director or council has considered any comments so made.

[11] Section 76A

Insert after section 76:

76A Consent authorities to have regard to register of critical habitat

Each consent authority must have regard to the register of critical habitat kept by the Director-General of National Parks and Wildlife under the *Threatened Species Conservation Act 1995* when exercising its functions under this Act.

[12] Section 77 Making of development applications

Omit section 77 (3) (d1). Insert instead:

- (d1) if the application is in respect of development on land that is, or is a part of, critical habitat or is likely to significantly affect threatened species, populations or ecological communities, or their habitats, be accompanied by a species impact statement prepared in accordance with Division 2 of Part 6 of the *Threatened Species Conservation Act 1995*,

[13] Section 77 (4A)

Omit the subsection.

[14] Sections 77A–77C

Insert after section 77:

77A Concurrence of or consultation with Director-General of National Parks and Wildlife in certain cases

- (1) If development consent is required for development on land that is, or is a part of, critical habitat, development consent must not be granted without the concurrence of the Director-General of National Parks and Wildlife.
- (2) If development consent is required for development and that development is likely to significantly affect a threatened species, population or ecological community, or its habitat, consent must not be granted without the concurrence of the Director-General of National Parks and Wildlife.
- (3) Despite subsections (1) and (2), if the Minister administering the *Threatened Species Conservation Act 1995* considers that it is appropriate, that Minister may:
 - (a) elect to act in the place of the Director-General of National Parks and Wildlife for the purposes of those subsections, or
 - (b) review and amend any recommendations that the Director-General proposes to make, or any advice that the Director-General proposes to offer, for the purposes of those subsections.
- (4) Sections 78 (subsection (2) excepted), 79 (subsection (4) excepted), 80, 81 and 82 apply (with such modifications as may be necessary) to and in respect of the granting of concurrence under this section in the same way as they apply to and in respect of the granting of concurrence required by an environmental planning instrument.

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- (5) Despite subsections (1) and (2), if a Minister is the consent authority, development consent must not be granted unless the Minister has consulted with the Minister administering the *Threatened Species Conservation Act 1995*.
 - (6) The Minister administering the *Threatened Species Conservation Act 1995* must provide the Minister who is the consent authority with any recommendations made by the Director-General of National Parks and Wildlife concerning determination of such a development application and, if that Minister does not accept any one or more of the recommendations, that Minister must include in the determination the recommendations not accepted and that Minister's reasons for not accepting them.
 - (7) A decision with respect to a development consent or concurrence referred to in this section, by whoever made, must include the reasons for which it was made.
 - (8) A copy of the reasons referred to in this section must be available for public inspection, during ordinary office hours, at the head office of the National Parks and Wildlife Service.
 - (9) Despite any inconsistent provisions in sections 102 and 103, but without otherwise affecting those sections, development consent of the kind referred to in subsection (1) or (2) is not to be modified (except in the case of a minor modification) unless the requirements of this section and section 77C concerning concurrence have been complied with in relation to the proposed modification as if that proposed modification were an application for development consent.

77B Determination by Minister without concurrence or consultation with Director-General of National Parks and Wildlife

- (1) Despite section 77A, if the Minister is of the opinion that it is expedient in the public interest to do so, having regard to matters that in the opinion of the Minister are of significance for State or regional environmental

planning, the Minister may determine a development application in accordance with section 101 and without the concurrence of, or consultation with, the Director-General of National Parks and Wildlife (or the concurrence of, or consultation with, the Minister administering the *Threatened Species Conservation Act 1995* if that Minister acts under section 77A).

- (2) However, in making such a determination, the Minister is to consult with the Minister administering the *Threatened Species Conservation Act 1995* if the development the subject of the development application is on land that is, or is a part of, critical habitat or is likely to significantly affect an endangered species, population or ecological community, or its habitat.
- (3) The Minister administering the *Threatened Species Conservation Act 1995* must provide the Minister with any recommendations made by the Director-General of National Parks and Wildlife concerning the determination of the development application and, if the Minister does not accept any one or more of the recommendations, the Minister must include in the determination the recommendations not accepted and the Minister's reasons for not accepting them.
- (4) A copy of the reasons referred to in this section must be available for public inspection, during ordinary office hours, at the head office of the National Parks and Wildlife Service.

77C Matters to be considered by Director-General of National Parks and Wildlife as concurrence authority

In deciding whether or not concurrence should be granted under section 77A, the Director-General of National Parks and Wildlife (or the Minister administering the *Threatened Species Conservation Act 1995*, if that Minister acts under that section) must take the following matters into consideration:

- (a) any species impact statement that accompanied the development application,

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- (b) any assessment report prepared by the consent authority,
 - (c) any submissions or objections received concerning the development application,
 - (d) any relevant recovery plan or threat abatement plan,
 - (e) whether the development proposed is likely to reduce the long-term viability of the species, population or ecological community in the region,
 - (f) whether the development is likely to accelerate the extinction of the species, population or ecological community or place it at risk of extinction,
 - (g) the principles of ecologically sustainable development (as described by section 6 (2) of the *Protection of the Environment Administration Act 1991*),
 - (h) the likely social and economic consequences of granting or of not granting concurrence.

[15] Section 78 Seeking concurrence of Minister or public authority

Insert “or section 77A” after “instrument” wherever occurring in section 78 (1).

[16] Section 79 Granting or refusal of concurrence by Minister or public authority

Insert “(other than the Minister and the public authority referred to in section 77A)” after “section 78” in section 79 (2).

[17] Section 81 Circumstances in which concurrence may be assumed

Insert “or section 77A” after “instrument” wherever occurring in section 81.

[18] Section 83 Avoidance of consents

Insert "or section 77A" after "instrument" in section 83.

[19] Section 90 (1) Matters for consideration

Omit section 90 (1) (c2). Insert instead:

- (c2) the effect of that development on critical habitat,
- (c3) whether there is likely to be a significant effect on threatened species, populations or ecological communities, or their habitats,
- (c4) any relevant recovery plan or threat abatement plan,
- (c5) the effect of that development on any other protected fauna or protected native plants within the meaning of the *National Parks and Wildlife Act 1974*,

[20] Section 110C

Insert after section 110B:

110C Determining authorities to have regard to register of critical habitat

Each determining authority must, for the purpose of exercising functions under this Part, have regard to the register of critical habitat kept by the Director-General of National Parks and Wildlife under the *Threatened Species Conservation Act 1995*.

[21] Section 111 Duty to consider environmental impact

Insert at the end of section 111 (2) (b):

- , and
- (c) any joint management agreement entered into under the *Threatened Species Conservation Act 1995*.

[22] Section 111 (4)

Insert after section 111 (3):

- (4) Without limiting subsection (1), a determining authority must consider the effect of an activity on:
 - (a) critical habitat, and
 - (b) in the case of threatened species, populations and ecological communities, and their habitats, whether there is likely to be a significant effect on those species, populations or ecological communities, or those habitats, and
 - (c) any other protected fauna or protected native plants within the meaning of the *National Parks and Wildlife Act 1974*.

[23] Section 112 Decision of determining authority in relation to certain activities

Insert “(including critical habitat) or threatened species, populations or ecological communities, or their habitats,” after “environment” in section 112 (1).

[24] Section 112 (1B)

Omit section 112 (1B)–(1D). Insert instead:

- (1B) Without limiting subsection (1), a determining authority must not carry out an activity, or grant an approval in relation to an activity, being an activity that is in respect of land that is, or is a part of, critical habitat or is likely to significantly affect threatened species, populations or ecological communities, or their habitats, unless a species impact statement, or an environmental impact statement that includes a species impact statement, has been prepared (in each case) in accordance with Division 2 of Part 6 the *Threatened Species Conservation Act 1995*.

[25] Section 112 (4)

Insert “(including critical habitat) or threatened species, populations or ecological communities, or their habitats” after “environment” wherever occurring.

[26] Sections 112A–112E

Insert after section 112:

112A Determining authorities to have regard to recovery plans and threat abatement plans

A determining authority, in considering a species impact statement, must have regard to the terms of any recovery plan or threat abatement plan relating to the land referred to in the species impact statement for the purposes of assessing any effect on a threatened species, population or ecological community, or its habitat.

112B Consultation with Minister for the Environment if Minister is determining authority

- (1) A Minister who is a determining authority must not carry out, or grant an approval to carry out, an activity in respect of land that is, or is a part of, critical habitat or is likely to significantly affect threatened species, populations or ecological communities, or their habitats, unless that Minister has consulted with the Minister administering the *Threatened Species Conservation Act 1995*.
- (2) In so consulting, the Minister administering the *Threatened Species Conservation Act 1995* must provide the Minister who is the determining authority with any recommendations made by the Director-General of National Parks and Wildlife concerning the determination of the activity. If that Minister does not accept any one or more of the recommendations, that Minister must include the recommendations not accepted and the Minister’s reasons for not accepting them in the determination.

112C Concurrence of or consultation with Director-General of National Parks and Wildlife if Minister is not determining authority

- (1) A determining authority (not being a Minister) must not carry out, or grant an approval to carry out, an activity:
 - (a) that is to be carried out in respect of land that is, or is part of, critical habitat, or
 - (b) that is likely to significantly affect a threatened species, population or ecological community or its habitat,without the concurrence of the Director-General of National Parks and Wildlife.
- (2) Despite subsection (1), if the Minister administering the *Threatened Species Conservation Act 1995* considers that it is appropriate, that Minister may elect to act in the place of the Director-General of National Parks and Wildlife for the purpose of that subsection. However, if the Minister so elects, the Minister must:
 - (a) consult the Director-General of National Parks and Wildlife and seek the Director-General's recommendations in respect of the proposed activity, and
 - (b) if the Minister does not accept any one or more of those recommendations—specify, in the determination as to the grant or refusal to grant concurrence under this section, the recommendations that were not accepted and the Minister's reasons for not accepting them.
- (3) Sections 78 (subsection (2) excepted), 79 (subsection (4) excepted), 80, 81 and 82 apply (with such modifications as may be necessary) to and in respect of the granting of concurrence under this section in the same way as they apply to and in respect of the granting of concurrence required by an environmental planning instrument.

112D Matters to be considered by Director-General of National Parks and Wildlife as concurrence authority

In deciding whether or not concurrence should be granted under section 112C, the Director-General of National Parks and Wildlife (or the Minister administering the *Threatened Species Conservation Act 1995*, if that Minister acts under that section) must take the following matters into consideration:

- (a) any species impact statement prepared in relation to the activity,
- (b) any assessment report prepared by or on behalf of the proponent,
- (c) any representations made under section 113 concerning the species impact statement,
- (d) any relevant recovery plan or threat abatement plan,
- (e) whether the activity is likely to reduce the long-term viability of the species, population or ecological community in the region,
- (f) whether the activity is likely to accelerate the extinction of the species or ecological community or place it at risk of extinction,
- (g) the principles of ecologically sustainable development (as described by section 6 (2) of the *Protection of the Environment Administration Act 1991*),
- (h) the likely social and economic consequences of granting or of not granting concurrence.

112E Matters to be considered by Minister or Director-General of National Parks and Wildlife when consulted

The Minister administering the *Threatened Species Conservation Act 1995* (for the purposes of consultation under section 112B) or the Director-General of National Parks and Wildlife (for the purposes of consultation

under section 112C) (or the Minister administering the *Threatened Species Conservation Act 1995*, if that Minister acts under that section) must take the following matters into consideration:

- (a) any species impact statement prepared in relation to the activity,
- (b) any assessment report prepared by or on behalf of the proponent,
- (c) any representations made under section 113 concerning the species impact statement,
- (d) whether the activity is likely to reduce the long-term viability of the species in the region,
- (e) whether the activity is likely to place the species at risk of becoming endangered as described in section 10 of the *Threatened Species Conservation Act 1995*,
- (f) the principles of ecologically sustainable development (as described by section 6 (2) of the *Protection of the Environment Administration Act 1991*),
- (g) the likely social and economic consequences if the activity is not carried out.

[27] Section 113 Publicity and examination of environmental, fauna and species impact statements

Insert after section 113 (7):

- (8) In this section, *environmental impact statement* includes a fauna impact statement and a species impact statement.

[28] Section 115B Provisions relating to Minister's approval

Insert at the end of section 115B (1) "The proponent must also have complied with section 112B or 112C, or both, as the case requires".

[29] Section 123 Restraint etc of breaches of this Act

Insert at the end of the section:

- (4) Proceedings under this section may not be brought in connection with development, or an activity, carried out by, for or on behalf of the Olympic Co-ordination Authority in accordance with the *Olympic Co-ordination Authority Act 1995*.

[30] Schedule 6 Savings, transitional and other provisions

Insert at the end of the list of Acts in clause 1 (1):

Threatened Species Conservation Act 1995

Schedule 6 Amendment of other Acts and regulations

(Section 154)

6.1 Commonwealth Powers (Poultry Processing) Act 1993 No 100

Section 3 Reference of matters relating to poultry processing

Omit "taken or killed" from the definition of *poultry* in section 3 (2).
Insert instead "harmed".

6.2 Dividing Fences Act 1991 No 72

Section 14 Orders as to fencing work

Insert after section 14 (1):

- (1A) Despite subsection (1), no order may be made for the carrying out of fencing work on critical habitat within the meaning of the *Threatened Species Conservation Act 1995* without the consent of the Director-General of National Parks and Wildlife.

6.3 Environmental Planning and Assessment Regulation 1994

Omit "or endangered" wherever occurring from clauses 65 (c) (i) and (ii) and 82 (2) (f).

6.4 Impounding Act 1993 No 31

Section 41 Special power to destroy animals

Insert "a threatened species (as defined in the *Threatened Species Conservation Act 1995*)," after "that is" in section 41 (3).

6.5 Land and Environment Court Act 1979 No 204

[1] Section 17 Class 1—environmental planning and protection appeals

Omit “section 92C of the *National Parks and Wildlife Act 1974*” from paragraph (ea).

Insert instead “section 106 of the *Threatened Species Conservation Act 1995*”.

[2] Section 20 Class 4—environmental planning and protection and development contract civil enforcement

Insert after subsection (1) (cj):

(ck) proceedings under section 147 of the *Threatened Species Conservation Act 1995*,

[3] Section 20 (3)

Insert in alphabetical order of Acts:

Threatened Species Conservation Act 1995,

6.6 Local Government Act 1993 No 30

Section 428, Note

Insert after subsection (2) (c):

Note. Section 70 (2) of the *Threatened Species Conservation Act 1995* requires a council that is identified in a recovery plan (within the meaning of that Act) as responsible for the implementation of measures included in the plan to report on action taken by it to implement those measures in its annual report as to the state of the environment of its area.

Section 87 (2) of that Act imposes the same requirement in relation to threat abatement plans (within the meaning of that Act).

6.7 Meat Industry Act 1978 No 54

Section 41 Offences as to sale of meat and 41A Offences as to storage of meat

Omit "taken and" wherever occurring.

6.8 National Parks and Wildlife (Administration) Regulation 1995

Schedule 2 Penalty notice offences

Omit "take/kill" wherever occurring. Insert instead "harm".

6.9 National Parks and Wildlife (Fauna Protection) Regulation 1994

[1] Clause 8 (2) and (3)

Omit "taken or killed" wherever occurring.
Insert instead "harmed".

[2] Clause 9

Omit "take or kill" wherever occurring. Insert instead "harm".

[3] Clause 12 (2)

Omit "taken or killed". Insert instead "harmed".

[4] Clause 16 (2)

Omit "section 99 (1) (c)". Insert instead "section 112G".

[5] Clause 19 (1)

Omit "taking or killing". Insert instead "harming".

**6.10 National Parks and Wildlife (Land Management)
Regulation 1995**

[1] Clause 26 (2)

Insert "any threatened species, population or ecological community, or its habitat, (within the meaning of the *Threatened Species Conservation Act 1995*) or any" after "the land or" in clause 26 (2) (f).

[2] Clauses 37 (1) and 40

Omit "taking or killing" wherever occurring.
Insert instead "harming".

[3] Clause 37 (3)

Omit "endangered fauna".
Insert instead "threatened species, populations and ecological communities within the meaning of the *Threatened Species Conservation Act 1995*".

6.11 Non-Indigenous Animals Act 1987 No 166

Section 4 Application of Act

Insert at the end of section 4 (2):

Threatened Species Conservation Act 1995.

6.12 Rural Lands Protection Act 1989 No 197

[1] Section 3 Definitions

Insert after section 3 (2):

- (2A) An order may not be made under subsection (2) (b) in respect of a species of insects that is a threatened species within the meaning of the *Threatened Species Conservation Act 1995* without the concurrence of the Director-General of National Parks and Wildlife.

[2] Section 138C Applications for control orders by boards and section 138D Control orders

Insert "threatened species within the meaning of the *Threatened Species Conservation Act 1995* or" after "other than" wherever occurring in sections 138C (3) (c) and 138D (3) (c).

6.13 Soil Conservation Act 1938 No 10

[1] Section 21B Protected land

Omit section 21B (6) (b). Insert instead:

- (b) critical habitat, or land containing threatened species, populations or ecological communities, or their habitats, within the meaning of the *Threatened Species Conservation Act 1995*,

[2] Section 21D Authority to destroy timber on protected land

Omit section 21D (3A) (c). Insert instead:

- (c) an adverse effect on critical habitat, or threatened species, populations or ecological communities, or their habitats, within the meaning of the *Threatened Species Conservation Act 1995*,

6.14 Timber Industry (Interim Protection) Act 1992 No 1

[1] Section 3 Objects of this Act

Insert “, section 114 of the *Threatened Species Conservation Act 1995* or section 91AA of the *National Parks and Wildlife Act 1974*” after “(as inserted by the *Endangered Fauna (Interim Protection) Act 1991*)” in section 3 (g).

[2] Section 11 Stop work orders

Insert at the end of the section:

- (2) In addition, during the period when the application of Part 5 of the EPA Act is suspended in respect of land specified in Schedule 4, an order under section 114 of the *Threatened Species Conservation Act 1995* or section 91AA of the *National Parks and Wildlife Act 1974* made on or after the commencement of those sections has no effect in respect of that land.

[3] Section 12 Logging operations on private land

Insert after section 12 (4) (b):

, and

- (c) an order under section 114 of the *Threatened Species Conservation Act 1995* or section 91AA of the *National Parks and Wildlife Act 1974* made on or after the commencement of those sections has no effect in respect of that land.

[4] Section 12 (7)

Insert “(or species impact statements under the *Threatened Species Conservation Act 1995*)” after “fauna impact statements”.

[5] Section 13

Omit the section.

Schedule 7 Savings, transitional and other provisions

(Section 156)

Part 1 Savings and transitional regulations

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done before the date of its publication.

Part 2 Amendments consequent on Threatened Species Conservation Act 1995

2 Dissolution of Scientific Committee

- (1) The Scientific Committee established under section 92A of the *National Parks and Wildlife Act 1974*, as inserted by the *Endangered Fauna (Interim Protection) Act 1991*, is dissolved.
- (2) A person who, immediately before the dissolution of the Scientific Committee referred to in this clause, held office as a member of that Scientific Committee:
 - (a) ceases to hold that office, and
 - (b) is eligible (if otherwise qualified) to be appointed as a member of the Scientific Committee established under this Act.

- (3) A person who so ceases to hold office as a member of the Scientific Committee is not entitled to any remuneration or compensation because of the loss of that office.

3 Extension of certain licences under section 120 of the National Parks and Wildlife Act 1974

- (1) This clause applies to a licence to which section 4 of the *Endangered Fauna (Interim Protection) Amendment Act 1992* applied immediately before the repeal or expiry of that section.
- (2) A licence to which this clause applies continues in force, despite any expiry date specified in the licence, as if no such date had been so specified.
- (3) A licence to which this clause applies may be varied under section 133 of the *National Parks and Wildlife Act 1974*.

4 Certain licences taken to be licences under Part 6

- (1) A licence to which clause 3 refers is taken to be a licence under Part 6 of this Act and is as efficacious, in relation to the action that it authorises, as a licence granted under that Part.
- (2) In particular, a licence to which clause 3 refers is, in relation to the action that it authorises, taken to authorise the harming or picking of threatened species, populations or ecological communities, or the damaging of their habitats (including habitats that are critical habitats).

5 Savings in respect of planning matters

- (1) The amendments made by this Act to the *Environmental Planning and Assessment Act 1979* do not affect:
 - (a) any development consent granted before the commencement of this clause or any development carried out in accordance with such a consent, or

-
- (b) any activity to which Part 5 of that Act applies (or any approval for the carrying out of any such activity) if the provisions of that Part were complied with for that activity before the commencement of this clause.
- (2) If an application for development consent has not been finally determined on the commencement of this clause, the amendments made by this Act to the *Environmental Planning and Assessment Act 1979* do not apply to the determination of the application or to any development carried out in accordance with a development consent granted on the determination of the application. However, the Minister for Planning may, by notice served on the consent authority, direct that all or any specified amendments apply to the determination of the application.
- (3) If, in respect of any activity to which Part 5 of that Act applies (or any approval for carrying out any such activity):
- (a) an environmental impact statement was duly obtained before the commencement of this clause, but the provisions of that Part had not been fully complied with before that commencement, or
 - (b) the Director-General of the Department of Planning had duly notified the person preparing an environmental impact statement before the commencement of this clause of requirements with respect to the form and contents of the statement, but the statement had not been obtained before that commencement,

the statement (so long as it is obtained in accordance with the provisions of that Act as in force immediately before that commencement) is taken to have been obtained in accordance with that Act, as amended by this Act.

- (4) Subclause (3) does not apply to an activity that has not been carried out before the commencement of this clause if the Minister for Planning (by notice served on the person obtaining the statement concerned) so directs.

6 Savings in respect of stop work orders

A stop work order made under section 92E of the National Parks and Wildlife Act 1974 is, if it has any force or effect immediately before the repeal of that section, taken to be a stop work order under Part 6A of that Act, as inserted by this Act.

[Minister's second reading speech made in—
Legislative Assembly on 7 December 1995
Legislative Council on 14 December 1995]

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New South Wales

Threatened Species Conservation Bill 1995 (No 2)

Explanatory note

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

Overview of Bill

The object of this Bill is to provide for the conservation of threatened species, populations and ecological communities of animals and plants.

The Bill provides for:

- the identification, and classification, of the species, populations and ecological communities with which it is concerned, and
- the identification of threatening processes that may threaten the survival of those species, populations and ecological communities.

The Bill also provides for the declaration, and mapping, of habitats that are critical to the survival of those identified threatened species, populations and ecological communities that are classified as endangered.

Provision is made for the preparation of recovery plans for threatened species, populations and ecological communities and threat abatement plans to manage key threatening processes.

Second print



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The Bill also provides for the declaration, and mapping, of habitats that are critical to the survival of those identified threatened species, populations and ecological communities that are classified as endangered.

Provision is made for the preparation of recovery plans for threatened species, populations and ecological communities and threat abatement plans to manage key threatening processes.

Other measures are available to facilitate the appropriate assessment, management and regulation of actions that may damage critical or other habitat or otherwise significantly effect threatened species, populations and ecological communities. The Bill makes provision for licences, stop work orders and joint management agreements while the coverage of interim protection orders and conservation agreements under the *National Parks and Wildlife Act 1974* (the *NPW Act*) (as amended by the Bill) is extended for purposes of the conservation of threatened species, populations and ecological communities, and their habitats.

New offences relating to harming (of threatened species, populations and ecological communities, being animals) and picking (of threatened species, populations and ecological communities, being plants), buying, selling or possessing of threatened species or populations (being animals or plants) and damaging of critical and other habitat are created, and are enforceable under, the *NPW Act*.

These measures are integrated with, and complemented by, amendments made by the Bill to the *Environmental Planning and Assessment Act 1979* (the *EPA Act*). The amendments to the *EPA Act* require (among other things) that:

- critical habitat be identified in environmental planning instruments, and
- consent authorities and determining authorities must, when considering proposed development or an activity (within the meaning of that Act), assess whether it is likely to significantly affect threatened species, populations and ecological communities, or their habitats, and, if a significant effect is likely, to require the preparation of a species impact statement in accordance with the requirements of the Bill, and
- consent authorities and determining authorities must, when considering proposed development or an activity, have regard to relevant recovery plans and threat abatement plans, and
- a regime for concurrence and consultation between consent authorities and determining authorities and the Minister administering the proposed Act or the Director-General of National Parks and Wildlife be instituted to aid the assessment process.

The Bill repeals the *Endangered Fauna (Interim Protection) Act 1991*, makes consequential amendments to certain other Acts and enacts consequential savings, transitional and other provisions.

Outline of provisions

Part 1 Preliminary

Part 1 (**clauses 1–5**) contains provisions that set out the objects of the proposed Act and define terms used in it. Among the expressions defined are *ecological community*, *habitat*, *population* and *threatening process*. The Part also contains machinery provisions, including provisions dealing with the citation and commencement of the proposed Act.

Part 2 Listing of threatened species, populations and ecological communities and key threatening processes

Part 2 (**clauses 6–37**) provides for the identification, and classification, of the species, populations and ecological communities with which the proposed Act is concerned. It also provides for the identification of key threatening processes that are most likely to jeopardise the survival of those species, populations and ecological communities. To this end, this Part provides for the listing:

- in Schedule 1, of endangered species, endangered populations and ecological communities and species that are presumed to be extinct, and
- in Schedule 2, of vulnerable species, and
- in Schedule 3, of key threatening processes.

The initial lists of threatened species, that is, species that are endangered, presumed extinct or vulnerable, are contained in the proposed Act. Responsibility for inserting lists of endangered populations and endangered ecological communities and threatening processes, and for adding items to, omitting items from or amending items in the lists of threatened species, populations and ecological communities and threatening processes rests with the Scientific Committee established by the proposed Act. The Scientific Committee must however refer a proposed determination for listing to the Minister for review.

Division 1 (**clauses 6–9**) makes provision with respect to Schedules 1–3 that are to contain lists of the species, populations and ecological communities and key threatening processes with which the proposed Act is concerned. Provision is made for the identification on those lists of species that are

endangered or vulnerable, and of ecological communities that are endangered, on a national basis (being species or ecological communities that are also listed under the *Endangered Species Protection Act 1992* of the Commonwealth).

Division 2 (**clauses 10–15**) deals with eligibility for listing of species, populations and ecological communities that are endangered, species that are presumed extinct, species that are vulnerable and key threatening processes.

Division 3 (**clauses 16–26**) describes the process by which the items may be added to or omitted from lists and by which items in lists may be amended, and makes provision for public participation in that process.

Division 4 (**clauses 27–37**) describes the process by which species may be listed provisionally in Schedule 1, on an emergency basis, before the formal listing process described in Division 3 has been undertaken or completed, and makes provision for public participation in that process. Only species that are likely to be endangered may be provisionally listed.

Offences relating to the harming of threatened species, populations and ecological communities (being animals), the buying, selling or possessing of threatened species or populations (being animals or plants) and the picking of threatened species, populations and ecological communities (being plants) are contained in the NPW Act.

Part 3 Critical habitat of endangered species, populations and ecological communities

Part 3 (**clauses 38–56**) makes the Director-General of National Parks and Wildlife responsible for identifying (where this is possible) habitat that is critical to the survival of endangered species, populations and ecological communities (that is, those species, populations and ecological communities listed for the time being in Schedule 1) and for recommending to the Minister administering the proposed Act that the habitat so identified be declared critical habitat. The Director-General must consult with the Scientific Committee before preparing a recommendation and must have regard to any advice given by the Scientific Committee concerning identification of critical habitat of endangered populations and ecological communities.

Division 1 (**clauses 38–53**) describes the process by which critical habitat is identified by the Director-General and declared by the Minister and makes provision for public participation in that process.

The Division specifies the land that is eligible for declaration as critical habitat. Notice of a recommendation for identification of an area or areas of land as critical habitat must be given to landholders who are affected by the recommendation, public authorities exercising functions in relation to the land and other specified persons, including mortgagees. Notice must also be published in the press and the Gazette, and any person may make submissions concerning the recommendation. In considering a recommendation, the Minister must have regard (among other matters) to:

- the likely social and economic consequences of a declaration, and
- the likely consequences of a declaration for landholders of, or other persons having an interest in, or on lawful uses of, the land.

If a public authority submits that a recommendation is likely to affect its exercise of functions, the Minister administering the proposed Act is required to consult with the Minister responsible for the public authority before making a decision about the recommendation.

Regulations may be made under, and for the purposes of, the proposed Act to prohibit or restrict the carrying out of specified action, or action of a specified kind, on specified critical habitat.

Division 2 (clauses 54–56) deals with the preparation, publication and other dissemination of maps of critical habitat, and the maintenance of a register of critical habitat by the Director-General. The register is to be open for public inspection, free of charge. The register is also to be made available to public authorities.

An offence relating to the damaging of critical habitat is contained in the NPW Act. That Act also makes it an offence for a person to damage the habitat of a threatened species, population or ecological community.

Part 4 Recovery plans for threatened species, populations and ecological communities

Part 4 (clauses 57–74) is the first of 4 Parts of the proposed Act that address responses to threats to the survival of threatened species, populations and ecological communities, and their habitats. Part 4 deals with recovery plans for threatened species, populations and ecological communities and makes further provision as to the protection of their critical habitats (if any).

The Director-General of National Parks and Wildlife must prepare recovery plans for endangered species (other than species presumed extinct),

populations and ecological communities and may prepare recovery plans for vulnerable species. The object of a recovery plan is to promote the recovery of the threatened species, population or ecological community to which it relates to a position of viability in nature. If critical habitat has been declared for the species, population or ecological community, the plan must include reference to that fact.

Division 1 (**clauses 57–69**) deals with the preparation, contents, publication and adoption of recovery plans.

The Director-General must, in preparing a recovery plan, have regard to the objects of the proposed Act, the likely social and economic consequences of the making of the plan, the most efficient and effective use of available resources for the conservation of threatened species, populations and ecological communities and, consistent with the principles of ecologically sustainable development, minimising any significant adverse social or economic consequences of the making of the plan. The Director-General must also consider the inclusion in a recovery plan of measures to secure public co-operation in the conservation effort.

The Director-General is charged, after consulting with the Scientific Committee, with determining priorities in the preparation of recovery plans, with the highest priority to be given to the preparation of plans for species, populations and ecological communities that are endangered nationally.

Recovery plans must, among other things, identify the persons who are responsible for the implementation of measures included in them. If a public authority is to have this responsibility, the Minister administering the proposed Act must consult with, and obtain the approval of, the Minister responsible for the public authority to inclusion in the plan of the measures to be taken by the public authority before completing preparation of the draft plan.

Notice of the preparation of a draft recovery plan is to be given to affected public authorities and in the press and the Gazette. Any person may make submissions about the draft recovery plan.

The proposed Act provides for the approval of recovery plans by the Minister administering the proposed Act, and for publication of that approval. The Director-General is required to make a copy of a recovery plan available for public inspection, without charge.

Division 2 (**clauses 70–74**) deals with the implementation of recovery plans, and includes procedures for public authorities to report on their implementation of, or on proposed departures from, measures specified to be taken in recovery plans.

A consultative procedure, aimed at resolving difficulties in implementation of recovery plans, is provided.

In accordance with amendments proposed to be made by the proposed Act to the EPA Act, the terms of recovery plans are to be taken into account by consent authorities and determining authorities (within the meaning of that Act) when they are considering development applications under Part 4, or the carrying out, or applications for approval for the carrying out, of activities under Part 5, of that Act.

Part 5 Threat abatement plans to manage key threatening processes

As noted above, Part 2 of the proposed Act (Listing of threatened species, populations and ecological communities and key threatening processes) provides for the identification of key threatening processes by the Scientific Committee. Part 5 (**clauses 75–91**) deals with the preparation, at the discretion of the Director-General of National Parks and Wildlife, and implementation of threat abatement plans. The object of a threat abatement plan is to manage a key threatening process so as to abate, ameliorate or eliminate its adverse affects on threatened species, populations and ecological communities.

Division 1 (**clauses 75–86**) deals with the preparation, contents, publication and adoption of threat abatement plans.

The Director-General must, in preparing a threat abatement plan, have regard to the objects of the proposed Act, the likely social and economic consequences of the making of the plan, the most efficient and effective use of available resources for the conservation of threatened species, populations and ecological communities and, consistent with the principles of ecologically sustainable development, minimising any significant adverse social or economic consequences of the making of the plan. The Director-General must also consider the inclusion in a threat abatement plan of measures to secure public co-operation in the conservation effort.

The Director-General is charged, after consulting with the Scientific Committee, with determining priorities in the preparation of threat abatement plans.

Threat abatement plans must, among other things, identify the persons who are responsible for the implementation of measures included in them. If a public authority is to have this responsibility, the Minister administering the proposed Act must consult with, and obtain the approval of, the Minister responsible for the public authority to inclusion in the plan of the measures to be taken by the public authority before completing preparation of the draft plan.

Notice of the preparation of a draft threat abatement plan is to be given to affected public authorities and in the press and the Gazette. Any person may make submissions about the draft threat abatement plan.

The proposed Act provides for the approval of threat abatement plans by the Minister administering the proposed Act, and for publication of that approval. The Director-General is required to make a copy of a threat abatement plan available for public inspection, without charge.

Division 2 (**clauses 87–91**) deals with the implementation of threat abatement plans, and includes procedures for public authorities to report on their implementation of, or on proposed departures from, measures specified to be taken in threat abatement plans.

A consultative procedure, aimed at resolving difficulties in implementation of threat abatement plans, is provided.

In accordance with amendments proposed to be made by the proposed Act to the EPA Act, the terms of threat abatement plans are to be taken into account by consent authorities and determining authorities (within the meaning of that Act) when they are considering development applications under Part 4, or the carrying out, or applications for approval for the carrying out, of activities under Part 5, of that Act.

Part 6 Licensing

Part 6 (**clauses 92–113**) deals with the licensing by the Director-General of actions that are likely:

- to harm threatened species, populations or ecological communities (in so far as animals are concerned) or to result in the picking of threatened species, populations or ecological communities (in so far as plants are concerned), or
- to damage critical habitat or other habitat of those species, populations or ecological communities.

Harm and *pick* are defined in the NPW Act.

A person does not commit an offence under Part 8A of the NPW Act of harming or picking threatened species, populations or ecological communities or damaging a critical habitat or the habitat of threatened species, populations or ecological communities if the action taken by the person is essential for the carrying out of:

- (a) development in accordance with a development consent within the meaning of the EPA Act, or
- (b) an activity, whether by a determining authority or pursuant to an approval of a determining authority, within the meaning of Part 5 of that Act if the determining authority has complied with that Part.

Accordingly, a licence under the proposed Act is not required for the taking of action that is so authorised under the EPA Act. However, amendments made by the proposed Act to the EPA Act ensure that the same tests are applied (with the involvement of the Minister administering this Act or the Director-General of National Parks and Wildlife) to assess the consequences of development or an activity under that Act before a decision concerning it is made as are applied by the Director-General under the proposed Act in determining whether a licence should be granted under Part 6.

The Part also contains provisions about species impact statements. These statements are employed to measure the significance of the effect of actions on threatened species, populations or ecological communities, or their habitats. A species impact statement must be lodged with an application for a licence under this Part if the Director-General determines that the action proposed is likely to significantly affect threatened species, populations or ecological communities, or their habitats. A similar requirement applies when a development application is lodged, or an activity proposed, under the EPA Act over critical habitat or that is likely to significantly affect threatened species, populations or ecological communities, or their habitats.

Division 1 (**clauses 92–108**) deals with the grant of licences, including the making of applications, fees, determinations as to whether actions proposed will significantly affect threatened species, populations or ecological communities, or their habitats, publication of applications and the making of submissions concerning them, matters that the Director-General must take into account before granting licences, licence conditions, cancellation of licences and appeals.

Specific provision is made as to the matters that the Director-General must take into account when deciding whether an action is likely to have a significant effect on threatened species, populations or ecological communities, or their habitats, and when, accordingly, an applicant should be required to prepare a species impact statement. These matters mirror those contained in proposed section 5A of the EPA Act that consent authorities and determining authorities must apply in determining likely significant effect on threatened species, populations and ecological communities, and their habitats, and whether, therefore, species impact statements should be prepared for the purposes of making appropriate decisions under Parts 4 and 5 of that Act.

Similarly, both this Part and the proposed amendments to the EPA Act, contain complementary provisions dealing with matters that the Director-General must take into account when deciding whether to grant, or to refuse to grant, a licence under the proposed Act and with matters that the Director-General (or the Minister administering the proposed Act, if standing in place of the Director-General) must take into account when acting as a concurrence authority, or consulting with consent authorities or determining authorities or the Minister administering the EPA Act, under that Act in relation to development or activities affecting critical habitat or threatened species, populations or ecological communities, or their habitats.

If the Director-General determines under Part 6 of the proposed Act that there is likely to be a significant effect on threatened species, populations or ecological communities, or their habitats, the Director-General must require the licence applicant to prepare a species impact statement. If the Director-General determines that a significant effect is not likely, no licence under the proposed Act is required and the Director-General must give the applicant a certificate to this effect. However, if the action proposed by the applicant may affect protected fauna or protected native plants (within the meaning of the NPW Act), the applicant may require a licence under that Act before taking the action proposed.

If an action that is likely to affect threatened species, populations or ecological communities, or their habitats as well as protected fauna or protected native plants, a licence granted under the proposed Act may authorise the harming of the protected fauna or the picking of the protected native plants without the necessity for the applicant to apply for, and obtain, a separate licence for this purpose under the NPW Act.

Division 2 (**clauses 109–113**) deals with the form and content of species impact statements and the notification of the Director-General's requirements as to their preparation. It also makes provision for the accreditation of persons to prepare assessments of species impact statements.

Part 7 Other conservation measures

Part 7 (**clauses 114–126**) deals with certain other measures that may be taken to conserve threatened species, populations and ecological communities, and their habitats. These involve the making of stop work orders by the Director-General or the making of joint management agreements between the Director-General and other public authorities to manage or regulate actions on land that may jeopardise the survival of threatened species, populations or ecological communities, or their habitats.

Measures available under the NPW Act, involving the making of interim protection orders by the Minister or the entering into of conservation agreements by the Minister with land owners, may also be employed for the conservation of threatened species, populations or ecological communities, or their habitats (in consequence of the amendment of that Act by the proposed Act).

Division 1 (**clauses 114–120**) deals with the making of stop work orders by the Director-General, appeals, consultations about modification of detrimental action and recommendations for the making of interim protection orders under the NPW Act.

The Director-General may, if of the opinion that action being, or about to be, carried out that is likely to harm threatened species, populations or ecological communities or damage critical or other habitat, order that the action and any other action (other than any action specified in the order) cease in, or in the vicinity of, the habitat concerned for a period of 40 days. An order may be extended for a further period or periods of 40 days. (A reference to action being carried out includes a reference to action that should be, but is not being, carried out.) Power to make a stop work order does not extend to the prevention of action authorised by or under a licence granted under the proposed Act or the NPW Act, the sanction of an appropriate planning determination or under the *Bush Fires Act 1949* or the *State Emergency and Rescue Management Act 1989* if reasonably necessary to avoid a threat to life or property.

No prior notice of the intention to make a stop work order need be given. A person against whom an order is made may appeal to the Minister against the making of the order. The Director-General is also required to consult with the person to ascertain whether any suitable modification of the action is possible.

Division 2 (**clauses 121–126**) deals with the preparation, contents and publication of joint management agreements, and provides for review of joint management agreements, and the performance of parties to them, by the Scientific Committee.

Joint management agreements are agreements entered into by the Director-General with one or more public authorities to manage, control, regulate or restrict an action that is jeopardising the survival of threatened species, populations or ecological communities. Joint management agreements must, among other things, identify the action that is the subject of the agreement, the objective of the agreement, the measures to be adopted to achieve the objective and the parties responsible for implementing the measures.

Part 8 Scientific Committee

Part 8 (**clauses 127–136**) establishes the Scientific Committee as a body corporate, and describes its functions and membership. Provision is made as to procedure of, and the manner of service of documents on, the Scientific Committee. The Part provides that the Scientific Committee is not subject to Ministerial control or direction. However, the Minister administering the proposed Act is responsible for the appointment of the Chairperson and Deputy Chairperson of the Scientific Committee from among its members.

Part 9 Miscellaneous

Part 9 (**clauses 137–151**) makes provision for a number of miscellaneous matters relating to the operation of the Act. These include:

- a statement that the Act binds the Crown
- a requirement for the Director-General to report on the operation of the Act in the Director-General's annual report to Parliament
- a statement that the Act is not intended to affect native title rights and interests

- a provision providing that the Director-General may decline to disclose the location of critical habitat (or proposed critical habitat) other than to specified persons if the Director-General is of the opinion that disclosure would be likely to expose the critical habitat (or proposed critical habitat) to a significant risk and that withholding of the location is in the public interest, and if affected landholders have requested, or are agreeable to, the withholding of the location
- a provision enabling third parties to bring proceedings in the Land and Environment Court for orders remedying or restraining breaches of the Act
- provisions as to the form and service of notices and other documents under the proposed Act
- a provision repealing the *Endangered Fauna (Interim Protection) Act 1991* and certain Acts amending that Act
- a provision concerning review of the operation of the Act as soon as possible after the period of 2 years after the date of assent to the proposed Act.

The Part also authorises the making of regulations, and contains formal provisions giving effect to the Schedules amending other Acts and inserting savings, transitional and other provisions.

Schedule 1 Endangered species, populations and ecological communities

Part 1 lists endangered species.

Part 2 makes provision for the list of endangered populations.

Part 3 makes provision for the list of endangered ecological communities.

Part 4 lists species that are presumed extinct.

Schedule 2 Vulnerable species

Schedule 2 lists vulnerable species.

Schedule 3 Key threatening processes

Schedule 3 makes provision for the list of key threatening processes.

Schedule 4 Amendment of the National Parks and Wildlife Act 1974

Certain of the amendments to this Act have been referred to above.

Various definitions are revised or omitted, and certain new definitions are inserted to accord with definitions contained in the proposed Act. The concept of *take* (in relation to fauna) has been replaced with that of *harm*, this expression being extended to cover threatened species, populations and ecological communities, but does not include harming by the changing of habitat. (Specific offences relating to damage to critical and other habitat are proposed to be included in the Act). A revised definition of *pick* is inserted. Numerous consequential amendments arise because of these changes.

The definition of *endangered fauna* is omitted. A definition of *threatened interstate fauna* is included to cover fauna, to be listed on a revised Schedule 12 to the Act, that is not threatened in New South Wales but is threatened elsewhere in Australia. Various offences relating to threatened interstate fauna (for example, under sections 99, 100, 101 and 103) are created.

Various amendments are made to include references to the proposed Act (and, where appropriate, the *Wilderness Act 1987*) in provisions dealing with the administration of the National Parks and Wildlife Service and similar matters.

A provision dealing with the purpose and contents of conservation agreements (section 69C) is revised so that such agreements may be entered into for the purpose of conserving threatened species, populations and ecological communities, and their habitats.

Provisions dealing with stop work orders (sections 91AA–91FF in Division 1 of Part 6A) are revised to accord with those in the proposed Act. Stop work orders under the NPW Act may now be made only by the Director-General (rather than by either the Minister or the Director-General) but an appeal against an order made by the Director-General may be made to the Minister.

The provisions dealing with the making of interim protection orders (sections 91A–91D in Division 2 of Part 6A) are also revised to accommodate the making of orders in respect of critical habitat and threatened species, populations and ecological communities, and their

habitats. These provisions are also revised by extending, from 12 months to 2 years, the period during which an interim protection order may operate and by permitting the making of more than one order in respect of land owned by the same owner.

Offence provisions relating to fauna (other than new offences arising under the proposed Act) have been revised, among other things, to omit references to endangered fauna and marine mammals and to include references to threatened interstate fauna (see amendments to sections 98–101, 103 and 110–112). The offence of approaching a marine mammal closer than a prescribed distance (previously section 99 (1) (c)) has been relocated as proposed section 112G.

The new offences relating to the harming or picking of threatened species, populations and ecological communities, buying, selling or possessing threatened species or populations and damaging critical habitat and habitat of threatened species, populations and ecological communities are contained in a new Part, Part 8A (proposed sections 118A–118E). Proposed section 118E enables a court, on finding an offence relating to the damaging of habitat proven, to order an accused, in addition to or in substitution for the payment of any pecuniary penalty for the offence, to mitigate the damage or to restore the habitat concerned.

A provision dealing with rights to enter property (section 164) is extended to enable critical habitat to be identified and mapped under the proposed Act, to enable the Director-General (or the Minister, where appropriate) to perform their functions as concurrence authorities or on being consulted for the purposes of planning matters under the EPA Act, and generally to enable compliance with the requirements of the proposed Act.

Amendments are also made concerning proceedings for offences, restraint of breaches of the Act, evidentiary provisions and matters of a savings, transitional and consequential nature.

Schedule 8B (dealing with the procedures and conditions of the Scientific Committee under the Act) has been repealed as it is proposed that that Committee be abolished and replaced by the Scientific Committee established under the proposed Act.

Schedule 12 (Endangered Fauna) is amended by the repeal of all of the lists of endangered species currently included in it. The matter in these lists has been transferred to Schedules 1 and 2 to the proposed Act. Similarly, Schedule 13 (Protected Native Plants) has been amended so as to delete reference to threatened species that are now included on Schedule 1 or 2 to the proposed Act and to appropriately revise its contents.

Schedule 5 Amendment of the Environmental Planning and Assessment Act 1979

Certain of the amendments to this Act have been referred to above.

Certain definitions are provided to accord with those in the proposed Act.

The objects of the EPA Act (section 5) are revised to make it clear that the protection and conservation of threatened species, populations and ecological communities is within the compass of the EPA Act.

Proposed section 5A is inserted (in place of the current section 4A, which is repealed) to set out the test to be applied by consent authorities and determining authorities in determining whether there is likely to be a significant effect on threatened species, populations and ecological communities, and their habitats.

Provisions are included to make it clear that environmental planning instruments may make provision for protection and conservation of native plants and animals, including threatened species, populations and ecological communities, and their habitats, and to require environmental planning instruments to make provision as to critical habitat (proposed section 26 (e1) and (2)).

Proposed section 34A requires the Director of Planning to consult with the Director-General of National Parks and Wildlife before preparing a draft State environmental planning policy, an environmental study or draft regional environmental plan and councils to consult with the Director-General of National Parks and Wildlife before preparing an environmental study or draft local environmental plan if, in either case, critical habitats or threatened species, populations and ecological communities, and their habitats, will or may be affected by the draft policy, environmental study or draft plan.

Requirements for consent authorities and determining authorities to have regard to the register of critical habitat kept by the Director-General of National Parks and Wildlife under the proposed Act are included (proposed sections 76A and 110C).

A requirement is proposed to be inserted requiring provision, with a development application, of a species impact statement prepared in accordance with the proposed Act if the development concerned is on land that is critical habitat or if it is likely to significantly affect threatened

species, populations or ecological communities, or their habitats (proposed section 77 (3) (d1)). (*Species impact statement* is defined, by the proposed Act, to include an environmental impact statement, prepared under the EPA Act, that contains a species impact statement.)

Consent authorities under Part 4 of the Act are required to obtain the concurrence of the Director-General of National Parks and Wildlife to the grant of development consent to development that is on land that is critical habitat or that is likely to significantly affect an endangered species, population or ecological community, or its habitat, and to consult with the Director-General if a vulnerable species, or its habitat, is involved. However, the Minister administering the proposed Act may, if the Minister wishes, act in place of the Director-General of National Parks and Wildlife for the purposes of the concurrence or consultation process. If a Minister is the consent authority, the requirement for the concurrence is replaced with a requirement that the Minister consult with the Minister administering the proposed Act (proposed section 77A).

If the Minister administering the EPA Act considers, in light of the matters referred to in section 101 of the EPA Act, that it is appropriate, the Minister may, in place of the procedure described in proposed section 77A, determine a development application in accordance with section 101 and without the concurrence or consultation envisaged under proposed section 77A. However, in that event, the Minister must consult with the Minister administering the proposed Act if the land concerned is critical habitat or if the development is likely to have a significant effect on an endangered species, population or ecological community, or its habitat (proposed section 77B).

Proposed section 77C sets out the matters that the Director-General of National Parks and Wildlife (or the Minister administering the proposed Act, if acting in place of the Director-General) must consider when acting as a concurrence authority under proposed section 77A. Proposed section 77D sets out the matters that the Director-General of National Parks and Wildlife (or the Minister administering the proposed Act, if acting in place of the Director-General) must consider for the purposes of consultations under proposed section 77A.

Section 90 is amended to require consent authorities, in determining development applications, to take into consideration the following:

- the effect of the development on critical habitat
- whether there is likely to be a significant effect on threatened species, populations or ecological communities, or their habitats

- any relevant recovery plan or threat abatement plan
- the effect of the development on any other protected fauna or protected native plants within the meaning of the NPW Act.

It is proposed that Part 5 of the EPA Act be amended to require determining authorities to take the same matters into account when considering the likely effect of an activity on the environment or, in the case of recovery plans and threat abatement plans, when considering species impact statements (proposed sections 111 (4) and 112A).

A requirement is proposed requiring provision of a species impact statement before a determining authority carries out, or grants approval in relation to the carrying out of, an activity that is on land that is critical habitat or is likely to significantly affect threatened species, populations or ecological communities, or their habitats (proposed section 112 (1B)).

A Minister who is a determining authority under Part 5 is required to consult with the Minister administering the proposed Act before carrying out, or granting an approval for the carrying out of, an activity on land that is critical habitat or that is likely to significantly affect threatened species, populations or ecological communities, or their habitats (proposed section 112B).

Determining authorities (other than Ministers) are required to obtain the concurrence of the Director-General of National Parks and Wildlife before carrying out, or granting an approval for the carrying out of, an activity on land that is critical habitat or that is likely to significantly affect an endangered species, population or ecological community, or is habitat, and to consult with the Director-General if a vulnerable species, or its habitat, is involved. However, the Minister administering the proposed Act may, if the Minister wishes, act in place of the Director-General of National Parks and Wildlife for the purposes of the concurrence or consultation process (proposed section 112C).

Proposed section 112D sets out the matters that the Director-General of National Parks and Wildlife (or the Minister administering the proposed Act, if acting in place of the Director-General) must consider when acting as a concurrence authority, and proposed section 112E sets out the matters that the Minister and the Director-General of National Parks and Wildlife (or the Minister administering the proposed Act, if acting in place of the Director-General) must consider for the purposes of consultations under proposed sections 112B and 112C.

Amendments are also made concerning restraint of breaches of the EPA Act and matters of a savings, transitional and consequential nature.

Schedule 6 Amendment of other Acts and regulations

Consequential amendments are made to various Acts and regulations. Amendments to certain of the Acts are highlighted below.

The *Dividing Fences Act 1991* is amended to provide that no order may be made for the fencing work on land that is critical habitat without the consent of the Director-General of National Parks and Wildlife.

Amendments are made to the *Land and Environment Court Act 1979* to enable that Court to exercise jurisdiction in relation to appeals concerning licences and third party enforcement proceedings under the proposed Act.

The *Local Government Act 1993* is amended by the insertion of a note drawing attention to the obligation of councils to implement those measures contained in recovery plans and threat abatement plans, prepared under the proposed Act, for which councils are responsible.

The *Non-Indigenous Animals Act 1987* is amended to make it clear that that Act does not affect the operation of the proposed Act.

The *Rural Lands Protection Act 1989* is amended, among other matters, to provide that an order to declare a species of insects to be a noxious species under that Act cannot be made without the concurrence of the Director-General of National Parks and Wildlife if the species happens to be a threatened species under the proposed Act.

The *Soil Conservation Act 1938* is amended to provide that the Commissioner of the Soil Conservation Service may prepare maps identifying, as protected land, critical habitat, or land containing threatened species, populations or ecological communities, or their habitats. The Commissioner may also impose conditions on an authority to destroy timber on protected land if the authorised action is likely to have an adverse effect on critical habitat, or land containing threatened species, populations or ecological communities, or their habitats.

The *Timber Industry (Interim Protection) Act 1992* is amended to reflect the changes made by the proposed Act to the regime for dealing with threatened species.

Schedule 7 Savings, transitional and other provisions

Schedule 7 enables the making of regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

Provisions dealing with the dissolution of the Scientific Committee under the NPW Act, the extension of certain licences under section 120 of that Act, the treatment of those licences for the purposes of the proposed Act and savings with respect to planning matters and stop work orders are also inserted.



New South Wales

Threatened Species Conservation Bill 1995 (No 2)

Contents

	Page
Part 1 Preliminary	
1 Name of Act	2
2 Commencement	2
3 Objects of Act	2
4 Definitions	3
5 Notes in text	6
Part 2 Listing of threatened species, populations and ecological communities and key threatening processes	
Division 1 Lists of threatened species, populations and ecological communities and key threatening processes	
6 Schedule 1 list of endangered species, populations and ecological communities	7

Threatened Species Conservation Bill 1995 (No 2)

Contents

	Page
7 Schedule 2 list of vulnerable species	8
8 Schedule 3 list of key threatening processes	8
9 Listing of nationally threatened species and ecological communities	8
Division 2 Eligibility for listing	
10 Species eligible for listing as endangered species	9
11 Populations eligible for listing as endangered populations	9
12 Ecological communities eligible for listing as endangered ecological communities	10
13 Species eligible for listing as species presumed extinct	10
14 Species eligible for listing as vulnerable species	10
15 Threatening processes eligible for listing as key threatening processes	10
Division 3 Procedure for listing	
16 Operation of Division	11
17 Scientific Committee responsible for lists	11
18 Who may initiate action for listing	11
19 Making nomination for inclusion on, omission from or amendment of list	12
20 Scientific Committee may request additional information	12
21 Consideration of nomination by Scientific Committee	12
22 Scientific Committee's preliminary determination	13
23 Scientific Committee to refer proposed final determination to Minister	14
24 Scientific Committee's final determination	14
25 Publication of final determination	15
26 Revision of Schedule on publication of final determination	15
Division 4 Procedure for provisional listing of endangered species on emergency basis	
27 Operation of Division	16
28 Scientific Committee responsible for provisional listing	16
29 Eligibility for provisional listing	16
30 Who may initiate action for provisional listing	16
31 Making nomination for provisional listing	17

Threatened Species Conservation Bill 1995 (No 2)

Contents

	Page
32 Scientific Committee may request additional information	17
33 Consideration of nomination for provisional listing by Scientific Committee	17
34 Publication of determination for provisional listing	18
35 Effect of publication of determination for provisional listing	18
36 Scientific Committee to review status of provisionally listed species	19
37 Termination of provisional listing	19

Part 3 Critical habitat of endangered species, populations and ecological communities

Division 1 Identification and declaration of critical habitat

38 Habitat eligible to be declared to be critical habitat	20
39 Director-General responsible for identifying critical habitat	21
40 Director-General to consult with Scientific Committee	21
41 Preparation of recommendation for identification of critical habitat	21
42 Publication of recommendation	21
43 Consideration of submissions by Director-General	22
44 Director-General to refer recommendation to Minister	23
45 Consideration of recommendation by Minister	23
46 Consultation between Ministers	24
47 Minister may return recommendation to Director-General for amendment	24
48 Declaration of critical habitat by Minister	24
49 Publication of declaration of critical habitat	25
50 Amendment or revocation of declaration of critical habitat	25
51 Public authorities to have regard to critical habitat	26
52 Regulations may prohibit certain actions on critical habitat	26
53 Effect of failure to comply with procedural requirements	27

Contents

	Page
<hr/>	
Division 2 Maps and register of critical habitat	
54 Map of critical habitat to be prepared and published	27
55 Maps of critical habitat to be served on certain public authorities	27
56 Director-General to keep register of critical habitat	28
<hr/>	
Part 4 Recovery plans for threatened species, populations and ecological communities	
<hr/>	
Division 1 Preparation of recovery plans	
57 Director-General to prepare recovery plans	29
58 Guidelines for recovery plans	30
59 Priorities for recovery plans	30
60 Contents of recovery plans	31
61 Consultation between Ministers	32
62 Publication of draft recovery plan	32
63 Consideration of submissions by Director-General	33
64 Director-General to refer draft recovery plan to Minister	33
65 Minister may return draft recovery plan to Director-General for amendment	33
66 Approval of recovery plan by Minister	33
67 Reasons for departure from draft recovery plan to be stated	34
68 Recovery plans to be published	34
69 Review of recovery plans	35
Division 2 Implementation of recovery plans	
70 Ministers and public authorities to implement recovery plans	35
71 Public authorities to report on implementation of recovery plans	35
72 Notification of proposed departures from recovery plan	36
73 Consultations with Director-General concerning proposed departures	36
74 Reference of proposed departures to Ministers and Premier	37

Part 5 Threat abatement plans to manage key threatening processes

Division 1 Preparation of threat abatement plans

75	Director-General may prepare threat abatement plans	38
76	Guidelines for threat abatement plans	38
77	Priorities for threat abatement plans	39
78	Contents of threat abatement plans	39
79	Consultation between Ministers	40
80	Publication of draft threat abatement plan	40
81	Consideration of submissions by Director-General	41
82	Director-General to refer draft threat abatement plan to Minister	41
83	Minister may return draft threat abatement plan to Director-General for amendment	41
84	Approval of threat abatement plan by Minister	42
85	Threat abatement plans to be published	42
86	Review of threat abatement plans	42

Division 2 Implementation of threat abatement plans

87	Ministers and public authorities to implement threat abatement plans	43
88	Public authorities to report on implementation of threat abatement plans	43
89	Notification of proposed departures from threat abatement plan	44
90	Consultations with Director-General concerning proposed departures	44
91	Reference of proposed departures to Ministers and Premier	45

Part 6 Licensing

Division 1 Grant of licences

92	Licence to harm or pick threatened species, population or ecological communities or damage habitat	47
93	Application for licence	47

Threatened Species Conservation Bill 1995 (No 2)

Contents

	Page
94 Payment of licence processing fee	48
95 Significant effect on threatened species, populations or ecological communities, or their habitats	49
96 Determination by Director-General as to significant effect	50
97 Publication of licence application	50
98 Matters that Director-General must take into account	51
99 Director-General may request additional information	51
100 Determination of licence application	51
101 Licence may extend to protected fauna or protected native plants	52
102 Conditions and restrictions to licence	52
103 Notification of licence determination	53
104 Director-General to keep register of licences	53
105 Cancellation of licence	53
106 Appeal by applicant or person commenting on licence application	53
107 Time for appeal, and deemed approval	54
108 Stay of operation of licence pending appeal	54
 Division 2 Species impact statements	
109 Form of species impact statements	54
110 Content of species impact statements	55
111 Director-General's requirements	57
112 Regulations	58
113 Director-General may accredit persons to prepare assessments of species impact statements	58

Part 7 Other conservation measures

Division 1 Stop work orders

114 Director-General may make stop work order	59
115 Prior notification of making of stop work order not required	60
116 Appeal to Minister	61
117 Extension of stop work order	61
118 Consultation about modification of proposed detrimental action	61

Threatened Species Conservation Bill 1995 (No 2)

Contents

	Page
119 Recommendation for making of interim protection order	62
120 Stop work order prevails over other instruments	62
 Division 2 Joint management agreements	
121 Joint management agreements	62
122 Role of Scientific Committee	63
123 Contents of joint management agreements	63
124 Publication of draft joint management agreement	64
125 Consideration of submissions by Director-General	64
126 Amendment of joint management agreement	65

Part 8 Scientific Committee	
127 Establishment of Scientific Committee	66
128 Functions of Scientific Committee	66
129 Members of Scientific Committee	67
130 Provisions relating to members of Scientific Committee	68
131 Chairperson and Deputy Chairperson	69
132 Disclosure of pecuniary interests	69
133 Procedure of Scientific Committee	70
134 Transaction of business outside meeting or by telephone or other means	71
135 Scientific Committee not subject to Ministerial control	72
136 Service of documents on Scientific Committee	72

Part 9 Miscellaneous	
137 Act binds Crown	73
138 Annual report by Director-General on operation of Act	73
139 Relationship of Act to National Parks and Wildlife Act 1974	74
140 Native title rights and interests	74
141 Decision not to disclose location of critical habitat	74
142 Restraint of breaches of Act	75
143 Form of notices	75
144 Service of documents	76

Threatened Species Conservation Bill 1995 (No 2)

Contents

	Page
145 Regulations	76
146 Proceedings for offences	76
147 Amendment of National Parks and Wildlife Act 1974 No 80	76
148 Amendment of Environmental Planning and Assessment Act 1979 No 203	76
149 Amendment of other Acts and regulations	77
150 Repeal of Endangered Fauna (Interim Protection) Act 1991 No 66 and amending Acts	77
151 Savings, transitional and other provisions	77
152 Review of Act	77

Schedules

1 Endangered species, populations and ecological communities	78
2 Vulnerable species	97
3 Key threatening processes	113
4 Amendment of National Parks and Wildlife Act 1974	114
5 Amendment of Environmental Planning and Assessment Act 1979	147
6 Amendment of other Acts and regulations	164
7 Savings, transitional and other provisions	170



New South Wales

Threatened Species Conservation Bill 1995 (No 2)

No , 1995

A Bill for

An Act to conserve threatened species, populations and ecological communities of animals and plants; to amend the *National Parks and Wildlife Act 1974*, the *Environmental Planning and Assessment Act 1979* and certain other Acts; to repeal the *Endangered Fauna (Interim Protection) Act 1991*; and for other purposes.

The Legislature of New South Wales enacts:

Part 1 Preliminary

Introductory note

This Part contains provisions that set out the objects of this Act and define terms used in this Act. The Part also contains machinery provisions.

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1 Name of Act

This Act is the *Threatened Species Conservation Act 1995*.

2 Commencement

(1) This Act commences on a day or days to be appointed by proclamation, except as provided in this section.

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(2) Section 150 (2) commences on the date of assent to this Act.

3 Objects of Act

The objects of this Act are as follows:

(a) to conserve biological diversity and promote ecologically sustainable development, and

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(b) to prevent the extinction and promote the recovery of threatened species, populations and ecological communities, and

(c) to protect the critical habitat of those threatened species, populations and ecological communities that are endangered, and

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(d) to eliminate or manage certain processes that threaten the survival or evolutionary development of threatened species, populations and ecological communities, and

(e) to ensure that the impact of any action affecting threatened species, populations and ecological communities is properly assessed, and

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(f) to encourage the conservation of threatened species, populations and ecological communities by the adoption of measures involving co-operative management.

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4 Definitions

(1) In this Act:

animal means any animal-life that is indigenous to New South Wales or is known to periodically or occasionally migrate to New South Wales, whether vertebrate or invertebrate and in any stage of biological development, but does not include: 5

- (a) humans, or
- (b) fish within the meaning of the *Fisheries Management Act 1994*.

biological diversity means the diversity of life and is made up of the following 3 components: 10

- (a) genetic diversity—the variety of genes (or units of heredity) in any population,
- (b) species diversity—the variety of species,
- (c) ecosystem diversity—the variety of communities or ecosystems. 15

council has the same meaning as in the *Local Government Act 1993*.

critical habitat means habitat declared to be critical habitat under Part 3. 20

Director-General means the Director-General of National Parks and Wildlife appointed under the *National Parks and Wildlife Act 1974*.

ecological community means an assemblage of species occupying a particular area. 25

ecologically sustainable development has the same meaning as under section 6 (2) of the *Protection of the Environment Administration Act 1991*.

endangered ecological community means an ecological community specified in Part 3 of Schedule 1. 30

endangered population means a population specified in Part 2 of Schedule 1.

endangered species means a species specified in Part 1 of Schedule 1.

endangered species, populations and ecological communities means species, populations and ecological communities specified in Schedule 1 and **endangered species, population or ecological community** means a species, population or ecological community respectively specified in that Schedule. 5

exercise a function includes perform a duty.

function includes a power, authority or duty.

habitat means an area or areas occupied, or periodically or occasionally occupied, by a species, population or ecological community and includes any biotic or abiotic component. 10

harm has the same meaning as in the *National Parks and Wildlife Act 1974*.

joint management agreement means an agreement entered into under Division 2 of Part 7. 15

key threatening process means a threatening process specified in Schedule 3.

land includes:

- (a) buildings and other structures permanently fixed to land, and 20
- (b) land covered with water, and
- (c) the sea or an arm of the sea, and
- (d) a bay, inlet, lagoon, lake or body of water, whether inland or not and whether tidal or not, and 25
- (e) a river, stream or watercourse, whether tidal or not.

landholder of land means a person who owns land or who, whether by reason of ownership or otherwise, is in lawful occupation or possession, or has lawful management or control, of land. 30

list means a list set out in Schedule 1, 2 or 3 and includes a list in one or more of those Schedules that does not contain any entries.

pick has the same meaning as in the *National Parks and Wildlife Act 1974*.

plant means any plant-life that is indigenous to New South Wales, whether vascular or non-vascular and in any stage of biological development, and includes fungi and lichens, but does not include marine vegetation within the meaning of the *Fisheries Management Act 1994*. 5

population means a group of organisms, all of the same species, occupying a particular area.

public authority means any public or local authority constituted by or under an Act, a government department, a statutory body representing the Crown, or a State owned corporation, and includes a person exercising any function on behalf of the authority, department, body or corporation and any person prescribed by the regulations to be a public authority. 10 15

recovery plan means a plan prepared and approved under Part 4.

Scientific Committee means the Scientific Committee constituted under Part 8.

species of animal or plant includes any defined sub-species and taxon below a sub-species and any recognisable variant of a sub-species or taxon. 20

species impact statement means a statement referred to in Division 2 of Part 6 and includes an environmental impact statement, prepared under the *Environmental Planning and Assessment Act 1979*, that contains a species impact statement. 25

species presumed extinct means a species specified in Part 4 of Schedule 1.

threat abatement plan means a plan prepared and approved under Part 5.

threatened species means a species specified in Part 1 or 4 of Schedule 1 or in Schedule 2. 30

threatened species, populations and ecological communities means species, populations and ecological communities specified in Schedules 1 and 2 and ***threatened species, population or ecological community*** means a species, population or ecological community specified in either of those Schedules. 35

Clause 4 Threatened Species Conservation Bill 1995 (No 2)

Part 1 Preliminary

threatening process means a process that threatens, or may have the capability to threaten, the survival or evolutionary development of species, populations or ecological communities.

vulnerable species means a species specified in Schedule 2.

- (2) A reference in this Act to animal-life or plant-life indigenous to New South Wales is a reference to animal-life or plant-life of a species that was established in New South Wales before European settlement. 5
- (3) A reference in this Act to New South Wales includes a reference to the coastal waters of the State. 10

Note. *Coastal waters of the State* is defined in section 58 of the Interpretation Act 1987.

5 Notes in text

Introductory notes to Parts and other notes do not form part of this Act. 15

Part 2 Listing of threatened species, populations and ecological communities and key threatening processes

Introductory note

This Part provides for the identification, and classification, of the species, populations and ecological communities with which this Act is concerned. It also provides for the identification of key threatening processes that are most likely to jeopardise the survival of those species, populations and ecological communities. To this end, this Part provides for the listing:

- in Schedule 1, of endangered species, endangered populations and ecological communities and species that are presumed to be extinct, and
- in Schedule 2, of vulnerable species, and
- in Schedule 3, of key threatening processes.

The initial lists of threatened species, that is, species that are endangered, presumed extinct or vulnerable are contained in this Act on its commencement. Responsibility for inserting lists of endangered populations and endangered ecological communities and threatening processes, and for adding items to, omitting items from or amending items in the lists of threatened species, populations and ecological communities and threatening processes rests with the Scientific Committee. The Scientific Committee must however refer a proposed determination for listing to the Minister for review.

Division 1 makes provision with respect to Schedules 1–3 that are to contain lists of the species, populations and ecological communities and key threatening processes with which this Act is concerned.

Division 2 deals with eligibility for listing.

Division 3 describes the process by which the items may be added to or omitted from lists and by which items in lists may be amended, and makes provision for public participation in that process.

Division 4 describes the process by which species that are endangered may be listed provisionally in Schedule 1, on an emergency basis, before the formal listing process described in Division 3 has been undertaken or completed, and makes provision for public participation in that process.

Offences relating to the harming of threatened species, populations and ecological communities (being animals) and the picking of threatened species, populations and ecological communities (being plants) are contained in the *National Parks and Wildlife Act 1974*.

Division 1 Lists of threatened species, populations and ecological communities and key threatening processes

6 Schedule 1 list of endangered species, populations and ecological communities

- (1) Part 1 of Schedule 1 contains a list of endangered species for the purposes of this Act.

Clause 6 Threatened Species Conservation Bill 1995 (No 2)

Part 2 Listing of threatened species, populations and ecological communities and
Division 1 key threatening processes

- (2) Part 2 of Schedule 1 contains a list of endangered populations for the purposes of this Act.
- (3) Part 3 of Schedule 1 contains a list of endangered ecological communities for the purposes of this Act.
- (4) Part 4 of Schedule 1 contains a list of species presumed extinct for the purposes of this Act. 5
- (5) Endangered species or ecological communities listed in Schedule 1 that are also listed in Part 1 of Schedule 1 or in Schedule 2 to the *Endangered Species Protection Act 1992* of the Commonwealth are marked with asterisks to show that they are endangered nationally. 10
- (6) Species presumed extinct listed in Schedule 1 that are also listed in Part 3 of Schedule 1 to the *Endangered Species Protection Act 1992* of the Commonwealth are marked with asterisks to show that they are presumed extinct nationally. 15

7 Schedule 2 list of vulnerable species

- (1) Schedule 2 contains a list of vulnerable species for the purposes of this Act.
- (2) Vulnerable species listed in Schedule 2 that are also listed in Part 2 of Schedule 1 to the *Endangered Species Protection Act 1992* of the Commonwealth are marked with an asterisk to show that they are vulnerable nationally. 20

8 Schedule 3 list of key threatening processes

Schedule 3 contains a list of key threatening processes for the purposes of this Act. 25

9 Listing of nationally threatened species and ecological communities

- (1) As soon as practicable after a species or ecological community that is or was indigenous to New South Wales is inserted in Schedule 1 or 2 to the *Endangered Species Protection Act 1992* of the Commonwealth, the Scientific Committee is to consider whether, in accordance with Divisions 2 and 3, the species or ecological community should be listed as a threatened species or endangered ecological community in Schedule 1 or 2 to this Act. 30

- (2) Any species or ecological community that is inserted in a Schedule pursuant to this section is to be marked with an asterisk to show its national status.
- (3) If a threatened species or endangered ecological community is omitted from Schedule 1 or 2 to the *Endangered Species Protection Act 1992* of the Commonwealth:
 - (a) the Minister is, by order published in the Gazette, to amend Schedule 1 or 2 to this Act to omit the asterisk showing its national status, and
 - (b) the Scientific Committee is to consider, in accordance with Division 3, whether the species or ecological community should be omitted from Schedule 1 or 2 to this Act.

Division 2 Eligibility for listing

10 Species eligible for listing as endangered species

A species is eligible to be listed as an endangered species if, in the opinion of the Scientific Committee:

- (a) it is likely to become extinct in nature in New South Wales unless the circumstances and factors threatening its survival or evolutionary development cease to operate, or
- (b) its numbers have been reduced to such a critical level, or its habitats have been so drastically reduced, that it is in immediate danger of extinction, or
- (c) it might already be extinct, but is not presumed extinct.

11 Populations eligible for listing as endangered populations

A population is eligible to be listed as an endangered population if, in the opinion of the Scientific Committee, its numbers have been reduced to such a critical level, or its habitat has been so drastically reduced, that it is in immediate danger of extinction and it is not a population of a species already listed in Schedule 1, and:

- (a) it is disjunct and at or near the limit of its geographic range, or
- (b) it is or is likely to be genetically distinct, or
- (c) it is otherwise of significant conservation value.

**12 Ecological communities eligible for listing as endangered
ecological communities**

An ecological community is eligible to be listed as an endangered ecological community if, in the opinion of the Scientific Committee:

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- (a) it is likely to become extinct in nature in New South Wales unless the circumstances and factors threatening its survival or evolutionary development cease to operate, or
- (b) it might already be extinct.

13 Species eligible for listing as species presumed extinct

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A species is eligible to be listed as a species that is presumed extinct at a particular time if, to the knowledge of the Scientific Committee, it has not been definitely located in nature during the preceding 50 years despite searching of known and likely habitats during that period.

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14 Species eligible for listing as vulnerable species

A species is eligible to be listed as a vulnerable species if, in the opinion of the Scientific Committee, the species is likely to become endangered unless the circumstances and factors threatening its survival or evolutionary development cease to operate.

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15 Threatening processes eligible for listing as key threatening processes

- (1) A threatening process is eligible to be listed as a key threatening process if, in the opinion of the Scientific Committee, it:
 - (a) adversely affects 2 or more threatened species, populations or ecological communities, or
 - (b) could cause species, populations or ecological communities that are not threatened to become threatened.

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- (2) A threatening process is not to be listed unless the making of a threat abatement plan under Part 5 is an effective and efficient way to abate, ameliorate or eliminate its adverse effects on threatened species, populations or ecological communities.

Division 3 Procedure for listing

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16 Operation of Division

- (1) This Division sets out the procedure to be adopted for the purposes of inserting matter in, omitting matter from or amending matter in Schedule 1, 2 or 3.
- (2) The procedure set out in this Division does not apply to the provisional listing of endangered species, populations or ecological communities, on an emergency basis, by the Scientific Committee under Division 4. 10

17 Scientific Committee responsible for lists

- (1) The Scientific Committee is responsible for determining whether any species, population, ecological community or threatening process should be inserted in or omitted from Schedule 1, 2 or 3 or whether any matter in those Schedules should be amended. 15
- (2) Accordingly, the Scientific Committee must keep the lists in those Schedules under review and must, at least bi-annually, determine whether any changes to the lists are necessary. 20

18 Who may initiate action for listing

- (1) The Scientific Committee may make a determination for the purposes of this Division on its own initiative.
- (2) The Scientific Committee may also make a determination: 25
- (a) following a request by the Minister, or
 - (b) on a nomination, made in accordance with this Division, of any other person.

19 Making nomination for inclusion on, omission from or amendment of list

- (1) Any person may nominate any species, population or ecological community for insertion in or omission from Schedule 1 or 2.
- (2) Any person may nominate any matter in Schedule 1 or 2 for amendment. 5
- (3) Any person may nominate any threatening process for insertion in or omission from Schedule 3.
- (4) Any person may nominate any matter in Schedule 3 for amendment. 10
- (5) A nomination must be in writing addressed to the Chairperson of the Scientific Committee and must include any information prescribed by the regulations.

20 Scientific Committee may request additional information

- The Scientific Committee may request a person who makes a nomination to provide additional information about the subject matter of the nomination within a specified period. 15

21 Consideration of nomination by Scientific Committee

- (1) The Scientific Committee is to consider each nomination as soon as practicable after it is made or, if additional information has been requested, after that information has been provided or the period specified for its provision has expired. 20
- (2) The Scientific Committee may consider different nominations about the same subject together.
- (3) The Scientific Committee may reject a nomination if: 25
 - (a) the subject of the nomination has already been dealt with, or
 - (b) the nomination is vexatious, or
 - (c) the nomination is not accompanied by the information prescribed by the regulations, or 30

- (d) any additional information requested by the Scientific Committee is not provided within the period specified for its provision, or
- (e) any additional information provided is inadequate and does not satisfy the Scientific Committee's request. 5
- (4) If the Scientific Committee rejects a nomination, it is to notify the Minister, the Director-General and the person who made the nomination and is to give reasons for the rejection.

22 Scientific Committee's preliminary determination

- (1) The Scientific Committee, after considering a proposal raised on its own initiative or in response to a request from the Minister or a nomination by another person, must make a preliminary determination as to whether the proposal should be supported or not supported. 10
- (2) As soon as possible after making a preliminary determination, the Scientific Committee must: 15
 - (a) in a case involving a nomination, notify the person who made the nomination, the Minister and the Director-General, and
 - (b) in a case of a proposal raised on its own initiative or in response to a request from the Minister, notify the Minister and the Director-General, and 20
 - (c) publish notice of its preliminary determination and the reasons for it in a newspaper circulating generally throughout the State and, if the determination is likely to affect a particular area or areas (other than the State as a whole), in a newspaper circulating generally in that area or areas, and 25
 - (d) publish notice of the making of the preliminary determination in the Gazette. 30
- (3) The notice must:
 - (a) state that the preliminary determination has been prepared, and
 - (b) specify the address of the place at which copies of the determination may be inspected, and 35

Clause 22 Threatened Species Conservation Bill 1995 (No 2)

Part 2 Listing of threatened species, populations and ecological communities and
Division 3 key threatening processes

- (c) invite persons to make written submissions to the Director-General about the determination, and
 - (d) specify the address of the place to which submissions about the determination may be forwarded and the date by which submissions must be made. 5
- (4) The notice must specify the date by which and the address of the place to which any person may forward written submissions to the Scientific Committee about a preliminary determination.
- (5) The Scientific Committee must consider all written submissions received by it on or before the date specified in the notice. 10

23 Scientific Committee to refer proposed final determination to Minister

- (1) The Scientific Committee must, after considering public submissions but before making a final determination, refer its proposed final determination to the Minister for review. 15
- (2) The Minister may accept the proposed final determination or refer it back to the Scientific Committee for further consideration.
- (3) The Minister may take such advice as the Minister thinks appropriate for the purpose of considering a proposed final determination. 20
- (4) The Minister is to consider a proposed final determination within one month after it is referred to the Minister or within such further time as the Minister notifies to the Scientific Committee is necessary to enable the Minister to obtain advice concerning the proposed final determination. 25

24 Scientific Committee's final determination

- (1) The Scientific Committee must, if the Minister accepts the proposed final determination, either accept (with or without such amendment as may also be acceptable to the Minister), or reject, a proposal for inclusion, or amendment, of matter in or omission of matter from Schedule 1, 2 or 3, and must give reasons for the determination. 30

- (2) In a case involving a nomination, the Scientific Committee must make a determination under this section within 6 months after:
- (a) the making of the nomination, or
 - (b) if additional information has been requested by the Scientific Committee, after that information has been provided or the period specified for its provision has expired.

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25 Publication of final determination

On making a final determination, the Scientific Committee must, as soon as practicable:

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- (a) in a case involving a nomination, notify the person who made the nomination of the determination, and
- (b) notify the Minister and the Director-General of the determination, and
- (c) publish notice of the determination and the reasons for it in a newspaper circulating generally throughout the State and, if the determination is likely to affect a particular area or areas (other than the State as a whole), in a newspaper circulating generally in that area or areas, and
- (d) publish notice of the making of the determination in the Gazette.

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26 Revision of Schedule on publication of final determination

On the publication of a final determination in the Gazette that:

- (a) a species, population, ecological community or threatening process be inserted in Schedule 1, 2 or 3—the relevant Schedule is amended by inserting the species, population, ecological community or threatening process, or
- (b) a species, population, ecological community or threatening process be omitted from Schedule 1, 2 or 3—the relevant Schedule is amended by omitting the species, population, ecological community or threatening process, or
- (c) a species, population, ecological community or threatening process listed in Schedule 1, 2 or 3 be amended—the relevant Schedule is amended by omitting the species,

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Clause 26 Threatened Species Conservation Bill 1995 (No 2)

Part 2 Listing of threatened species, populations and ecological communities and
Division 3 key threatening processes

population, ecological community or threatening process that is set out in the Schedule and by inserting instead a description of the species, population, ecological community or threatening process in the manner required by the determination.

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Division 4 Procedure for provisional listing of endangered species on emergency basis

27 Operation of Division

This Division sets out the procedure to be adopted for the purposes of enabling matter to be provisionally listed in Schedule 1 on an emergency basis.

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Note. Only species that are likely to be endangered may be provisionally listed.

28 Scientific Committee responsible for provisional listing

The Scientific Committee is responsible for determining whether any species should be provisionally listed in Schedule 1 as an endangered species on an emergency basis.

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29 Eligibility for provisional listing

A species is eligible to be provisionally listed in Schedule 1 as an endangered species if, in the opinion of the Scientific Committee:

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(a) the species:

(i) although not previously known to have existed in New South Wales, is believed on current knowledge to be indigenous to New South Wales, or

(ii) was presumed to be extinct in New South Wales but has been rediscovered, and

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(b) the species is not listed in Part 1 of Schedule 1.

30 Who may initiate action for provisional listing

(1) The Scientific Committee may make a determination for the purposes of this Division on its own initiative.

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- (2) The Scientific Committee may also make a determination:
 - (a) following a request by the Minister, or
 - (b) on a nomination, made in accordance with this Division, of any other person.

31 Making nomination for provisional listing 5

- (1) Any person may nominate any species for provisional listing in Schedule 1.
- (2) A nomination must be must be in writing addressed to the Chairperson of the Scientific Committee and must include any information prescribed by the regulations. 10

32 Scientific Committee may request additional information

The Scientific Committee may request a person who makes a nomination for provisional listing to provide additional information about the subject matter of the nomination within a specified period. 15

33 Consideration of nomination for provisional listing by Scientific Committee

- (1) The Scientific Committee is to consider each nomination as soon as practicable after it is made or, if additional information has been requested, after that information has been provided or the period specified for its provision has expired. 20
- (2) In any event, the Scientific Committee must make a determination about a nomination within 6 months after it is made or, if additional information has been requested, after that information has been provided or the period specified for its provision has expired. 25
- (3) The Scientific Committee may consider different nominations about the same subject together.
- (4) The Scientific Committee may reject a nomination if:
 - (a) the subject of the nomination has already been dealt with, 30
or
 - (b) the nomination is vexatious, or

Clause 33 Threatened Species Conservation Bill 1995 (No 2)

Part 2 Listing of threatened species, populations and ecological communities and
Division 4 key threatening processes

- (c) the nomination is not accompanied by the information prescribed by the regulations, or
 - (d) any additional information requested by the Scientific Committee is not provided within the period specified for its provision, or 5
 - (e) any additional information provided is inadequate and does not satisfy the Scientific Committee's request.
- (5) If the Scientific Committee rejects a nomination, it is to notify the Minister, the Director-General and the person who made the nomination and is to give reasons for the rejection. 10

34 Publication of determination for provisional listing

On making a determination for provisional listing, the Scientific Committee must, as soon as practicable:

- (a) in a case involving a nomination, notify the person who made the nomination of the determination, and 15
- (b) notify the Minister and the Director-General of the determination, and
- (c) publish notice of the determination and the reasons for it in a newspaper circulating generally throughout the State and, if the determination is likely to affect a particular area or areas (other than the State as a whole), in a newspaper circulating generally in that area or areas, and 20
- (d) publish notice of the making of the determination in the Gazette.

35 Effect of publication of determination for provisional listing 25

On the publication of the determination that a species be provisionally listed in Schedule 1, Schedule 1 is taken for all purposes to have been amended by the insertion of the description of the species that is the subject of the determination until such time as the provisional listing ceases to have effect in accordance with this Division. 30

36 Scientific Committee to review status of provisionally listed species

- (1) As soon as practicable after the publication of a determination under this Division, the Scientific Committee must review the status of a provisionally listed species, population or ecological community to determine whether or not the species should be listed as a threatened species. 5
- (2) The requirements of sections 22–26 apply to the review of a provisional listing.

37 Termination of provisional listing 10

The provisional listing of a species in Schedule 1 ceases to have effect:

- (a) if the Scientific Committee makes a final determination in accordance with Division 3 that the species should be listed in Schedule 1 or 2—when that determination is published in the Gazette, or 15
- (b) if the Scientific Committee makes a final determination in accordance with Division 3 that the species should not be listed in Schedule 1 or 2—when the Scientific Committee publishes a notice to that effect in the Gazette, or 20
- (c) within 12 months after the provisional listing,

whichever first occurs.

Part 3 Critical habitat of endangered species, populations and ecological communities

Introductory note

This Part makes the Director-General responsible for identifying (where this is possible) habitat that is critical to the survival of endangered species, populations and ecological communities (that is, those species, populations and ecological communities listed for the time being in Schedule 1) and for recommending to the Minister that the habitat so identified be declared critical habitat. The Director-General must consult with the Scientific Committee before preparing a recommendation and must have regard to any advice given by the Scientific Committee concerning identification of critical habitat of endangered populations and ecological communities. 5 10

Division 1 describes the process by which critical habitat is identified by the Director-General and declared by the Minister and makes provision for public participation in that process. 15

Division 2 deals with the preparation, publication and other dissemination of maps of critical habitat, and the maintenance of a register of critical habitat by the Director-General.

An offence relating to the damaging of critical habitat is contained in the *National Parks and Wildlife Act 1974*. That Act also makes it an offence for a person to damage the habitat of a threatened species, population or ecological community. 20

Division 1 Identification and declaration of critical habitat

38 Habitat eligible to be declared to be critical habitat

- (1) The whole or any part or parts of the area or areas of land comprising the habitat of an endangered species, population or ecological community that is critical to the survival of the species, population or ecological community is eligible to be declared under this Part to be the critical habitat of the species, population or ecological community. 25 30
- (2) The regulations may provide that a specified habitat, or habitat of a specified kind, may, or may not, be declared to be critical habitat for the purposes of this Part.

39 Director-General responsible for identifying critical habitat

The Director-General is responsible for identifying (where this is possible) the area or areas of land comprising the critical habitat of each endangered species, population and ecological community.

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40 Director-General to consult with Scientific Committee

- (1) The Director-General must consult with the Scientific Committee before preparing a recommendation for the identification of an area or areas of land comprising critical habitat for the purposes of this Act.
- (2) In particular, the Director-General must consult with the Scientific Committee concerning the identification of the area or areas of land comprising the critical habitat of endangered populations and endangered ecological communities and must have regard to its advice in preparing any recommendation for that purpose.

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41 Preparation of recommendation for identification of critical habitat

- (1) After considering the Scientific Committee's advice, the Director-General must, if the Director-General considers that it is possible to identify the critical habitat of a species, population or ecological community, prepare a recommendation for identification of the area or areas of land comprising the critical habitat of that species, population or ecological community.
- (2) In so doing, the Director-General must consider the likely social and economic consequences of the making of the recommendation in the manner proposed.

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42 Publication of recommendation

- (1) After preparing a recommendation for identification of the area or areas of land comprising the critical habitat of a species, population or ecological community, the Director-General must:
 - (a) give a copy of it to the Scientific Committee, and

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- (b) give notice of the recommendation to all persons known by the Director-General, following the making of reasonable searches and inquiries, to be affected by the recommendation, being:
 - (i) landholders (including public authorities who are landholders), and 5
 - (ii) other public authorities known to the Director-General to exercise relevant functions in relation to the land, and
 - (iii) if the land is subject to a mortgage, charge or positive covenant—the mortgagee, chargee or person entitled to the benefit of the covenant, and 10
- (c) publish notice of the recommendation in a newspaper circulating generally throughout the State and, if the recommendation is likely to affect a particular area or areas (other than the State as a whole), in a newspaper circulating generally in that area or areas, and 15
- (d) publish notice of the recommendation in the Gazette.
- (2) The notice must:
 - (a) state that the recommendation has been prepared, and 20
 - (b) specify the address of the place at which copies of the recommendation may be inspected, and
 - (c) invite persons to make written submissions to the Director-General about the recommendation, and
 - (d) specify the address of the place to which submissions about the recommendation may be forwarded and the date by which submissions must be made. 25

43 Consideration of submissions by Director-General

- (1) The Director-General must consider all written submissions received by the Director-General on or before the date specified in the notice. 30
- (2) The Director-General may amend the recommendation to take account of any of those submissions or any advice given by the Scientific Committee.

44 Director-General to refer recommendation to Minister

After considering the submissions and making amendments (if any) to the recommendation, the Director-General:

- (a) must forward the recommendation, identifying the area or areas of land comprising the critical habitat of the species, population or ecological community concerned, to the Minister, and 5
- (b) must also provide the Minister with a summary of any advice given by the Scientific Committee concerning the matter and of all submissions received about the recommendation, and details of any amendments made to the recommendation by the Director-General to take account of that advice or those submissions. 10

45 Consideration of recommendation by Minister

- (1) On receiving a recommendation from the Director-General, the Minister must consider the recommendation and have regard to the following: 15
 - (a) the likely social and economic consequences of a declaration of critical habitat in the manner indicated in the recommendation, 20
 - (b) without limiting paragraph (a), the likely consequences of a declaration of critical habitat in the manner indicated in the recommendation for landholders of, or other persons having an interest in, or on lawful uses of, the land,
 - (c) the advice of the Scientific Committee concerning the matter, 25
 - (d) any submissions made about the recommendation and, in particular, any submissions received from public authorities exercising relevant functions in relation to the land. 30
- (2) In so doing, the Minister must also consider whether, consistent with the principles of ecologically sustainable development, the recommendation might be amended to avoid or lessen any adverse consequences of the making of a declaration of critical habitat. 35

46 Consultation between Ministers

If a submission from a public authority indicates that a recommendation is likely to affect the exercise of functions by the public authority, the Minister is to consult with the responsible Minister for the public authority concerning the recommendation before making a decision about the recommendation. 5

47 Minister may return recommendation to Director-General for amendment

- (1) If the Minister thinks that a recommendation should be amended in some respect, the Minister may request the Director-General to amend the recommendation. 10
- (2) On receiving such a request, the Director-General must:
- (a) amend the recommendation in the manner requested by the Minister, and 15
 - (b) return the recommendation, as so amended, to the Minister.

48 Declaration of critical habitat by Minister

- (1) The Minister may:
- (a) approve a recommendation, without amendment or with any amendments that the Minister considers appropriate, or 20
 - (b) refuse a recommendation (on the basis of one or more of the factors referred to in section 45 (1) or otherwise), or
 - (c) refer it back to the Director-General for further consideration. 25
- (2) If the Minister approves of a recommendation, with or without amendments, the Minister may, by notification published in the Gazette, declare the area or areas of land identified in the recommendation (with any appropriate amendment) and described in the notification to be the critical habitat of the endangered species, population or ecological community concerned. 30
- (3) Section 54 (2) applies to the publication of a map of the critical habitat.

49 Publication of declaration of critical habitat

As soon as practicable after the declaration of critical habitat by the Minister, the Director-General must:

- (a) give notice of the declaration to all persons known by the Director-General, following the making of reasonable searches and inquiries, to be affected by the declaration, being:
 - (i) landholders (including public authorities who are landholders), and
 - (ii) other public authorities known by the Director-General to exercise relevant functions in relation to the land, and
 - (iii) if the land is subject to a mortgage, charge or positive covenant—the mortgagee, chargee or person entitled to the benefit of the covenant, and
- (b) publish notice of the declaration in a newspaper circulating generally throughout the State and, if the declaration is likely to affect a particular area or areas (other than the State as a whole), in a newspaper circulating generally in that area or areas, and
- (c) publish notice of the declaration in the Gazette.

50 Amendment or revocation of declaration of critical habitat

- (1) The Minister may amend or revoke a declaration of critical habitat by a further notification published in the Gazette. However, the Minister must not revoke a declaration unless the Minister has obtained from, and considered, the advice of the Director-General.
- (2) The Director-General may consult with the Scientific Committee before providing advice about a proposed revocation, and must consult with the Scientific Committee if the proposed revocation relates to the critical habitat of an endangered population or an endangered ecological community.

- (3) If a declaration is amended or revoked by the Minister, the Director-General must:
- (a) give notice of the amendment or revocation to:
 - (i) those persons who were given notice of the making of the declaration and who retain the requisite interest in the land, and 5
 - (ii) any other person known by the Director-General, following the making of reasonable searches and inquiries, to have become a landholder, public authority exercising relevant functions in relation to the land, mortgagee, chargee or person entitled to the benefit of a positive covenant in the land after notice of the making of the declaration was given, and 10
 - (b) publish notice of the amendment or revocation in the Gazette. 15
- (4) A notice under subsection (3) must give the reasons for the amendment or revocation of the declaration.

51 Public authorities to have regard to critical habitat

A public authority must, on and after publication of a declaration of critical habitat (whether or not a map of the critical habitat is published at the same time), have regard to the existence of critical habitat: 20

- (a) in relation to use of land that it owns or controls that is within or contains critical habitat, or 25
- (b) in exercising its functions in relation to land that is within or contains critical habitat.

52 Regulations may prohibit certain actions on critical habitat

The regulations may prohibit or regulate, for the purposes of this Act, the carrying out of specified actions, or actions of a specified class or description, on specified critical habitat. 30

53 Effect of failure to comply with procedural requirements

A declaration of critical habitat is not open to challenge because of a failure to comply with the procedural requirements of this Division after the declaration has been published in the Gazette.

Division 2 Maps and register of critical habitat

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54 Map of critical habitat to be prepared and published

- (1) On or as soon as practicable after the publication of a declaration, or an amendment of a declaration, of critical habitat, the Director-General must arrange for the preparation of a map that shows the location of the critical habitat as so declared or amended. 10
- (2) A copy of the map is to be published in the Gazette on or after the publication of the declaration of the critical habitat.

55 Maps of critical habitat to be served on certain public authorities

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The Director-General must serve a copy of a map of critical habitat on the following:

- (a) the Director-General of the Department of Land and Water Conservation,
- (b) the Director of Planning, 20
- (c) each council within whose area the whole or part of the critical habitat is located,
- (d) the chief executive of any other public authority that:
 - (i) owns or controls land that is within, or includes the whole or part of, the critical habitat, or 25
 - (ii) to the knowledge of the Director-General, exercises relevant functions in relation to such land.

Clause 56 Threatened Species Conservation Bill 1995 (No 2)

Part 3 Critical habitat of endangered species, populations and ecological
Division 2 communities

56 Director-General to keep register of critical habitat

- (1) The Director-General must keep a register containing copies of declarations of critical habitat as in force from time to time, and maps of the critical habitat that are published in the Gazette, and must make that register available to public authorities.
- (2) The register is to be open for public inspection, without charge, during ordinary business hours, and copies of or extracts from the register are to be made available to the public on request, on payment of the fee fixed by the Director-General.

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Part 4 Recovery plans for threatened species, populations and ecological communities

Introductory note

This Part is the first of 4 Parts that address responses to threats to the survival of threatened species, populations and ecological communities, and their habitats. This Part deals with recovery plans for threatened species, populations and ecological communities and makes further provision as to the protection of their critical habitats (if any).

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The Director-General must prepare recovery plans for endangered species (other than species presumed extinct), populations and ecological communities and may prepare recovery plans for vulnerable species. The object of a recovery plan is to promote the recovery of the threatened species, population or ecological community to which it relates to a position of viability in nature. If critical habitat has been declared for the species, population or ecological community, the plan must include reference to that fact.

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Division 1 deals with the preparation, contents, publication and adoption of recovery plans.

Division 2 deals with the implementation of recovery plans, and includes procedures for public authorities to report on their implementation of, or on proposed departures from, measures specified to be taken in recovery plans.

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In accordance with the *Environmental Planning and Assessment Act 1979*, the terms of recovery plans are to be taken into account by consent authorities and determining authorities (within the meaning of that Act) when they are considering development applications under Part 4, or the carrying out, or applications for approval for the carrying out, of activities under Part 5, of that Act.

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Division 1 Preparation of recovery plans

57 Director-General to prepare recovery plans

- (1) The Director-General is required to prepare a recovery plan for each endangered species (other than a species presumed extinct), population and ecological community, as soon as practicable after it is listed in Schedule 1, to promote the recovery of the species, population or ecological community to a position of viability in nature.
- (2) The Director-General may also prepare recovery plans for vulnerable species.

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58 Guidelines for recovery plans

- (1) The Director-General must, in preparing a recovery plan and in deciding which measures to include in it, have regard to the following:
 - (a) the objects of this Act, 5
 - (b) the likely social and economic consequences of the making of the plan,
 - (c) the most efficient and effective use of available resources for the conservation of threatened species, populations and ecological communities, 10
 - (d) the desirability of minimising any significant adverse social and economic consequences.
- (2) The Director-General is to consider, when preparing a recovery plan, any measures by which the public may co-operate in the conservation of a threatened species, population or ecological community. 15

59 Priorities for recovery plans

- (1) The Director-General must, after consulting with the Scientific Committee, determine priorities in the preparation of recovery plans. 20
- (2) The highest priority is to be given to the preparation of recovery plans for species, populations and ecological communities that are identified by asterisks in Schedule 1 as being endangered nationally.
- (3) After complying with subsection (2), priorities in the preparation of recovery plans are to be determined in accordance with the following criteria and any other criteria that the Director-General, after consultation with the Scientific Committee, considers relevant: 25
 - (a) likelihood of extinction—whether the species, population or ecological community has a greater likelihood of extinction than other species, populations or ecological communities, 30

- (b) likelihood of recovery—whether the species, population or ecological community is more likely to recover, if it is the subject of a recovery plan, than other species, populations or ecological communities,
- (c) keystone species—whether many other species are dependant for survival on the species, 5
- (d) indicator species—whether the relative abundance of the species is a measure of the overall health of its ecosystem.

60 Contents of recovery plans

- A recovery plan must: 10
 - (a) identify the threatened species, population or ecological community to which it applies, and
 - (b) identify any critical habitat declared in relation to the threatened species, population or ecological community, and 15
 - (c) identify any threatening process or processes threatening the threatened species, population or ecological community, and
 - (d) identify methods by which adverse social and economic consequences of the making of the plan can be minimised, and 20
 - (e) state what must be done to ensure the recovery of the threatened species, population or ecological community, and
 - (f) state what must be done to protect the critical habitat (if any) identified in the plan, and 25
 - (g) state, with reference to the objects of this Act:
 - (i) the way in which those objects are to be implemented or promoted for the benefit of the threatened species, population or ecological community, and 30
 - (ii) the method by which progress towards achieving those objects is to be assessed, and
 - (h) identify the persons or public authorities who are responsible for the implementation of the measures included in the plan, and 35
 - (i) state the date by which the recovery plan should be subject to review by the Director-General.

61 Consultation between Ministers

- (1) The Minister must, if the Director-General informs the Minister that the Director-General considers that a public authority should be responsible for the implementation of a measure to be included in a recovery plan, consult with the Minister responsible for the public authority before completing the preparation of the draft recovery plan. 5
- (2) A measure must not be included in a recovery plan for implementation by a public authority unless the Minister responsible for the public authority approves of the inclusion of the measure. 10

62 Publication of draft recovery plan

- (1) As soon as practicable after preparing a draft recovery plan, the Director-General must:
- (a) give a copy of the draft recovery plan to the Scientific Committee, and 15
 - (b) give notice of the preparation of the draft recovery plan to any public authority that the Director-General knows is likely to be affected by the recovery plan, and
 - (c) publish notice of the preparation of the draft recovery plan in a newspaper circulating generally throughout the State and, if the recovery plan is likely to affect a particular area or areas (other than the State as a whole), in a newspaper circulating generally in that area or areas, and 20
 - (d) publish notice of the preparation of the draft recovery plan in the Gazette. 25
- (2) The notice must:
- (a) state that the draft recovery plan has been prepared, and
 - (b) specify the address of the place at which copies of the draft recovery plan may be inspected, and 30
 - (c) invite persons to make written submissions to the Director-General about the draft recovery plan, and
 - (d) specify the address of the place to which submissions about the draft recovery plan may be forwarded and the date by which submissions must be made. 35

63 Consideration of submissions by Director-General

- (1) The Director-General must consider all written submissions received by the Director-General on or before the date specified in the notice.
- (2) The Director-General may amend the draft recovery plan to take account of those submissions or any advice given by the Scientific Committee.

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64 Director-General to refer draft recovery plan to Minister

After considering the submissions and making amendments (if any) to the draft recovery plan, the Director-General must:

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- (a) forward the draft recovery plan to the Minister, and
- (b) provide the Minister with a summary of any advice given by the Scientific Committee and of all submissions received about the draft recovery plan, and details of any amendments made to the draft recovery plan by the Director-General to take account of that advice or those submissions.

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65 Minister may return draft recovery plan to Director-General for amendment

- (1) If the Minister thinks that a draft recovery plan should be amended in some respect, the Minister may request the Director-General to amend the plan.
- (2) On receiving such a request, the Director-General must:
 - (a) amend the proposal in the manner requested by the Minister, and
 - (b) return the plan, as so amended, to the Minister.

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66 Approval of recovery plan by Minister

- (1) In considering whether to approve or to refuse to approve a draft recovery plan, the Minister must have regard to the likely social and economic consequences of the approval of the plan.

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- (2) The Minister may:
- (a) approve a draft recovery plan without amendment or with any amendments that the Minister considers appropriate, or
 - (b) refuse to approve the plan (on the basis of the likely social or economic consequences of the plan or otherwise), or 5
 - (c) refer it back to the Director-General for further consideration.

67 Reasons for departure from draft recovery plan to be stated

If a recovery plan approved by the Minister is not in the form of the draft recovery plan submitted to the Minister by the Director-General, the recovery plan approved must state the reasons for any departures from the draft plan. 10

68 Recovery plans to be published

- (1) As soon as practicable after the Minister approves a draft recovery plan, the Director-General must: 15
- (a) give a copy of the recovery plan to the Scientific Committee, and
 - (b) publish notice of the approval of the plan in a newspaper circulating generally throughout the State and, if the recovery plan is likely to affect a particular area or areas (other than the State as a whole), in a newspaper circulating generally in that area or areas, and 20
 - (c) notify any public authority likely to be affected by the plan, and 25
 - (d) publish notice of the approval of the plan in the Gazette.
- (2) The Director-General must also make a copy of the recovery plan available for public inspection, without charge, during business hours and copies of or extracts from the recovery plan are to be made available to the public on request, on payment of the fee fixed by the Director-General. 30

69 Review of recovery plans

- (1) The Director-General is required to keep each recovery plan under review and, if a date by which a plan is to be reviewed is stated in it, is to review the plan by that date.
- (2) The Director-General is also to consider any submissions about recovery plans received from public authorities or the public. 5
- (3) If the Director-General considers that any change (other than a minor change) should be made to a recovery plan, the Director-General is to prepare a new plan in accordance with this Part. 10

Division 2 Implementation of recovery plans**70 Ministers and public authorities to implement recovery plans**

- (1) Ministers and public authorities (including the Director-General) are to take any appropriate action available to them to implement those measures included in a recovery plan for which they are responsible and must not make decisions that are inconsistent with the provisions of a recovery plan. 15
- (2) If the implementation of a recovery plan affects a statutory discretion of a Minister or public authority, this section does not operate to exclude the discretion, but the Minister or authority must take the recovery plan into account. 20
- (3) This section does not operate to require or authorise any action by a Minister or public authority that is inconsistent with any statutory or other legal obligation of the Minister or public authority. 25

71 Public authorities to report on implementation of recovery plans

- (1) A public authority (including the Director-General but not including a council) identified in a recovery plan as responsible for the implementation of measures included in the plan must report on action taken by it to implement those measures in its annual report to Parliament. 30

- (2) A council identified in a recovery plan as responsible for the implementation of measures included in the plan must report on action taken by it to implement those measures in its annual report as to the state of the environment of its area.

72 Notification of proposed departures from recovery plan 5

- (1) A public authority must not exercise a function (other than the exercise of a discretion of a kind referred to in section 70 (2)) in a manner that is inconsistent with the implementation of measures included in a recovery plan unless:
- (a) in the case of a public authority other than the Director-General—it has given written notice of the proposed exercise of the function to the Director-General, or 10
- (b) in the case of the Director-General—the Director-General has given written notice of the proposed exercise of the function to the Minister. 15
- (2) The Director-General must comply with any directions given by the Minister concerning a proposed departure from a recovery plan.
- (3) This section does not apply in relation to anything authorised to be done by or under the *Bush Fires Act 1949* or the *State Emergency and Rescue Management Act 1989* that is reasonably necessary in order to avoid a threat to life or property. 20

73 Consultations with Director-General concerning proposed departures 25

- (1) The Director-General must, on receiving notice of a proposed departure from a recovery plan from a public authority, determine whether exercise of the function in the manner proposed is acceptable or whether it is likely to jeopardise the effective implementation of the plan. 30
- (2) If the Director-General considers that the departure is acceptable, the Director-General must notify the public authority accordingly.

- (3) If the Director-General considers that the departure is unacceptable because it is likely to jeopardise the effective implementation of the recovery plan, the Director-General must consult with the public authority in an endeavour to resolve the matter by modification of the action proposed or by other mutually acceptable means. 5

74 Reference of proposed departures to Ministers and Premier

- (1) A matter that has not been resolved after consultation between the Director-General and the public authority concerned must be referred by the parties to their respective Ministers. 10
- (2) In the case of a council, the reference is to the Minister administering the *Local Government Act 1993* unless the matter relates, in whole or in part, to the exercise of functions under the *Environmental Planning and Assessment Act 1979*. In that event, the reference is to be to the Minister administering the *Environmental Planning and Assessment Act 1979*. 15
- (3) The Ministers, on receiving a reference, are to consult in an endeavour to resolve the matter by means that the Ministers consider to be appropriate.
- (4) If the Ministers are unable to resolve the matter after consultation, it is to be referred to the Premier for resolution. 20
- (5) A public authority (including the Director-General) must give effect to any decision of, or directions made or given by, the Premier on the matter and is, despite the requirements of any other Act or law, empowered to comply with any such decision or directions. 25

Part 5 Threat abatement plans to manage key threatening processes

Introductory note

Part 2 provides for the identification of key threatening processes by the Scientific Committee. This Part deals with the preparation, at the discretion of the Director-General, and implementation of threat abatement plans to manage key threatening processes with a view to their abatement, amelioration or elimination. 5

Division 1 deals with the preparation, contents, publication and adoption of threat abatement plans. 10

Division 2 deals with the implementation of threat abatement plans, and includes procedures for public authorities to report on their implementation of, or on proposed departures from, measures specified to be taken in threat abatement plans.

In accordance with the *Environmental Planning and Assessment Act 1979*, the terms of threat abatement plans are to be taken into account by consent authorities and determining authorities (within the meaning of that Act) when they are considering development applications under Part 4, or the carrying out, or applications for approval for the carrying out, of activities under Part 5, of that Act. 15
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Division 1 Preparation of threat abatement plans

75 Director-General may prepare threat abatement plans

The Director-General may prepare a threat abatement plan for each key threatening process to manage the threatening process so as to abate, ameliorate or eliminate its adverse effects on threatened species, populations or ecological communities. 25

76 Guidelines for threat abatement plans

- (1) The Director-General must, in preparing threat abatement plans and in deciding which measures to include in those plans, have regard to the following: 30
- (a) the objects of this Act,
 - (b) the likely social and economic consequences of the making of the plan,

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- (c) the most efficient and effective use of available resources for the conservation of threatened species, populations and ecological communities,
 - (d) the desirability of minimising any significant adverse social and economic consequences. 5
- (2) The Director-General is to consider, when preparing a threat abatement plan, any measures by which the public may co-operate in the abatement, amelioration or elimination of the adverse effects of key threatening processes on the prospects of survival of threatened species, populations or ecological communities and their recovery to a position of viability in nature. 10

77 Priorities for threat abatement plans

The Director-General must, after consulting with the Scientific Committee, determine priorities in the preparation of threat abatement plans. 15

78 Contents of threat abatement plans

A threat abatement plan must:

- (a) state the criteria for assessing the achievement of the objective, and 20
- (b) identify the actions needed to abate, ameliorate or eliminate the effects of the key threatening process, and
- (c) identify the persons or public authorities who are responsible for the implementation of the measures included in the plan, and 25
- (d) where practicable, provide a proposed timetable for the implementation of the plan, and
- (e) state the estimated cost of the measures included in the plan, and
- (f) state the date by which the plan should be subject to review by the Director-General, and 30
- (g) include any other matter relating to the impact of the plan as the Director-General considers appropriate.

79 Consultation between Ministers

- (1) The Minister must, if the Director-General informs the Minister that the Director-General considers that a public authority should be responsible for the implementation of a measure to be included in a threat abatement plan, consult with the Minister responsible for the public authority before completing the preparation of the draft threat abatement plan. 5
- (2) A measure must not be included in a threat abatement plan for implementation by a public authority unless the Minister responsible for the public authority approves of the inclusion of the measure. 10

80 Publication of draft threat abatement plan

- (1) As soon as practicable after preparing a draft threat abatement plan, the Director-General must:
 - (a) give a copy of the draft threat abatement plan to the Scientific Committee, and 15
 - (b) give notice of the preparation of the draft threat abatement plan to any public authority that the Director-General knows is likely to be affected by the threat abatement plan, and 20
 - (c) publish notice of the preparation of the draft threat abatement plan in a newspaper circulating generally throughout the State and, if the threat abatement plan is likely to affect a particular area or areas (other than the State as a whole), in a newspaper circulating generally in that area or areas, and 25
 - (d) publish notice of the preparation of the draft threat abatement plan in the Gazette.
- (2) The notice must:
 - (a) state that the draft threat abatement plan has been prepared, and 30
 - (b) specify the address of the place at which copies of the draft threat abatement plan may be inspected, and
 - (c) invite persons to make written submissions to the Director-General about the draft threat abatement plan, and 35

- (d) specify the address of the place to which submissions about the draft threat abatement plan may be forwarded and the date by which submissions must be made.

81 Consideration of submissions by Director-General

- (1) The Director-General must consider all written submissions received by the Director-General on or before the date specified in the notice. 5
- (2) The Director-General may amend the draft threat abatement plan to take into account any of those submissions or any advice given by the Scientific Committee. 10

82 Director-General to refer draft threat abatement plan to Minister

After considering the submissions and making amendments (if any) to the draft threat abatement plan, the Director-General must:

- (a) forward the draft threat abatement plan to the Minister, and 15
- (b) provide the Minister with a summary of any advice given by the Scientific Committee and of all submissions received about the draft threat abatement plan, and details of any amendments made to the draft threat abatement plan by the Director-General to take account of that advice or those submissions. 20

83 Minister may return draft threat abatement plan to Director-General for amendment

- (1) If the Minister thinks that a draft threat abatement plan should be amended in some respect, the Minister may request the Director-General to amend the plan. 25
- (2) On receiving such a request, the Director-General must:
- (a) amend the plan in the manner requested by the Minister, and
- (b) return the plan, as so amended, to the Minister. 30

84 Approval of threat abatement plan by Minister

- (1) In considering whether to approve or to refuse to approve a draft threat abatement plan, the Minister must have regard to the likely social and economic consequences of the approval of the plan.
- (2) The Minister may: 5
 - (a) approve a threat abatement plan without amendment or with any amendments that the Minister considers appropriate, or
 - (b) refuse to approve the plan (on the basis of the likely social or economic consequences of the plan or otherwise), or 10
 - (c) refer it back to the Director-General for further consideration.

85 Threat abatement plans to be published

- (1) As soon as practicable after the Minister approves a threat abatement plan, the Director-General must: 15
 - (a) give a copy of the threat abatement plan to the Scientific Committee, and
 - (b) publish notice of the approval of the plan in a newspaper circulating generally throughout the State and, if the threat abatement plan is likely to affect a particular area or areas 20 (other than the State as a whole), in a newspaper circulating generally in that area or areas, and
 - (c) notify any public authority that the Director-General knows is likely to be affected by the plan, and
 - (d) publish notice of the approval of the plan in the Gazette. 25
- (2) The Director-General must also make a copy of the threat abatement plan available for public inspection, without charge, during ordinary business hours and copies of or extracts from the threat abatement plan are to be made available to the public on request, on payment of the fee fixed by the Director-General. 30

86 Review of threat abatement plans

- (1) The Director-General is required to keep each threat abatement plan under review and, if a date by which a plan is to be reviewed is stated in it, is to review the plan by that date.

- (2) The Director-General is also to consider any submissions about threat abatement plans received from public authorities or the public.
- (3) If the Director-General considers that any change (other than a minor change) should be made to a threat abatement plan, the Director-General is to prepare a new plan in accordance with this Part.

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Division 2 Implementation of threat abatement plans

87 Ministers and public authorities to implement threat abatement plans

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- (1) Ministers and public authorities (including the Director-General) are to take any appropriate action available to them to implement those measures included in a threat abatement plan for which they are responsible and must not make decisions that are inconsistent with the provisions of a threat abatement plan.
- (2) If the implementation of a threat abatement plan affects a statutory discretion of a Minister or public authority, this section does not operate to exclude the discretion, but the Minister or authority must take the plan into account.
- (3) This section does not operate to require or authorise any action by a Minister or public authority that is inconsistent with any statutory or other legal obligation of the Minister or public authority.

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88 Public authorities to report on implementation of threat abatement plans

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- (1) A public authority (including the Director-General but not including a council) identified in a threat abatement plan as responsible for the implementation of measures included in the plan must report on action taken by it to implement those measures in its annual report to Parliament.
- (2) A council identified in a threat abatement plan as responsible for the implementation of measures included in the plan must report on action taken by it to implement those measures in its annual report as to the state of the environment of its area.

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89 Notification of proposed departures from threat abatement plan

- (1) A public authority must not exercise a function (other than the exercise of a discretion of a kind referred to in section 86 (2)) in a manner that is inconsistent with the implementation of measures included in a threat abatement plan unless: 5
- (a) in the case of a public authority other than the Director-General—it has given written notice of the proposed exercise of the function to the Director-General, or
- (b) in the case of the Director-General—the Director-General has given written notice of the proposed exercise of the function to the Minister. 10
- (2) The Director-General must comply with any directions given by the Minister concerning a proposed departure from a threat abatement plan. 15
- (3) This section does not apply in relation to anything authorised to be done by or under the *Bush Fires Act 1949* or the *State Emergency and Rescue Management Act 1989* that is reasonably necessary in order to avoid a threat to life or property.

90 Consultations with Director-General concerning proposed departures 20

- (1) The Director-General must, on receiving notice of a proposed departure from a threat abatement plan from a public authority, determine whether exercise of the function in the manner proposed is acceptable or whether it is likely to jeopardise the effective implementation of the plan. 25
- (2) If the Director-General considers that the departure is acceptable, the Director-General must notify the public authority accordingly.
- (3) If the Director-General considers that the departure is unacceptable because it is likely to jeopardise the effective implementation of the threat abatement plan, the Director-General must consult with the public authority in an endeavour to resolve the matter by modification of the action proposed or by other mutually acceptable means. 30 35

91 Reference of proposed departures to Ministers and Premier

- (1) A matter that has not been resolved after consultation between the Director-General and the public authority concerned must be referred by the parties to their respective Ministers.
- (2) In the case of a council, the reference is to the Minister administering the *Local Government Act 1993* unless the matter relates, in whole or in part, to the exercise of functions under the *Environmental Planning and Assessment Act 1979*. In that event, the reference is to be to the Minister administering the *Environmental Planning and Assessment Act 1979*. 5
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- (3) The Ministers, on receiving a reference, are to consult in an endeavour to resolve the matter by means that the Ministers consider to be appropriate.
- (4) If the Ministers are unable to resolve the matter after consultation, it is to be referred to the Premier for resolution. 15
- (5) A public authority (including the Director-General) must give effect to any decision of, or directions made or given by, the Premier on the matter and is, despite the requirements of any other Act or law, empowered to comply with any such decision or directions. 20

Part 6 Licensing

Introductory note

This Part deals with the licensing by the Director-General of actions that are likely:

- to harm threatened species, populations or ecological communities (in so far as animals are concerned) or to result in the picking of threatened species, populations or ecological communities (in so far as plants are concerned), or 5
- to damage critical habitat or other habitat of those species, populations or ecological communities. 10

Harm and **pick** are defined in the *National Parks and Wildlife Act 1974*.

A person does not commit an offence under Part 8A of the *National Parks and Wildlife Act 1974* of harming or picking threatened species, populations or ecological communities or damaging a critical habitat or the habitat of threatened species, populations or ecological communities if the action taken by the person is essential for the carrying out of: 15

- (a) development in accordance with a development consent within the meaning of the *Environmental Planning and Assessment Act 1979*, or
- (b) an activity, whether by a determining authority or pursuant to an approval of a determining authority, within the meaning of Part 5 of that Act if the determining authority has complied with that Part. 20

Accordingly, a licence under this Act is not required for the taking of action that is so authorised under the *Environmental Planning and Assessment Act 1979*. However, the same tests are applied (with the involvement of the Minister administering this Act or the Director-General of National Parks and Wildlife) to assess the consequences of a development or an activity under that Act before a decision is made concerning it as are applied by the Director-General in determining whether a licence should be granted under this Part. 25

The Part also contains provisions about species impact statements. These statements are employed to measure the significance of the effect of actions on threatened species, populations or ecological communities, or their habitats. A species impact statement must be lodged with an application for a licence under this Part if the Director-General determines that the action proposed is likely to significantly affect threatened species, populations or ecological communities, or their habitats. A similar requirement applies when a development application is lodged, or an activity proposed, under the *Environmental Planning and Assessment Act 1979* over critical habitat or that is likely to significantly affect threatened species, populations or ecological communities, or their habitats. 30 35 40

Division 1 deals with the grant of licences, including the making of applications, fees, determinations as to whether actions proposed will significantly affect threatened species, populations or ecological

communities, publication of applications and the making of submissions concerning them, and matters that the Director-General must take into account before granting licences and appeals.

Division 2 deals with the form and content of species impact statements and the notification of the Director-General's requirements as to their preparation. It also makes provision for the accreditation of persons to prepare assessments of species impact statements.

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Division 1 Grant of licences

92 Licence to harm or pick threatened species, population or ecological communities or damage habitat 10

- (1) The Director-General may grant a licence authorising a person to take action that is likely to result in one or more of the following:
 - (a) harm to a threatened species, population or ecological community (so far as animals are concerned),
 - (b) picking of a threatened species, population or ecological community (so far as plants are concerned), 15
 - (c) damage to a critical habitat,
 - (d) damage to a habitat of a threatened species, population or ecological community.
- (2) A general licence under section 120 of the *National Parks and Wildlife Act 1974* may only be issued for a purpose referred to in subsection (1):
 - (a) for scientific purposes, or
 - (b) for the welfare of an animal, or
 - (c) if there is a threat to life or property. 25

93 Application for licence

- (1) An application for a licence must be in a form approved, and be accompanied by an application fee of the amount prescribed, by the Director-General.
- (2) If the action proposed to be taken under the authority of the licence is on land that is critical habitat, the application must be accompanied by a species impact statement prepared in accordance with Division 2. 30

- (3) If the action proposed is not on land that is critical habitat, the application must include the following:
- (a) details of the types, and condition, of habitats in and adjacent to the land to be affected by the action,
 - (b) particulars of any known records of a threatened species in the same or similar known habitats in the locality, 5
 - (c) details of any known or potential habitat for a threatened species on the land to be affected by the action,
 - (d) details of the amount of such habitat to be affected by the action proposed in relation to the known distribution of the species and its habitat in the locality and region, 10
 - (e) an assessment of the likely nature and intensity of the effect of the action on the life cycle and habitat of the species,
 - (f) details of possible measures to avoid or ameliorate the effect of the action. 15
- (4) An applicant may lodge a species impact statement with an application even if the action proposed is not on land that is critical habitat. In that event, the application need not include the information referred to in subsection (3). 20

94 Payment of licence processing fee

- (1) The Director-General is to levy a processing fee, being not more than the costs (including on-costs) incurred by the National Parks and Wildlife Service in the assessment and processing of a licence application (whether or not the application is successful). 25
- (2) The fee is recoverable by the Director-General as a debt due to the Crown in a court of competent jurisdiction.
- (3) The Director-General may, before dealing with an application, require the applicant to pay an amount not exceeding one-half of the estimated processing fee. 30
- (4) The Director-General may reduce the amount of a processing fee levied for any licence application having regard to the following:
 - (a) the extent of scientific examination necessary for the processing of the application,

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- (b) the adequacy of any species impact statement or environmental impact statement that includes a species impact component supplied by the applicant,
 - (c) the capacity of the applicant or persons with whom the applicant is associated to meet the fee levies, 5
 - (d) whether and to what extent the activity sought to be licensed may confer a commercial benefit on the applicant if the licence is granted.

95 Significant effect on threatened species, populations or ecological communities, or their habitats

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- (1) If the action proposed to be taken by the applicant is not on land that is critical habitat and the application is not accompanied by a species impact statement, the Director-General must determine whether the action proposed is likely to significantly affect threatened species, populations or ecological communities, or their habitats. 15
- (2) For that purpose, the Director-General must take into account the following:
 - (a) in the case of a threatened species, whether the life cycle of the species is likely to be disrupted such that a viable local population of the species is likely to be placed at risk of extinction, 20
 - (b) in the case of an endangered population, whether the life cycle of the species that constitutes the endangered population is likely to be disrupted such that the viability of the population is likely to be significantly compromised, 25
 - (c) in relation to the regional distribution of the habitat of a threatened species, population or ecological community, whether a significant area of known habitat is to be modified or removed, 30
 - (d) whether an area of known habitat is likely to become isolated from currently interconnecting or proximate areas of habitat for a threatened species, population or ecological community,
 - (e) whether critical habitat will be affected, 35

- (f) whether a threatened species, population or ecological community, or their habitats, are adequately represented in conservation reserves (or other similar protected areas) in the regional environment of the species, population or ecological community, 5
- (g) whether the action proposed is of a class of action that is recognised as a threatening process,
- (h) whether any threatened species or ecological community is at the limit of its known distribution.

96 Determination by Director-General as to significant effect 10

- (1) If the Director-General determines that an action proposed by an applicant for a licence is likely to significantly affect threatened species, populations or ecological communities, or their habitats, the Director-General must notify the applicant that, if the application is to proceed, a species impact statement prepared in accordance with Division 2 must be provided. 15
- (2) If the Director-General determines that an action proposed is not likely to significantly affect threatened species, populations or ecological communities, or their habitats, a licence under this Act is not required and the Director-General must, as soon as practicable after making the determination, issue to the applicant a certificate to that effect. 20

Note. An action that is not required to be licensed under this Act may however be required to be licensed under the *National Parks and Wildlife Act 1974* if it is likely to affect protected fauna or protected native plants or may otherwise constitute an offence under that Act. 25

97 Publication of licence application

On the receipt of a licence application accompanied by a species impact statement or a species impact statement provided in response to a notification from the Director-General that a statement is required, the Director-General must cause to be placed in a newspaper circulating throughout the State a notice: 30

- (a) outlining the nature of the application, and
- (b) specifying the address of the place at which copies of the species impact statement may be inspected or purchased, and 35

- (c) inviting written submissions within a period of not less than 28 days after the date of the notice.

98 Matters that Director-General must take into account

- (1) In considering whether to grant or to refuse to grant a licence application, the Director-General must take into account the following: 5
- (a) any species impact statement,
 - (b) any written submissions received concerning the application within the period, and at the address for submissions, specified in the notice, 10
 - (c) the factors specified in sections 10–15,
 - (d) any relevant recovery plan or threat abatement plan,
 - (e) the principles of ecologically sustainable development,
 - (f) whether the action proposed is likely to irretrievably reduce the long-term viability of the species, population or ecological community in the region, 15
 - (g) whether the action proposed is likely to accelerate the extinction of the species or ecological community or place it at risk of extinction.
- (2) The Director-General must also consider the likely social and economic consequences of granting or refusing to grant a licence application. 20

99 Director-General may request additional information

The Director-General may request the applicant to provide additional information in support of an application for a licence. 25

100 Determination of licence application

- (1) After considering an application for a licence and accompanying material, the Director-General may:
- (a) grant the application, unconditionally or subject to conditions or restrictions, or 30
 - (b) refuse the application.

- (2) The Director-General must, subject to subsection (3), make a decision about an application within 120 days after the Director-General receives a species impact statement or within such further period as may be agreed with the applicant for the licence. 5
- (3) The Director-General must not grant an application until the processing fee levied in respect of it has been paid.
- (4) A licence may authorise specified persons in addition to the person to whom the licence is granted to do the things authorised by the licence. In any such case, the specified persons are taken to be the holders of the licence for the purposes of this Act. 10
- (5) For the avoidance of doubt, it is declared that the Director-General is not a determining authority for the purposes of Part 5 of the *Environmental Planning and Assessment Act 1979* when granting a licence. 15

101 Licence may extend to protected fauna or protected native plants

- (1) The Director-General may, in a licence granted under this Part, authorise a person to take action that is likely to result in either or both of the following: 20
 - (a) harm to protected fauna,
 - (b) picking of protected native plants.
- (2) In this section, *protected fauna* and *protected native plant* have the same meanings as in the *National Parks and Wildlife Act 1974*. 25

102 Conditions and restrictions to licence

- (1) Without limiting section 100 (1) (a), the Director-General may grant an application for a licence subject to a condition that the applicant:
 - (a) make specified modifications to the action proposed, whether in relation to the area of land proposed to be affected or otherwise, or 30
 - (b) make a monetary contribution towards the cost of preparation of a recovery plan for any threatened species, population or ecological community, or any of their habitats, likely to be affected by the action proposed. 35

- (2) The Director-General may, by notice in writing served on the holder of a licence:
- (a) attach any conditions or restrictions to the licence after its issue, or
 - (b) vary or remove any conditions or restrictions attached to any licence, or 5
 - (c) otherwise vary the licence.

Note. Section 133 of the *National Parks and Wildlife Act 1974* requires that the holder of a licence under this Part must not contravene or fail to comply with any condition or restriction attached to the licence. 10

103 Notification of licence determination

The Director-General is to notify an applicant and any person who has made submissions of the Director-General's determination of a licence application.

104 Director-General to keep register of licences 15

- (1) The Director-General must keep a register containing copies of licences issued under this Division as in force from time to time.
- (2) The register is to be open for public inspection, without charge, during ordinary business hours, and copies of or extracts from the register are to be made available to the public on request, on payment of the fee fixed by the Director-General. 20

105 Cancellation of licence

- (1) A licence granted under this Part may be cancelled by the Director-General.
- (2) The Director-General is to notify the holder of a licence of its cancellation and is to include the reasons for the cancellation in that notification. 25

106 Appeal by applicant or person commenting on licence application

- (1) An applicant for a licence or a person who has made written submissions (within the period specified in this Division) about an application for a licence, or a person to whose licence conditions or restrictions have been attached or whose licence has been cancelled may, if dissatisfied with the Director-General's decision, appeal to the Land and Environment Court. 30
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- (2) In determining an appeal about an application for a licence, the Court must take into account the matters set out in section 97, but this requirement does not limit the operation of section 39 of the *Land and Environment Court Act 1979*.

107 Time for appeal, and deemed approval 5

- (1) An appeal may be made by a person within 28 days after notification has been given to the person under section 102 (2), 103 or 105 (2) or, if the appellant is dissatisfied with any condition or restriction attached to a licence when it is granted, within 28 days after the licence is granted. 10
- (2) If the Director-General fails to grant, but does not refuse, a licence application by the expiry of the period of 120 days referred to in section 100 (2) or of any extension of that period agreed to by the Director-General and the applicant for the licence, the application is taken to have been granted. 15

108 Stay of operation of licence pending appeal

- (1) If an appeal relates to the grant of a licence, the licence has no operation until the expiration of the period within which a person entitled to lodge an appeal may do so or, if an appeal has been lodged, until the appeal is finally determined. 20
- (2) If no written submissions about an application of a licence are received at the specified place and by the specified date and the applicant informs the Director-General in writing that the applicant does not wish to lodge an appeal but that the applicant wishes the licence to commence, the licence is to operate from a date stipulated by the Director-General. 25

Division 2 Species impact statements

109 Form of species impact statements

- (1) A species impact statement must be in writing.
- (2) A species impact statement must be signed by the principal author of the statement and by: 30
- (a) the applicant for the licence, or

- (b) if the species impact statement is prepared for the purposes of the *Environmental Planning and Assessment Act 1979*, the applicant for development consent or the proponent of the activity proposed to be carried out (as the case requires).

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110 Content of species impact statements

- (1) A species impact statement must include a full description of the action proposed, including its nature, extent, location, timing and layout and, to the fullest extent reasonably practicable, the information referred to in this section. 10
- (2) A species impact statement must include the following information as to threatened species and populations:
- (a) a general description of the threatened species or populations known or likely to be present in the area that is the subject of the action and in any area that is likely to be affected by the action, 15
 - (b) an assessment of which threatened species or populations known or likely to be present in the area are likely to be affected by the action,
 - (c) for each species or population likely to be affected, details of its local, regional and State-wide conservation status, the key threatening processes generally affecting it, its habitat requirements and any recovery plan or threat abatement plan applying to it, 20
 - (d) an estimate of the local and regional abundance of those species or populations, 25
 - (e) a general description of the threatened species or populations known or likely to be present in the area that is the subject of the action and in any area that is likely to be affected by the action, 30
 - (f) a full description of the type, location, size and condition of the habitat (including critical habitat) of those species and populations and details of the distribution and condition of similar habitats in the region,

- (g) a full assessment of the likely effect of the action on those species and populations, including, if possible, the quantitative effect of local populations in the cumulative effect in the region,
 - (h) a description of any feasible alternatives to the action that are likely to be of lesser effect and the reasons justifying the carrying out of the action in the manner proposed, having regard to the biophysical, economic and social considerations and the principles of ecologically sustainable development, 5 10
 - (i) a full description and justification of the measures proposed to mitigate any adverse effect of the action on the species and populations, including a compilation (in a single section of the statement) of those measures,
 - (j) a list of any approvals that must be obtained under any other Act or law before the action may be lawfully carried out, including details of the conditions of any existing approvals that are relevant to the species or population. 15
- (3) A species impact statement must include the following information as to ecological communities: 20
 - (a) a general description of the ecological community present in the area that is the subject of the action and in any area that is likely to be affected by the action,
 - (b) for each ecological community present, details of its local, regional and State-wide conservation status, the key threatening processes generally affecting it, its habitat requirements and any recovery plan or any threat abatement plan applying to it, 25
 - (c) a full description of the type, location, size and condition of the habitat of the ecological community and details of the distribution and condition of similar habitats in the region, 30
 - (d) a full assessment of the likely effect of the action on the ecological community, including, if possible, the quantitative effect of local populations in the cumulative effect in the region, 35

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- (e) a description of any feasible alternatives to the action that are likely to be of lesser effect and the reasons justifying the carrying out of the action in the manner proposed, having regard to the biophysical, economic and social considerations and the principles of ecologically sustainable development, 5
 - (f) a full description and justification of the measures proposed to mitigate any adverse effect of the action on the ecological community, including a compilation (in a single section of the statement) of those measures, 10
 - (g) a list of any approvals that must be obtained under any other Act or law before the action may be lawfully carried out, including details of the conditions of any existing approvals that are relevant to the ecological community.
 - (4) A species impact statement must include details of the qualifications and experience in threatened species conservation of the person preparing the statement and of any other person who has conducted research or investigations relied on in preparing the statement. 15
- 111 Director-General's requirements** 20
- (1) The person applying for the licence (or, if the species impact statement is being prepared for the purposes of the *Environmental Planning and Assessment Act 1979*, the applicant for development consent or the proponent of the activity) must request from the Director-General and must, in preparing the species impact statement, have regard to any requirements notified to the person by the Director-General concerning the form and content of the statement. 25
 - (2) The Director-General must notify any requirements under this section within 28 days after having been requested to provide them. 30
 - (3) Despite the other provisions of this Division, the Director-General may, having regard to the circumstances of a particular case, limit or modify (or limit and modify) the matters to be included in a species impact statement in such manner as may be specified by the Director-General in the particular case. 35
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112 Regulations

The regulations may make further provision for or with respect to the form and contents of species impact statements.

- 113 Director-General may accredit persons to prepare assessments of species impact statements** 5
- (1) The Director-General is to institute arrangements for the accreditation of suitably qualified and experienced persons to prepare assessment reports on species impact statements for the purposes of this Act.
 - (2) An applicant for accreditation must furnish the Director-General with such information as the Director-General requires to effectively determine the application and must be accompanied by the fee fixed by the Director-General for the consideration of the application. 10
 - (3) An accreditation is to be for the period 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. 15
 - (4) The Director-General may vary conditions or restrictions (if any) attaching to an accreditation and may suspend or cancel an accreditation. 20

Part 7 Other conservation measures

Introductory note

This Part deals with certain other measures that may be taken to conserve threatened species, populations and ecological communities, and their habitats. These involve the making of stop work orders by the Director-General or the making of joint management agreements between the Director-General and other public authorities to manage or regulate actions on land that may jeopardise the survival of threatened species, populations or ecological communities, or their habitats. 5

Measures available under the *National Parks and Wildlife Act 1974*, involving the making of interim protection orders by the Minister or the entering into of conservation agreements by the Minister with land owners, may also be employed for the conservation of threatened species, populations or ecological communities, or their habitats. 10

Division 1 deals with the making of stop work orders by the Director-General, appeals, consultations about modification of detrimental action and recommendations for the making of interim protection orders under the *National Parks and Wildlife Act 1974*. 15

Division 2 deals with the preparation, contents and publication of joint management agreements, and provides for review of joint management agreements, and the performance of parties to them, by the Scientific Committee. 20

Division 1 Stop work orders

114 Director-General may make stop work order

- (1) If the Director-General is of the opinion that any action is being, or is about to be, carried out that is likely to result in one or more of the following: 25

- (a) harm to a threatened species, population or ecological community (so far as animals are concerned),
- (b) picking of a threatened species, population or ecological community (so far as plants are concerned), 30
- (c) damage to critical habitat,
- (d) damage to habitats of threatened species, populations or ecological communities,

the Director-General may order that the action is to cease and that no action, other than such action as may be specified in the order, is to be carried out in or in the vicinity of the critical 35

habitat or the habitat of the threatened species, population or ecological community within a period of 40 days after the date of the order.

- (2) An order takes effect on and from the date on which:
- (a) a copy of the order is affixed in a conspicuous place in the critical habitat or other habitat the subject of the order, or 5
 - (b) the person performing or about to perform the action is notified that the order has been made,
- whichever is the sooner.
- (3) This section does not apply in relation to anything authorised to be done by or under: 10
- (a) a license granted under this Act or the *National Parks and Wildlife Act 1974*, or
 - (b) the *Bush Fires Act 1949* or the *State Emergency and Rescue Management Act 1989* that is reasonably necessary in order to avoid a threat to life or property. 15
- (4) This section does not apply in relation to anything that is essential for the carrying out of:
- (a) development in accordance with a development consent within the meaning of the *Environmental Planning and Assessment Act 1979*, or 20
 - (b) an activity, whether by a determining authority or pursuant to an approval of a determining authority within the meaning of Part 5 of that Act if the determining authority has complied with that Part. 25
- (5) In this Division, a reference to action being, or about to be, carried out includes a reference to action that should be, but is not being, carried out and the Director-General may make an order, in accordance with this Division, that any such action is to be carried out. 30

115 Prior notification of making of stop work order not required

The Director-General is not required, before making an order under this Division, to notify any person who may be affected by the order.

116 Appeal to Minister

- (1) A person against whom an order is made under this Division may appeal to the Minister against the making of the order.
- (2) After hearing an appeal, the Minister may:
 - (a) confirm the order, or
 - (b) modify or rescind the order, but only if this is consistent with the principles of ecologically sustainable development.

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117 Extension of stop work order

The Director-General may extend an order under this Division for such further period or periods of 40 days as the Director-General thinks fit.

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118 Consultation about modification of proposed detrimental action

- (1) After making an order under this Division, the Director-General must immediately consult with the person proposing to perform the action to determine whether any modification of the action may be sufficient to protect the threatened species, populations or ecological communities, critical habitat or other habitat concerned.
- (2) The Director-General may, for the purposes of making such determination and considering whether the adoption of any other steps, such as the grant of a licence under Part 6, may be appropriate, request the person proposing to perform the action to provide the information referred to in section 93 (3).
- (3) After considering any information provided under subsection (2) in accordance with the requirements of section 95, the Director-General may, if appropriate and if the person concerned wishes to apply for a licence under Part 6, request the person to provide an application for a licence and a species impact statement for determination under that Part.

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119 Recommendation for making of interim protection order

- (1) The Director-General must recommend to the Minister the making of an interim protection order under Part 6A of the *National Parks and Wildlife Act 1974* if, after consulting with the person proposing to perform the action, the Director-General is of the opinion that satisfactory arrangements cannot be made to protect the threatened species, populations or ecological communities, critical habitat or other habitat that is the subject of an order under this Division. 5
- (2) The Director-General must not recommend the making of an interim protection order in relation to anything that is authorised to be done by or under an authority referred to in section 114 (3) or that is essential for a purpose referred to in section 114 (4). 10

120 Stop work order prevails over other instruments

- (1) An approval, notice, order or other instrument made or issued by or under any other Act or law that requires or permits critical habitat, the subject of an order in force under this Division, to be significantly affected is inoperative to the extent of any inconsistency with the order under this Division. 15
- (2) This section has effect whether the approval, notice, order or other instrument concerned was made or issued before or after the making of the order under this Division. 20

Division 2 Joint management agreements

121 Joint management agreements

- The Director-General may enter into a joint management agreement with one or more public authorities for the management, control, regulation or restriction of an action that is jeopardising the survival of a threatened species, population or ecological community. 25

122 Role of Scientific Committee

- (1) Before a joint management agreement is entered into, the Scientific Committee must review the draft joint management contract and provide the Director-General with comments on the review by the date specified for the making of public submissions on the draft agreement. 5
- (2) The Scientific Committee must also:
 - (a) conduct an annual review of the performance of all parties to a joint management agreement, and
 - (b) advise the Director-General of any deficiencies in implementation of any joint management agreement by any party to it. 10
- (3) The Director-General is to incorporate the Scientific Committee's advice on the annual review of joint management agreements in the Director-General's annual report to Parliament under the *National Parks and Wildlife Act 1974*. 15

123 Contents of joint management agreements

- (1) A joint management agreement is to contain terms, binding on all parties, that:
 - (a) identify the threatened species, population or ecological community to which the agreement applies, and 20
 - (b) identify the action that it manages, controls, regulates or restricts, and
 - (c) state its objective (for example, maintenance of a habitat in a state that will contribute to the long-term survival of the species, population or ecological community), and 25
 - (d) state the way in which the objective is to be achieved, and
 - (e) specify the measures by which progress towards achieving the objective is to be assessed, and
 - (f) identify the parties who are responsible for the implementation of those measures. 30

- (2) A joint management agreement entered into with a council or a consent authority (within the meaning of the *Environmental Planning and Assessment Act 1979*) is void to the extent to which it fetters any discretion of the council or consent authority in the granting or refusal of a consent or approval under the *Environmental Planning and Assessment Act 1979* or the *Local Government Act 1993*. 5

124 Publication of draft joint management agreement

- (1) As soon as practicable after preparing a draft joint management agreement, the Director-General must: 10
- (a) give a copy of the draft joint management agreement to the Scientific Committee for review, and
 - (b) publish notice of the preparation of the draft joint management agreement in a newspaper circulating generally throughout the State and in a newspaper circulating generally in the area or areas likely to be affected by the agreement, and 15
 - (c) publish notice of the preparation of the draft agreement in the Gazette.
- (2) The notice must: 20
- (a) state that the draft joint management agreement has been prepared, and
 - (b) specify the address of the place at which copies of the draft joint management agreement may be inspected, and
 - (c) invite persons to make written submissions to the Director-General about the draft joint management agreement, and 25
 - (d) specify the address of the place to which submissions about the draft joint management agreement may be forwarded and the date by which submissions must be made. 30

125 Consideration of submissions by Director-General

- (1) The Director-General must consider all written submissions received by the Director-General on or before the date specified in the notice. 35

- (2) The Director-General may, with the consent of the other parties to the agreement, amend the draft joint management agreement to take into account any of those submissions and any comments made by the Scientific Committee about the draft agreement.

126 Amendment of joint management agreement

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A joint management agreement may only be amended by a joint management agreement.

Part 8 Scientific Committee

Introductory note

This Part establishes, and describes the functions, membership and procedure of, and the manner of service of documents on, the Scientific Committee. The Part provides that the Scientific Committee is not subject to Ministerial control or direction.

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127 Establishment of Scientific Committee

There is established by this Act a body corporate with the corporate name "Scientific Committee".

128 Functions of Scientific Committee

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- (1) The Scientific Committee has the functions conferred or imposed on it by or under this or any other Act or law.
- (2) The principal functions of the Scientific Committee are as follows:
 - (a) to determine which species are to be listed under this Act as threatened species, 15
 - (b) to determine which populations are to be listed under this Act as endangered populations and to advise the Director-General on the identification of their critical habitat, 20
 - (c) to determine which ecological communities are to be listed under this Act as endangered ecological communities and to advise the Director-General on the identification of their critical habitat,
 - (d) to determine which threatening processes are to be listed under this Act as key threatening processes, 25
 - (e) to review draft joint management agreements and the performance of parties under executed joint management agreements,
 - (f) to advise the Director-General on the exercise of the Director-General's functions under this Act, 30
 - (g) to advise the Minister on any matter relating to the conservation of threatened species, populations or ecological communities that is referred to the Committee by the Minister or that the Committee considers appropriate. 35

- (3) The Scientific Committee may, in the exercise of its functions, make use of consultants or obtain assistance or advice from other persons.

129 Members of Scientific Committee

- (1) The Scientific Committee is to consist of 10 members appointed by the Minister. 5
- (2) Of the members of the Scientific Committee:
- (a) two are to be scientists employed by the National Parks and Wildlife Service nominated by the Director-General,
 - (b) one is to be a scientist employed by a public authority, having expertise in one or more of the areas of study referred to in subsection (3), selected by the Minister, 10
 - (c) one is to be a scientist nominated by the Commonwealth Scientific and Industrial Research Organisation,
 - (d) one is to be a scientist employed and nominated by the Australian Museum Trust, 15
 - (e) one is to be a scientist employed and nominated by the Royal Botanic Gardens and Domain Trust,
 - (f) one is to be a scientist nominated by the Ecological Society of Australia, 20
 - (g) one is to be a scientist nominated by the Entomological Society of Australia,
 - (h) one is to be a scientist who is employed by a tertiary educational institution and who is selected by the Minister,
 - (i) one is to be a scientist having expertise in agricultural science and natural resource management who is selected by the Minister. 25
- (3) A person appointed as a member of the Scientific Committee is to have expertise in one or more of the following areas of study:
- (a) vertebrate biology, 30
 - (b) invertebrate biology,
 - (c) plant biology,
 - (d) terrestrial ecology,

- (e) plant community ecology,
- (f) limnology,
- (g) marine ecology,
- (h) genetics of small populations,
- (i) population dynamics (including population viability analysis or evolutionary ecology). 5

130 Provisions relating to members of Scientific Committee

- (1) Subject to this Act, a member of the Scientific Committee holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment. 10
- (2) A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.
- (3) The office of a member becomes vacant if the member: 15
 - (a) dies, or
 - (b) completes a term of office and is not reappointed, or
 - (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) is removed from office by the Minister under this section or by the Governor under Part 8 of the *Public Sector Management Act 1988*, or 20
 - (e) is absent from 4 consecutive meetings of the Scientific Committee of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Scientific Committee or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Scientific Committee for having been absent from those meetings, or 25
 - (f) becomes a mentally incapacitated person, or 30
 - (g) ceases to have the qualification required for the member's appointment.
- (4) The Minister may remove a member from office.

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- (5) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member.
- (6) If by or under any Act provision is made:
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or 5
 - (b) prohibiting the person from engaging in employment outside the duties of that office,
- the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member. 10

131 Chairperson and Deputy Chairperson

A Chairperson and a Deputy Chairperson of the Scientific Committee are to be appointed by the Minister from among the members of the Scientific Committee. 15

132 Disclosure of pecuniary interests

- (1) If:
- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Scientific Committee, and 20
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,
- the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Scientific Committee. 25
- (2) A disclosure by a member at a meeting of the Scientific Committee that the member:
- (a) is a member, or is in the employment, of a specified company or other body, or 30
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person, 35

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subsection (1).

- (3) Particulars of any disclosure made under this section must be recorded by the Scientific Committee in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee (if any) determined by the Scientific Committee. 5
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Scientific Committee otherwise determines: 10
 - (a) be present during any deliberation of the Scientific Committee with respect to the matter, or
 - (b) take part in any decision of the Scientific Committee with respect to the matter. 15
- (5) For the purposes of the making of a determination by the Scientific Committee under subsection (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not: 20
 - (a) be present during any deliberation of the Scientific Committee for the purpose of making the determination, or
 - (b) take part in the making by the Scientific Committee of the determination.
- (6) A contravention of this section does not invalidate any decision of the Scientific Committee. 25

133 Procedure of Scientific Committee

- (1) The procedure for the calling of meetings of the Scientific Committee and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Scientific Committee. 30
- (2) The quorum for a meeting of the Scientific Committee is 6 members.

-
- (3) The Chairperson of the Scientific Committee or, in the absence of the Chairperson, the Deputy Chairperson or, in the absence of both the Chairperson and the Deputy Chairperson, another member elected to chair the meeting, is to preside at a meeting of the Scientific Committee. The person presiding at a meeting has a deliberative vote but not a casting vote. 5
- (4) A decision supported by a majority of the votes cast at a meeting of the Scientific Committee at which a quorum is present is the decision of the Scientific Committee.
- (5) The Scientific Committee may invite suitably qualified persons to attend meetings to advise or inform the Scientific Committee on any matter. 10

134 Transaction of business outside meeting or by telephone or other means

- (1) The Scientific Committee may, if it thinks fit, transact any of its business by the circulation of papers among all the members for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Scientific Committee. 15
- (2) The Scientific Committee may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members. 20
- (3) For the purposes of: 25
- (a) the approval of a resolution under subsection (1), or
- (b) a meeting held in accordance with subsection (2),
- the Chairperson and each other member have the same voting rights as they have at an ordinary meeting of the Scientific Committee. 30
- (4) A resolution approved under subsection (1) is, subject to the regulations, to be recorded in the minutes of the meeting of the Scientific Committee.

- (5) Papers may be circulated among the members for the purposes of subsection (1) by facsimile or other transmission of the information in the papers concerned.

135 Scientific Committee not subject to Ministerial control

The Scientific Committee is not subject to the control or direction of the Minister. 5

136 Service of documents on Scientific Committee

For the purposes of this Act, a nomination for listing under Part 2 or any other document is made, issued or given to the Scientific Committee if it is addressed to the Scientific Committee and is: 10

- (a) lodged at the head office of the National Parks and Wildlife Service, or
- (b) sent by post to the head office of the National Parks and Wildlife Service, or
- (c) sent by facsimile transmission or other electronic means notified by the Scientific Committee as being an available means of communication, or 15
- (d) sent by any means provided for the service of documents by another Act or law.

Part 9 Miscellaneous

Introductory note

This Part makes provision for a number of miscellaneous matters relating to the operation of the Act. These include:

- a statement that the Act binds the Crown 5
- a requirement that the Director-General report on the operation of the Act in the Director-General's annual report to Parliament
- a provision enabling third parties to bring proceedings in the Land and Environment Court for orders remedying or restraining breaches of the Act 10
- a statement that the Act is not intended to affect native title rights and interests
- a provision providing that the Director-General may decline to disclose the location of critical habitat (or proposed critical habitat) other than to specified persons if the Director-General is of the opinion that disclosure would be likely to expose the critical habitat (or proposed critical habitat) to a significant risk and that withholding of the location is in the public interest, and if affected landholders have requested, or are agreeable to, the withholding of the location 15
- a provision enabling third parties to bring proceedings in the Land and Environment Court for orders remedying or restraining breaches of the Act 20
- provisions as to the form and service of notices and other documents under the proposed Act
- a provision concerning review of the operation of the Act as soon as possible after the period of 2 years after the date of assent to the proposed Act. 25

The Part also authorises the making of regulations, and contains formal provisions giving effect to the Schedules amending other Acts and inserting savings, transitional and other provisions. 30

137 Act binds Crown

This Act binds the Crown, not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its capacities.

138 Annual report by Director-General on operation of Act 35

The Director-General is to report on the operation of this Act in the annual report of the National Parks and Wildlife Service.

139 Relationship of Act to National Parks and Wildlife Act 1974

Except as otherwise provided by this Act, nothing in this Act affects the operation of the *National Parks and Wildlife Act 1974* in relation to animals and plants.

140 Native title rights and interests

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This Act does not affect the operation of the *Native Title Act 1993* of the Commonwealth or the *Native Title (New South Wales) Act 1994* in respect of the recognition of native title rights and interests within the meaning of the Commonwealth Act or in any other respect.

10

141 Decision not to disclose location of critical habitat

(1) Despite the other provisions of this Act, the Director-General may decline:

(a) to give public notice (by publication in a newspaper or in the Gazette) of a proposal (or amended proposal) to identify an area or areas of land as critical habitat, the approval of such a proposal, a declaration of critical habitat or the amendment or revocation of such a declaration, and

15

(b) to serve a copy of a map of critical habitat on any one or more of the persons or bodies referred to in section 55 (Maps of critical habitat to be served on certain public authorities), and

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(c) to include a copy of a declaration of critical habitat or a map of critical habitat in the register kept under section 56 (Director-General to keep register of critical habitat).

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(2) The Director-General may exercise the function under subsection (1) only if:

(a) the Director-General is of the opinion that:

(i) not to exercise the function would be likely to expose the critical habitat (or the proposed critical habitat) and the endangered species, population or ecological community that occupies it to a significant threat, and

30

(ii) the public interest requires the function to be exercised, and

35

-
- (b) each landholder of land concerned has requested or is agreeable to the exercise of the function.
- (3) Nothing in this section prevents the Director-General from disclosing the location of critical habitat to:
- (a) landholders or other persons having any legal or equitable estate, interest, easement, servitude, privilege or right in or over the land, or 5
- (b) public authorities exercising functions in relation to the land, or
- (c) any other person entitled by or under this or any other Act or law to notice of the declaration of critical habitat or the existence of interests in or proposals affecting the land. 10

142 Restraint of breaches of Act

- (1) Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of this Act, whether or not any right of that person has been or may be infringed by or as a consequence of that breach. 15
- (2) Proceedings under this section may be brought by a person on the person's own behalf or on behalf of the person and other persons (with their consent), or a body corporate or unincorporated (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings. 20
- (3) 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. 25
- (4) Proceedings under this section may not be brought in connection with development carried out by, for or on behalf of the Olympic Co-ordination Authority in accordance with the *Olympic Co-ordination Authority Act 1995*.

143 Form of notices

30

Any notice or other document issued, made or given for the purposes of this Act or the regulations must be in writing, except where this Act expressly authorises another means of giving notice.

144 Service of documents

- (1) Any notice or other document that is authorised or required under this Act or the regulations to be served on any person may be served:
 - (a) personally or by post, or 5
 - (b) by leaving it with a person apparently of or above the age of 16 years at, or by posting it to, the person's place of business or, in the case of a corporation, the registered office of the corporation.
- (2) This section does not apply with respect to the service of documents in accordance with section 136 (Service of documents on Scientific Committee). 10

145 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for the carrying out or giving effect to this Act. 15
- (2) A regulation may create an offence punishable by a penalty not exceeding 50 penalty units.

146 Proceedings for offences

20

Proceedings for an offence against the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

147 Amendment of National Parks and Wildlife Act 1974 No 80

The *National Parks and Wildlife Act 1974* is amended as set out in Schedule 4. 25

148 Amendment of Environmental Planning and Assessment Act 1979 No 203

The *Environmental Planning and Assessment Act 1979* is amended as set out in Schedule 5. 30

149 Amendment of other Acts and regulations

The Acts and regulations specified in Schedule 6 are amended as set out in that Schedule.

150 Repeal of Endangered Fauna (Interim Protection) Act 1991 No 66 and amending Acts

5

- (1) The *Endangered Fauna (Interim Protection) Act 1991* is repealed.

- (2) Section 7 of the *Endangered Fauna (Interim Protection) Act 1991* has no operation and is taken never to have had any operation. This subsection applies whether or not it commences before or after 31 December 1995.

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- (3) The following Acts are also repealed:

Endangered Fauna (Interim Protection) Amendment Act 1992 No 97

Endangered Fauna (Interim Protection) Amendment Act 1993 No 53

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Endangered Fauna (Interim Protection) Amendment Act 1995 No 33.

151 Savings, transitional and other provisions

Schedule 7 has effect.

20

152 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

- (2) The review is to be undertaken as soon as possible after the period of 2 years from the date of assent to this Act.

25

- (3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 2 years.

(Section 6)

Animals

5

Hylidae

Green and Golden Bell Frog

Litoria raniformis

10

Falconiformes

Red Goshawk

15

Cotton Pygmy-Goose

Leipoa ocellata

Malleefowl

Australian Bustard

20

Woodhen

Black-breasted Button Quail

Bush Thick-knee

Beach Thick-knee

Hooded Plover

Plains-wanderer

Little Tern

Part 1 Endangered species—continued

Animals

Columbiformes*Geophaps scripta*

Squatter Pigeon

Phaps histrionica

Flock Bronzewing

5

Psittaciformes*Polytelis anthopeplus*

Regent Parrot

Psittaculirostris diophthalma coxeni

Double-eyed Fig Parrot

Passeriformes*Amytornis textilis*

Thick-billed Grasswren

10

Manorina melanotis

Black-eared Miner

Pachycephala rufogularis

Red-lored Whistler

Poephila cincta

Black-throated Finch

Xanthomyza phrygia

Regent Honeyeater

Mammals

15

Dasyuridae*Antechinomys laniger*

Kultarr

Dasyurus viverrinus

Eastern Quoll

Macropodidae*Macropus dorsalis*

Black-striped Wallaby

20

Petrogale xanthopus

Yellow-footed Rock-Wallaby

Muridae*Pseudomys apodemoides*

Silky Mouse

Pseudomys bolami

Bolam's Mouse

Pseudomys fumeus

Smoky Mouse

25

Pseudomys oralis

Hastings River Mouse

Peramelidae*Isodon obesulus*

Southern Brown Bandicoot

Threatened Species Conservation Bill 1995 (No 2)

Schedule 1 Endangered species, populations and ecological communities

Part 1 Endangered species—continued

Animals

Potoroidae

Potorous longipes Long-footed Potoroo

Marine mammals

5

Cetacea

Balaenoptera musculus musculus Blue Whale

Reptiles

Elapidae

Hoplocephalus bungaroides Broad-headed Snake 10

Scincidae

Anomalopus mackayi

Eulamprus leuraensis

Plants

Acanthaceae

15

Calophanoides hygrophiloides (F. Muell.) R. Barker

Dipteracanthus australasicus subsp. *corynothecus* (F. Muell. ex Benth.) R. Barker

**Isoglossa eranthemoides* (F. Muell.) R. Barker

Xerothamnella parvifolia C. White

Anthericaceae

20

Caesia parviflora var. *minor* R.J.F. Hind.

Apiaceae

Gingidia montana (Forster & Forster f.) J. Wyndham Dawson

Trachymene saniculifolia Stapf

Part 1 Endangered species—continued

Plants

Apocynaceae*Ochrosia moorei* (F. Muell.) F. Muell. ex Benth.**Araliaceae**

5

Astrotricha roddii* MakinsonAraucariaceae***Wollemia noblei* W. Jones & K. Hill ms**Asclepiadaceae****Cynanchum elegans* (Benth.) Domin

10

Marsdenia longiloba* Benth.Tylophora linearis* P. Forster**Tylophora woollsii* Benth.**Asteraceae***Calotis moorei* P. Short

15

Cratystylis conocephala (F. Muell.) S. Moore*Erodiophyllum elderi* F. Muell.*Kippistia suaedifolia* F. Muell.*Leptorrhynchos waitzia* Sonder**Olearia flocktoniae* Maiden & E. Betcher

20

Rutidosis leptorrhynchoides* F. Muell.*Senecio spathulatus* A. Rich.*Senecio squarrosus* A. Rich.Brassicaceae***Irenepharsus magicus* Hewson

25

Irenepharsus trypherus Hewson**Lepidium hyssopifolium* Desv.**Lepidium monolocoides* F. Muell.*Lepidium pseudopapillosum* Thell.

Threatened Species Conservation Bill 1995 (No 2)

Schedule 1 Endangered species, populations and ecological communities

Part 1 Endangered species—continued

Plants

Campanulaceae

Wahlenbergia scopulicola Carolin ex P.J. Smith

Capparaceae

5

Capparis loranthifolia var. *loranthifolia* Lindley

Caryophyllaceae

Polycarpaea spirostylis subsp. *glabra* (C. White & Francis) Pedley

Casuarinaceae

**Allocasuarina defungens* L. Johnson

10

Allocasuarina glareicola L. Johnson

**Allocasuarina portuensis* L. Johnson

Casuarina obesa Miq.

Celastraceae

**Apatophyllum constablei* McGillivray

15

Chenopodiaceae

Atriplex rhagodioides F. Muell.

Atriplex sturtii S. Jacobs

Dysphania platycarpa Paul G. Wilson

Dysphania plantaginella F. Muell.

20

Osteocarpum scleropterum (F. Muell.) Volkens

Threlkeldia inchoata (J. Black) J. Black

Convolvulaceae

Ipomoea diamentinensis J. Black

Ipomoea polymorpha Roemer & Schultes

25

Cupressaceae

Callitris baileyi C. White

Part 1 Endangered species—continued

Plants

Cyperaceae

Carex raleighii Nelves

Cyperus aquatilis R. Br.

Cyperus conicus (R. Br.) Boeck

5

Davalliaceae

Arthropteris palisotii (Desv.) Alston

Davidsoniaceae

Davidsonia pruriens var. *jerseyana* Bailey

**Davidsonia* sp. A Mullumbimby-Currimbin Ck (A.G. Floyd 1595)

10

Dilleniaceae

Hibbertia hexandra C. White

Hibbertia procumbens (Labill.) DC.

Droseraceae

Aldrovanda vesiculosa L.

15

Dryopteridaceae

Lastreopsis hispida (Sw.) Tind.

Ebenaceae

**Diospyros mabacea* (F. Muell.) F. Muell.

Diospyros major var. *ebenus* (Sprengel) Bakh.

20

Elaeocarpaceae

Elaeocarpus sp. Rocky Creek (G. Read AQ 562114)

**Elaeocarpus williamsianus* Guymmer

Threatened Species Conservation Bill 1995 (No 2)

Schedule 1 Endangered species, populations and ecological communities

Part 1 Endangered species—continued

Plants

Epacridaceae

<i>Epacris hamiltonii</i> Maiden & E. Betche	
<i>Leucopogon confertus</i> Benth.	5
<i>Melichrus hirsutus</i> J.B. Williams ms	
<i>Monotoca rotundifolia</i> J.H. Willis	

Eriocaulaceae

* <i>Eriocaulon carsonii</i> F. Muell.	
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Euphorbiaceae

<i>Acalypha eremorum</i> Muell. Arg.	10
<i>Bertya ingramii</i> T. James	
<i>Euphorbia sarcostemmoides</i> J.H. Willis	
* <i>Fontainea oraria</i> Jessup & Guymmer	
<i>Monotaxis macrophylla</i> Benth.	15
<i>Phyllanthus maderaspatanus</i> L.	
<i>Pseudanthus ovalifolius</i> F. Muell.	
<i>Sauropus albiflorus</i> subsp. <i>microcladus</i> (Muell. Arg.) Airy Shaw	

Fabaceae

<i>Acacia acanthoclada</i> F. Muell.	20
<i>Acacia acrionastes</i> Pedley	
<i>Acacia jucunda</i> Maiden & Blakely	
<i>Acacia macnuttiana</i> Maiden & Blakely	
<i>Acacia notabilis</i> F. Muell.	
<i>Acacia petraea</i> Pedley	25
<i>Acacia pubifolia</i> Pedley	
<i>Acacia rivalis</i> J. Black	
<i>Acacia ruppii</i> Maiden & E. Betche	
<i>Almaleea cambagei</i> (Maiden & E. Betche) Crisp & P. Weston	
<i>Crotalaria cunninghamii</i> R. Br.	30
<i>Desmodium campylocaulon</i> F. Muell.	
<i>Indigofera efoliata</i> F. Muell.	

Part 1 Endangered species—continued

Plants

<i>Indigofera helmsii</i> Peter G. Wilson	
<i>Indigofera leucotricha</i> E. Pritzel	
<i>Indigofera longibractea</i> J. Black	5
* <i>Psoralea parva</i> F. Muell.	
<i>Pultenaea parrisiae</i> subsp. <i>elusa</i> J.D. Briggs & Crisp	
<i>Pultenaea parviflora</i> Sieber ex DC.	
<i>Senna acclinis</i> (F. Muell.) Randell	
<i>Swainsona adenophylla</i> J. Black	10
<i>Swainsona colutoides</i> F. Muell.	
<i>Swainsona flavicarinata</i> J. Black	
* <i>Swainsona recta</i> A. Lee	
<i>Swainsona viridis</i> J. Black	
Gentianaceae	15
* <i>Gentiana baeuerlenii</i> L. Adams	
* <i>Gentiana wingecarribiensis</i> L. Adams	
Goodeniaceae	
<i>Goodenia occidentalis</i> Carolin	
<i>Scaevola collaris</i> F. Muell.	20
<i>Velleia perfoliata</i> R. Br.	
Grammitaceae	
<i>Grammitis stenophylla</i> B.S. Parris	
Haloragaceae	
<i>Haloragodendron lucasii</i> (Maiden & E. Betcher) Orch.	25
Lamiaceae	
<i>Plectranthus allopectus</i> S.T. Blake	
<i>Plectranthus nitidus</i> P. Forst.	
<i>Prostanthera</i> sp. Somersby (B.J. Conn 4024)	
<i>Westringia kydrenis</i> Conn	30

Threatened Species Conservation Bill 1995 (No 2)

Schedule 1 Endangered species, populations and ecological communities

Part 1 Endangered species—continued

Plants

Lauraceae

**Endiandra floydii* B. Hyland

Endiandra muelleri subsp. *bracteata* B. Hyland 5

Lindsaeaceae

Lindsaea brachypoda (Baker) Salomon

Lindsaea fraseri Hook.

Lindsaea incisa Prent.

Loranthaceae

10

Amyema scandens (Tieghem) Danser

Muellerina myrtifolia (Cunn. ex Benth.) Barlow

Malvaceae

Sida rohlenae Domin

Marattiaceae

15

Angiopteris evecta Hoffm.

Marsileaceae

Pilularia novae-hollandiae A. Braun

Menispermaceae

Tinospora smilacina Benth. 20

Monimiaceae

Daphnandra sp. C Illawarra (R. Schodde 3475)

Myrtaceae

**Austromyrtus fragrantissima* (F. Muell. ex Benth.) Burret

Baeckea camphorata R. Br.

Choricarpia subargentea (C. White) L. Johnson

Eucalyptus approximans Maiden

25

Part 1 Endangered species—continued

Plants

<i>Eucalyptus camphora</i> subsp. <i>relicta</i> L. Johnson & K. Hill	
<i>Eucalyptus copulans</i> L. Johnson & K. Hill	
<i>Eucalyptus imlayensis</i> Crisp & Brooker	5
<i>Eucalyptus microcodon</i> L. Johnson & K. Hill	
<i>Eucalyptus pachycalyx</i> Maiden & Blakely	
* <i>Eucalyptus recurva</i> Crisp	
<i>Eucalyptus saxatilis</i> Kirkpatr. & Brooker	
<i>Eucalyptus</i> sp. Howes Swamp Creek (M. Doherty 19/7/85, NSW 207054)	10
* <i>Kunzea rupestris</i> Blakely	
* <i>Uromyrtus australis</i> A.J. Scott	

Orchidaceae

* <i>Caladenia rosella</i> G.W. Carr	
<i>Diuris pedunculata</i> R. Br.	15
* <i>Genoplesium rhyoliticum</i> D.L. Jones & M.A. Clem.	
<i>Phaius tankervilleae</i> (Banks ex L'Her.) Blume	
<i>Prasophyllum affine</i> Lindl.	
* <i>Prasophyllum petilum</i> D.L. Jones & R.J. Bates	
* <i>Prasophyllum uroglossum</i> Rupp	20
* <i>Pterostylis gibbosa</i> R. Br.	
<i>Pterostylis</i> sp. Botany Bay (A. Bishop J221/1-13)	

Platyzomataceae

<i>Platyzoma microphyllum</i> R. Br.	
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Poaceae

<i>Deyeuxia appressa</i> Vickery	25
* <i>Digitaria porrecta</i> S.T. Blake	
<i>Stipa nullanulla</i> J. Everett & S.W.L. Jacobs	
<i>Stipa wakoolica</i> Vickery, S.W.L. Jacobs & J. Everett	

Podocarpaceae

<i>Microstrobos fitzgeraldii</i> (F. Muell.) J. Garden & L. Johnson	30
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Threatened Species Conservation Bill 1995 (No 2)

Schedule 1 Endangered species, populations and ecological communities

Part 1 Endangered species—continued

Plants

Polygalaceae

Polygala linariifolia Willd.

Primulaceae

5

Lysimachia vulgaris var. *davurica* (Ledeb.) Knuth

Proteaceae

Grevillea acanthifolia subsp. *paludosa* Makinson & Albrecht

**Grevillea beadleana* McGillivray

**Grevillea caleyi* R. Br.

10

Grevillea guthrieana P. Olde & N. Marriott

**Grevillea iaspicula* McGillivray

Grevillea masonii P. Olde & N. Marriott

Grevillea mollis P. Olde & Molyneux

Grevillea molyneuxii McGillivray

15

Grevillea obtusiflora R. Br.

Grevillea rivularis L. Johnson & McGillivray

**Grevillea wilkinsonii* R. Makinson

**Hakea pulvinifera* L. Johnson

Hakea sp. B Kowmung River (M. Doherty 17-24)

20

Persoonia mollis subsp. *maxima* Krauss & L. Johnson

**Persoonia nutans* R. Br.

Psilotaceae

Psilotum complanatum Sw.

Rhamnaceae

25

Discaria nitida Tortosa

**Pomaderris cotoneaster* Wakef.

Pomaderris elachophylla F. Muell.

Pomaderris queenslandica C. White

Pomaderris sericea Wakef.

30

Part 1 Endangered species—continued

Plants

Rubiaceae*Dentella minutissima* C. White & Francis*Hedyotis galioides* F. Muell.

5

Randia moorei* F. Muell. ex Benth.*Tarenna cameronii* (C.T. White) Ali & Robbr.Rutaceae****Acronychia littoralis* T. Hartley & J. Williams**Asterolasia elegans* McDougall & Porteners

10

Boronia granitica* Maiden & E. BetcheBoronia repanda* (F. Muell. ex E. Betche) Maiden & E. Betche*Geijera paniculata* (F. Muell.) Druce*Phebalium glandulosum* subsp. *eglandulosum* (Blakely) Paul G. Wilson**Phebalium lachnaeoides* Cunn.

15

Zieria adenodonta (F. Muell.) J.A. Armstrong ms*Zieria adenophora* Blakely**Zieria baeuerlenii* J.A. Armstrong ms**Zieria buxijugum* J. Briggs & J.A. Armstrong ms*Zieria covenyi* J.A. Armstrong ms

20

Zieria floydii J.A. Armstrong ms**Zieria formosa* J. Briggs & J.A. Armstrong ms*Zieria granulata* (F. Muell.) C. Moore ex Benth.*Zieria ingramii* J.A. Armstrong ms*Zieria lasiocaulis* J.A. Armstrong ms

25

Zieria obcordata* Cunn.Zieria parrisiae* J. Briggs & J.A. Armstrong ms**Zieria prostrata* J.A. Armstrong ms**Santalaceae***Santalum murrayanum* (Mitchell) Gardner

30

Threatened Species Conservation Bill 1995 (No 2)

Schedule 1 Endangered species, populations and ecological communities

Part 1 Endangered species—continued

Plants

Sapindaceae

**Diploglottis campbellii* Cheel

Dodonaea microzyga var. *microzyga* F. Muell.

5

Dodonaea sinuolata subsp. *acrodentata* J. West

Scrophulariaceae

**Euphrasia collina* subsp. *muelleri* (Wettst.) W.R. Barker

Simaroubaceae

**Quassia* sp. *Mooney Creek* (J. King s.n., 1949)

10

Sinopteridaceae

Cheilanthes sieberi subsp. *pseudovellea* H. Quirk & T.C. Chambers

Stackhousiaceae

Stackhousia clementii Domin

Sterculiaceae

15

Rulingia prostrata Maiden & Betche

Thymelaeaceae

Pimelea elongata Threlfall

Pimelea serpyllifolia subsp. *serpyllifolia* R. Br.

**Pimelea spicata* R. Br.

20

Pimelea venosa Threlfall

Tiliaceae

**Corchorus cunninghamii* F. Muell.

Urticaceae

Dendrocnide moroides (Wedd.) Chew

25

Violaceae

Viola cleistogamoides (L. Adams) Seppelt

Part 1 Endangered species—continued

Plants

Zamiaceae

Macrozamia moorei F. Muell.

Part 2 Endangered populations

5

Part 3 Endangered ecological communities

Part 4 Species presumed extinct

Animals

Birds

Gruiformes

Notornis alba

White Gallinule

10

Columbiformes

Columba vitiensis godmanae

Lord Howe Pigeon

Threatened Species Conservation Bill 1995 (No 2)

Schedule 1 Endangered species, populations and ecological communities

Part 4 Species presumed extinct—continued

Animals

Psittaciformes

<i>Cyanorhamphus novaezelandiae</i> <i>subflavescens</i>	Lord Howe Parrakeet	5
<i>Geopsittacus occidentalis</i>	Night Parrot	
<i>Psephotus pulcherrimus</i>	Paradise Parrot	

Strigiformes

<i>Ninox novaeseelandiae albaria</i>	Lord Howe Boobook Owl	
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Passeriformes

<i>Aplonis fuscus hullianus</i>	Lord Howe Starling	10
<i>Gerygone insularis</i>	Lord Howe Warbler	
<i>Neochmia ruficauda</i>	Star Finch	
<i>Rhipidura cervina</i>	Lord Howe Fantail	
<i>Turdus xanthopus vinitinetus</i>	Vinous-tinted Thrush	15
<i>Zosterops strenua</i>	Robust silvereye	

Mammals

Dasyuridae

<i>Dasyercus cristicauda</i>	Mulgara	
<i>Dasyurus geoffroii</i>	Western Quoll	20
<i>Phascogale calura</i>	Red-tailed Phascogale	

Macropodidae

<i>Lagorchestes leporides</i>	Eastern Hare-wallaby	
<i>Onychogalea fraenata</i>	Bridled Nailtail Wallaby	
<i>Onychogalea lunata</i>	Crescent Nailtail Wallaby	25

Muridae

<i>Conilurus albipes</i>	White-footed Rabbit-rat	
<i>Leporillus apicalis</i>	Lesser Stick-nest Rat	
<i>Leporillus conditor</i>	Greater Stick-nest Rat	
<i>Notomys cervinus</i>	Fawn Hopping-mouse	30

Part 4 Species presumed extinct—continued

Animals

<i>Notomys fuscus</i>	Dusky Hopping-mouse	
<i>Notomys longicaudatus</i>	Long-tailed Hopping-mouse	
<i>Notomys mitchellii</i>	Mitchell's Hopping-mouse	5
<i>Pseudomys australis</i>	Plain's Rat	
<i>Pseudomys desertor</i>	Desert Mouse	
<i>Pseudomys gouldii</i>	Gould's Mouse	
Myrmecobiidae		
<i>Myrmecobius fasciatus</i>	Numbat	10
Peramelidae		
<i>Chaeropus ecaudatus</i>	Pig-footed Bandicoot	
<i>Isodon auratus</i>	Golden Bandicoot	
<i>Perameles bougainville</i>	Western Barred Bandicoot	
Potoroidae		15
<i>Bettongia gaimardi</i>	Tasmanian Bettong	
<i>Bettongia lesueur</i>	Burrowing Bettong	
<i>Bettongia penicillata</i>	Brush-tailed Bettong	
<i>Bettongia tropica</i>		
Thylacomyidae		20
<i>Macrotis lagotis</i>	Bilby	
Vespertilionidae		
<i>Nyctophilus howensis</i>		
Vombatidae		
<i>Lasiorninus krefftii</i>	Northern Hairy-nosed Wombat	25
Reptiles		
Elapidae		
<i>Oxyuranus microlepidota</i>	Fierce Snake	

Threatened Species Conservation Bill 1995 (No 2)

Schedule 1 Endangered species, populations and ecological communities

Part 4 Species presumed extinct—continued

Plants

Acanthaceae

Rhaphidospora bonneyana (F. Muell.) R. Barker

Aizoaceae

5

Glinus orygioides F. Muell.

**Trianthema cypseloides* (Fenzl) Benth.

Amaranthaceae

Ptilotus extenuatus Benl

Asteraceae

10

Acanthocladium dockeri F. Muell.

Blumea lacera (Burman f.) DC.

**Olearia oliganthema* F. Muell. ex Benth.

Senecio behrianus Sonder & F. Muell.

**Senecio georgianus* DC.

15

Stemmacantha australis (Gaudich.) Dittr.

Brassicaceae

Lepidium foliosum Desv.

**Lepidium peregrinum* Thell.

Stenopetalum velutinum F. Muell.

20

Chenopodiaceae

Atriplex acutiloba R. Anderson

Maireana lanosa (Lindley) Paul G. Wilson

Osteocarpum pentapterum (F. Muell. & Tate) Volkens

Cyperaceae

25

Eleocharis tetraquetra Nees

Dennstaedtiaceae

Hypolepis elegans Carruth.

Part 4 Species presumed extinct—continued

Plants

Euphorbiaceae*Amperea xiphoclada* var. *pedicellata* R.F.J. Hend.**Gyrostemonaceae**

5

Codonocarpus pyramidalis (F. Muell.) F. Muell.**Haloragaceae***Haloragis stricta* R. Br. ex Benth.*Myriophyllum implicatum* Orch.**Lamiaceae**

10

Prostanthera marifolia R. Br.**Lobeliaceae****Hypsela sessiliflora* F. Wimmer**Myrsinaceae****Rapanea* sp. A Richmond River (J.H. Maiden & J.L. Boorman NSW 26751)

15

Orchidaceae*Diuris bracteata* Fitzg.*Thelymitra epipactoides* F. Muell.**Polygalaceae***Comesperma scoparium* Drummond

20

Polypodiaceae*Drynaria rigidula* (Sw.) Beddome**Proteaceae***Grevillea nematophylla* F. Muell.*Persoonia laxa* L. Johnson & P. Weston

25

Threatened Species Conservation Bill 1995 (No 2)

Schedule 1 Endangered species, populations and ecological communities

Part 4 Species presumed extinct—continued

Plants

Rhamnaceae

Pomaderris oraria F. Muell. ex Reisseck

Rosaceae

5

Aphanes pentamera Rothm.

Rubiaceae

Galium australe DC.

Knoxia sumatrensis (Retz.) DC.

Rutaceae

10

Eriostemon angustifolius subsp. *angustifolius* Paul G. Wilson

Micromelum minutum (Forster f.) Wight & Arn.

Sapindaceae

Dodonaea stenophylla F. Muell.

Scrophulariaceae

15

**Euphrasia arguta* R. Br.

**Euphrasia* sp. Tamworth (Rupp s.n., -/09/1904)

Tremandraceae

Tetratheca pilosa subsp. *pilosa* Labill.

Schedule 2 Vulnerable species

(Section 7)

Animals

Amphibians

Hylidae

<i>Litoria brevipalmata</i>	Green Thighed Frog	5
<i>Litoria olongburensis</i>		
<i>Litoria piperata</i>		
<i>Litoria subglandulosa</i>		

Myobatrachidae

<i>Assa darlingtoni</i>	Pouched Frog	10
<i>Crinia tinnula</i>		
<i>Heleioporus australiacus</i>	Giant Burrowing Frog	
<i>Mixophyes balbus</i>		
<i>Mixophyes fleayi</i>		15
<i>Mixophyes iteratus</i>	Giant Barred Frog	
<i>Phyllorhina kundagungan</i>		
<i>Phyllorhina loveridgei</i>	Loveridge's Frog	
<i>Phyllorhina sphagnicolus</i>	Sphagnum Frog	
<i>Pseudophryne australis</i>	Red-crowned Toadlet	20
<i>Pseudophryne corroboree</i>	Corroboree Frog	

Birds

Procellariiformes

<i>Diomedea exulans</i>	Wandering Albatross	
<i>Fregetta grallaria</i>	White-bellied Storm-petrel	25
<i>Pterodroma leucoptera</i>	Gould's Petrel	
<i>Pterodroma neglecta</i>	Kermadec Petrel	
<i>Pterodroma nigripennis</i>	Black-winged Petrel	
<i>Pterodroma solandri</i>	Providence Petrel	
<i>Puffinus assimilus</i>	Little Shearwater	30
<i>Puffinus carneipes</i>	Fleshy-footed Shearwater	

Threatened Species Conservation Bill 1995 (No 2)

Schedule 2 Vulnerable species

Animals

Pelecaniformes

<i>Phaeton rubricauda</i>	Red-tailed Tropic-bird
<i>Sula dactylatra</i>	Masked Booby

Ciconiiformes

<i>Botaurus poiciloptilus</i>	Australasian Bittern
<i>Dupetor flavicollis</i>	Black Bittern
<i>Xenorhynchus asiaticus</i>	Black-necked Stork

5

Falconiformes

<i>Falco hypoleucos</i>	Grey Falcon
<i>Hamirostra melanosternon</i>	Black-breasted Buzzard
<i>Lophoictinia isura</i>	Square-tailed Kite
<i>Pandion haliaetus</i>	Osprey

10

Anseriformes

<i>Anseranas semipalmata</i>	Magpie Goose
<i>Oxyura australis</i>	Blue-billed Duck
<i>Stictonetta naevosa</i>	Freckled Duck

15

Gruiformes

<i>Gallinula olivacea</i>	Bush Hen
<i>Grus rubicundus</i>	Brolga

20

Charadriiformes

<i>Calidris alba</i>	Sanderling
<i>Calidris tenuirostris</i>	Great Knot
<i>Charadrius leschenaulti</i>	Large Sand-Plover
<i>Charadrius mongolus</i>	Mongolian Plover
<i>Gygis ciba</i>	White Tern
<i>Haematopus fuliginosus</i>	Sooty Oystercatcher
<i>Haematopus longirostris</i>	Pied Oystercatcher
<i>Irediparra gallinacea</i>	Comb-crested Jacana
<i>Limicola falcinellus</i>	Broad-billed Sandpiper
<i>Limosa limosa</i>	Black-tailed Godwit
<i>Procelsterna cerulea</i>	Grey Ternlet

25

30

Animals

<i>Rostratula benghalensis</i>	Painted Snipe	
<i>Sterna fuscata</i>	Sooty Tern	
<i>Tringa terek</i>	Terek Sandpiper	
Columbiformes		5
<i>Ptilinopus magnificus</i>	Wompoo Fruit-dove	
<i>Ptilinopus regina</i>	Rose-crowned Fruit-dove	
<i>Ptilinopus superbus</i>	Superb Fruit-dove	
Psittaciformes		
<i>Cacatua leadbeateri</i>	Pink Cockatoo	10
<i>Calyptorhynchus lathami</i>	Glossy Black-Cockatoo	
<i>Calyptorhynchus magnificus</i>	Red-tailed Black-Cockatoo	
<i>Glossopsitta porphyrocephala</i>	Purple-crowned Lorikeet	
<i>Lathamus discolor</i>	Swift Parrot	
<i>Neophema pulchella</i>	Turquoise Parrot	15
<i>Neophema splendida</i>	Scarlet-chested Parrot	
<i>Pezoporus wallicus</i>	Ground Parrot	
<i>Polytelis swainsonii</i>	Superb Parrot	
Strigiformes		
<i>Ninox strenua</i>	Powerful Owl	20
<i>Tyto longimembris</i>	Eastern Grass Owl	
<i>Tyto novaehollandiae</i>	Masked Owl	
<i>Tyto tenebricosa</i>	Sooty Owl	
Caprimulgiformes		
<i>Podargus ocellatus</i>	Marbled Frogmouth	25
Coraciiformes		
<i>Halcyon chloris</i>	Collared Kingfisher	
Passeriformes		
<i>Amytornis barbatus</i>	Grey Grasswren	
<i>Amytornis striatus</i>	Striated Grasswren	30

Threatened Species Conservation Bill 1995 (No 2)

Schedule 2 Vulnerable species

Animals

<i>Atrichornis rufescens</i>	Rufous Scrub-bird	
<i>Certhionyx variegatus</i>	Pied Honeyeater	
<i>Cinclosoma castanotum</i>	Chestnut Quail-thrush	
<i>Coracina lineata</i>	Yellow-eyed Cuckoo-shrike	5
<i>Dasyornis brachypterus</i>	Eastern Bristlebird	
<i>Drymodes brunneopygia</i>	Southern Scrub-robin	
<i>Grantiella picta</i>	Painted Honeyeater	
<i>Lichenostomus cratitius</i>	Purple-gaped Honeyeater	
<i>Lichenostomus fasciocularis</i>	Mangrove Honeyeater	10
<i>Menura alberti</i>	Albert's Lyrebird	
<i>Monarcha leucotis</i>	White-eared Monarch	
<i>Pachycephala inornata</i>	Gilbert's Whistler	
<i>Pachycephala olivacea</i>	Olive Whistler	
<i>Pachycephala pectoralis contempta</i>	Lord Howe Golden Whistler	15
<i>Petroica rodinogaster</i>	Pink Robin	
<i>Pomatostomus halli</i>	Hall's Babbler	
<i>Sericornis brunneus</i>	Redthroat	
<i>Sericornis cautus</i>	Shy Hylacola	
<i>Sericornis fuliginosus</i>	Calamanthus	20
<i>Stipiturus ruficeps</i>	Rufous-crowned Emu-Wren	
<i>Strepera graculina crissalis</i>	Lord Howe Pied Currawong	
<i>Zosterops tephroleura</i>	Lord Howe Silvereye	

Mammals

Burramyidae		25
<i>Burramys parvus</i>	Mountain Pygmy-possum	
Dasyuridae		
<i>Dasyurus maculatus</i>	Tiger Quoll	
<i>Ningauia yvonneae</i>		
<i>Phascogale tapoatafa</i>	Brush-tailed Phascogale	30
<i>Planigale maculata</i>	Common Planigale	
<i>Sminthopsis leucopus</i>	White-footed Dunnart	
<i>Sminthopsis macroura</i>	Stripe-faced Dunnart	

Threatened Species Conservation Bill 1995 (No 2)

Vulnerable species

Schedule 2

Animals

Emballonuridae

<i>Saccolaimus flaviventris</i>	Yellow-bellied Sheath-tail-Bat	
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Macropodidae

<i>Macropus parma</i>	Parma Wallaby	5
<i>Petrogale penicillata</i>	Brush-tailed Rock Wallaby	
<i>Thylogale stigmatica</i>	Red-legged Pademelon	

Molossidae

<i>Mormopterus beccarii</i>	Beccari's Mastiff-bat	
<i>Mormopterus norfolkensis</i>	Eastern Little Mastiff-bat	10

Muridae

<i>Leggadina forresti</i>	Forrest's Mouse	
<i>Mastacomys fuscus</i>	Broad-toothed Rat	
<i>Pseudomys gracilicaudatus</i>	Eastern Chestnut Mouse	
<i>Pseudomys hermannsburgensis</i>	Sandy Inland Mouse	15
<i>Pseudomys pilligaensis</i>	Pilliga Mouse	
<i>Rattus villosissimus</i>	Long-haired Rat	

Petauridae

<i>Petaurus australis</i>	Yellow-bellied Glider	
<i>Petaurus norfolcensis</i>	Squirrel Glider	20

Phascolarctidae

<i>Phascolarctos cinereus</i>	Koala	
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Pteropodidae

<i>Nyctimene robinsoni</i>	Queensland Tube-nosed Bat	
<i>Pteropus alecto</i>	Black Flying-fox	25
<i>Syconycteris australis</i>	Queensland Blossom Bat	

Potoroidae

<i>Aepyprymnus rufescens</i>	Rufous Bettong	
<i>Potorous tridactylus</i>	Long-nosed Potoroo	

Threatened Species Conservation Bill 1995 (No 2)

Schedule 2 Vulnerable species

Animals

Vespertilionidae

<i>Chalinolobus dwyeri</i>	Large Pied Bat	
<i>Chalinolobus nigrogriseus</i>	Hoary Bat	
<i>Chalinolobus picatus</i>	Little Pied Bat	5
<i>Eptesicus baverstocki</i>		
<i>Eptesicus troughtoni</i>		
<i>Falsistrellus tasmaniensis</i>	Great Pipistrelle	
<i>Kerivoula papuensis</i>	Golden-tipped Bat	
<i>Miniopterus australis</i>	Little Bent-wing Bat	10
<i>Miniopterus schreibersii</i>	Common Bent-wing Bat	
<i>Myotis adversus</i>	Large-footed Mouse-eared Bat	
<i>Nyctophilus bifax</i>	Queensland Long-eared Bat	
<i>Nyctophilus timoriensis</i>	Greater Long-eared Bat	
<i>Scoteanax rueppellii</i>	Greater Broad-nosed Bat	15

Marine Mammals

Cetacea

<i>Eubalaena australis</i>	Southern Right Whale	
<i>Megaptera novaeangliae</i>	Humpback Whale	
<i>Balaenoptera borealis</i>	Sei Whale	20
<i>Balaenoptera physalus</i>	Fin Whale	
<i>Sousa chinensis</i>	Indo-Pacific Humpback Dolphin	
<i>Stenella longirostris</i>	Spinner Dolphin	
<i>Physeter macrocephalus</i>	Sperm Whale	

Reptiles

Boidae 25

<i>Aspidites ramsayi</i>	Woma	
<i>Liasis stimsoni</i>	Stimson's Python	

Cheloniidae

<i>Caretta caretta</i>	Loggerhead Turtle	30
<i>Chelonia mydas</i>	Green Turtle	

Animals

Dermochelyidae

Dermochelys coriacea Leathery Turtle

Elapidae

<i>Cacophis harriettae</i>	White Crowned Snake	5
<i>Demansia torquata</i>	Collared Whip Snake	
<i>Echiopsis curta</i>		
<i>Hoplocephalus bitorquatus</i>	Pale-headed Snake	
<i>Hoplocephalus stephensi</i>	Stephen's Banded Snake	
<i>Simoselaps fasciolatus</i>	Narrow-banded Snake	10
<i>Suta flagellum</i>		

Gekkonidae

Christinus guentheri
Underwoodisaurus sphyrurus

Pygopodidae

<i>Aprasia inaurita</i>		15
<i>Aprasia parapulchella</i>		
<i>Delma impar</i>		

Scincidae

<i>Coeranoscincus reticulatus</i>		20
<i>Cyclodomorphus branchialis</i>		
<i>Pseudemoia lichenigera</i>		
<i>Tiliqua multifasciata</i>	Centralian Blue-tongued Lizard	
<i>Tiliqua occipitalis</i>	Western Blue-tongued Lizard	

Varanidae

<i>Varanus rosenbergi</i>		25
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Threatened Species Conservation Bill 1995 (No 2)

Schedule 2 Vulnerable species

Plants

Apocynaceae

Parsonsia dorrigoensis J.B. Williams ms

Araliaceae

Astrotricha crassifolia Blakely 5

Asteliaceae

Neoastelia spectabilis J.B. Williams

Asteraceae

Ammobium craspedioides Benth.
Brachycome muelleroides G. Davis 10
Brachycome papillosa G. Davis
Calotis glandulosa F. Muell.
Euchiton nitidulus (Hook. f.) A. Anderb.
Olearia cordata Lander
Ozothamnus tessellatus (Maiden & R. Baker) Anderberg 15
Picris evae Lack
Rutidosia heterogama Philipson
Rutidosia leiolepis F. Muell.
Senecio garlandii F. Muell. ex Belcher

Brassicaceae

20

Lepidium aschersonii Thell.

Callitrichaceae

Callitriche cyclocarpa Hegelm.

Casuarinaceae

Allocasuarina simulans L. Johnson 25

Chenopodiaceae

Atriplex infrequens Paul G. Wilson
Maireana cheelii (R. Anderson) Paul G. Wilson
Sclerolaena napiformis Paul G. Wilson

Plants

Corokiaceae

Corokia whiteana L.S. Smith

Corynocarpaceae

Corynocarpus rupestris subsp. *rupestris* Guymer

5

Cunoniaceae

Acrophyllum australe (Cunn.) Hoogl.

Cupressaceae

Callitris oblonga A. Rich. & Rich.

Cyperaceae

Eleocharis obicis L.A.S. Johnson & O.D. Evans

10

Dilleniaceae

Hibbertia marginata Conn

Epacridaceae

Budawangia gnidioides (Summerh.) Telford

Epacris sparsa R. Br.

Leucopogon exolasius (F. Muell.) F. Muell. ex Benth.

Styphelia perileuca J. Powell

15

Ericaceae

Gaultheria viridicarpa subsp. *merinoensis* J.B. Williams ms

Gaultheria viridicarpa subsp. *viridicarpa* J.B. Williams ms

20

Eriocaulaceae

Eriocaulon australasicum (F. Muell.) Korn.

Euphorbiaceae

Baloghia marmorata C. White

Bertya sp. A Cobar-Coolabah (Cunningham & Milthorpe s.n., 2/8/73)

Fontainea australis Jessup & Guymer

25

Threatened Species Conservation Bill 1995 (No 2)

Schedule 2 Vulnerable species

Plants

Fabaceae

<i>Acacia baueri</i> subsp. <i>aspera</i> (Maiden & E. Betche) Pedley	
<i>Acacia bynoeana</i> Benth.	
<i>Acacia carnei</i> Maiden	5
<i>Acacia clunies-rossiae</i> Maiden	
<i>Acacia constablei</i> Tind.	
<i>Acacia courtii</i> Tind. & Herscovitch	
<i>Acacia curranii</i> Maiden	
<i>Acacia flocktoniae</i> Maiden	10
<i>Acacia georgensis</i> Tind.	
<i>Acacia phasmoides</i> J.H. Willis	
<i>Acacia pubescens</i> (Vent.) R. Br.	
<i>Acacia pycnostachya</i> F. Muell.	
<i>Bossiaea oligosperma</i> A. Lee	15
<i>Desmodium acanthocladum</i> F. Muell.	
<i>Dillwynia tenuifolia</i> Sieber ex DC.	
<i>Kennedia retrorsa</i> Hemsley	
<i>Phyllota humifusa</i> Benth.	
<i>Pultenaea aristata</i> Sieber ex DC.	20
<i>Pultenaea baeuerlenii</i> F. Muell.	
<i>Pultenaea campbellii</i> Maiden & E. Betche	
<i>Pultenaea glabra</i> Benth.	
<i>Pultenaea parrisiae</i> subsp. <i>parrisiae</i> J.D. Briggs & Crisp	
<i>Pultenaea stuartiana</i> Williamson	25
<i>Sophora fraseri</i> Benth.	
<i>Swainsona murrayana</i> Wawra	
<i>Swainsona plagiotropis</i> F. Muell.	
<i>Swainsona pyrophila</i> J. Thompson	

Gentianaceae

30

<i>Gentiana bredboensis</i> L. Adams	
<i>Gentiana wissmannii</i> J. Williams	

Goodeniaceae

<i>Goodenia macbarronii</i> Carolin	
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Plants

Haloragaceae

Haloragis exalata subsp. *exalata* F. Muell.

Haloragis exalata subsp. *velutina* Orch.

Lamiaceae

5

Prostanthera cineolifera R. Baker & H.G. Smith

Prostanthera cryptandroides Cunn. ex Benth.

Prostanthera densa A.A. Ham.

Prostanthera discolor R. Baker

Prostanthera staurophylla F. Muell.

10

Prostanthera stricta R. Baker

Prostanthera sp. Strickland State Forest (J.H. Maiden s.n., 07/1915)

Prostanthera sp. Bundjalung National Park (B.J. Conn 3471)

Westringia davidii Conn

Lauraceae

15

Cryptocarya foetida R. Baker

Endiandra hayesii Kosterm.

Meliaceae

Owenia cepiodora F. Muell.

Menispermaceae

20

Tinospora tinosporoides (F. Muell.) Forman

Myrtaceae

Angophora robur L. Johnson & K. Hill

Baeckea sp. Pyramids (W.J. McDonald 357)

Darwinia biflora (Cheel) B. Briggs

25

Eucalyptus alligatrix subsp. *miscella* Brooker, Slee & J.D. Briggs ms

Eucalyptus aquatica (Blakely) L. Johnson & K. Hill

Eucalyptus benthamii Maiden & Cambage

Eucalyptus caleyi subsp. *ovendenii* L. Johnson & K. Hill

Eucalyptus camfieldii Maiden

30

Eucalyptus cannonii R. Baker

Threatened Species Conservation Bill 1995 (No 2)

Schedule 2 Vulnerable species

Plants

<i>Eucalyptus glaucina</i> Blakely	
<i>Eucalyptus kartzoffiana</i> L. Johnson & Blaxell	
<i>Eucalyptus langleyi</i> L. Johnson & Blaxell	
<i>Eucalyptus mckieana</i> Blakely	5
<i>Eucalyptus nicholii</i> Maiden & Blakely	
<i>Eucalyptus parramattensis</i> subsp. <i>decadens</i> L. Johnson & Blaxell	
<i>Eucalyptus parvula</i> L. Johnson & K. Hill	
<i>Eucalyptus pulverulenta</i> Sims	
<i>Eucalyptus pumila</i> Cambage	10
<i>Eucalyptus robertsonii</i> subsp. <i>hemisphaerica</i> L. Johnson & K. Hill	
<i>Eucalyptus rubida</i> subsp. <i>barbigerorum</i> L. Johnson & K. Hill	
<i>Eucalyptus rubida</i> subsp. <i>canobolensis</i> L. Johnson & K. Hill	
<i>Eucalyptus sturgissiana</i> L. Johnson & Blaxell	
<i>Eucalyptus tetrapleura</i> L. Johnson	15
<i>Homoranthus darwinioides</i> (Maiden & E. Betcher) Cheel	
<i>Homoranthus lunatus</i> Craven & S.R. Jones	
<i>Homoranthus prolixus</i> Craven & S.R. Jones	
<i>Kunzea cambagei</i> Maiden & E. Betcher	
<i>Leptospermum deanei</i> J. Thompson	20
<i>Leptospermum thompsonii</i> J. Thompson	
<i>Melaleuca groveana</i> Cheel & C. White	
<i>Micromyrtus blakelyi</i> J. Green	
<i>Micromyrtus minutiflora</i> (F. Muell.) Benth.	
<i>Syzygium hodgkinsoniae</i> (F. Muell.) L. Johnson	25
<i>Syzygium moorei</i> (F. Muell.) L. Johnson	
<i>Syzygium paniculatum</i> Gaertner	

Olacaceae

Olax angulata A.S. George

Orchidaceae

Bulbophyllum globuliforme Nicholls
Caladenia concolor Fitzg.
Caladenia tessellata Fitzg.
Cryptostylis hunteriana Nicholls

Plants

<i>Diuris aequalis</i> F. Muell. ex Fitzg.	
<i>Diuris praecox</i> D.L. Jones	
<i>Diuris shaeaffiana</i> Fitzg.	
<i>Diuris venosa</i> Rupp	5
<i>Phaius australis</i> F. Muell.	
<i>Prasophyllum fuscum</i> R. Br.	
<i>Prasophyllum morganii</i> Nicholls	
<i>Pterostylis cobarensis</i> M.A. Clem.	
<i>Pterostylis cucullata</i> R. Br.	10
<i>Pterostylis nigricans</i> L. Jones & M.A. Clem.	
<i>Pterostylis pulchella</i> Messmer	
<i>Sarcophilus fitzgeraldii</i> F. Muell.	
<i>Sarcophilus hartmannii</i> F. Muell.	
<i>Sarcophilus weinthalii</i> (F.M. Bailey) Dockrill	15

Poaceae

<i>Amphibromus fluitans</i> Kirk	
<i>Arthraxon hispidus</i> (Thunb.) Makino	
<i>Bothriochloa biloba</i> S.T. Blake	
<i>Dichanthium setosum</i> S.T. Blake	20
<i>Erythranthera pumila</i> (Kirk) Zotov	
<i>Plinthanthesis rodwayi</i> (C.E. Hubb.) S.T. Blake	
<i>Stipa metatoris</i> J. Everett & S.W.L. Jacobs	

Polygonaceae

<i>Persicaria elatior</i> (R. Br.) Sojak	25
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Proteaceae

<i>Floydia praealta</i> (F. Muell.) L. Johnson & B. Briggs	
<i>Grevillea banyabba</i> P. Olde & N. Marriott	
<i>Grevillea evansiana</i> McKee	
<i>Grevillea kennedyana</i> F. Muell.	30
<i>Grevillea quadricauda</i> P. Olde & N. Marriott	
<i>Grevillea rhizomatosa</i> P. Olde & N. Marriott	
<i>Grevillea scortechinii</i> subsp. <i>sarmentosa</i> (Blakely & McKie) McGillivray	

Threatened Species Conservation Bill 1995 (No 2)

Schedule 2 Vulnerable species

Plants

<i>Grevillea shiressii</i> Blakely	
<i>Hakea fraseri</i> R. Br.	
<i>Hakea trineura</i> F. Muell.	
<i>Hakea</i> sp. Manning River SF—Broken Bago SF (P. Hind 4662)	5
<i>Hicksbeachia pinnatifolia</i> F. Muell.	
<i>Isopogon fletcheri</i> F. Muell.	
<i>Macadamia tetraphylla</i> L. Johnson	
<i>Persoonia acerosa</i> Sieber ex Schultes & Schultes f.	
<i>Persoonia bargoensis</i> P. Weston & L. Johnson	10
<i>Persoonia glaucescens</i> Sieber ex Sprengel	
<i>Persoonia marginata</i> Cunn. ex R. Br.	

Ranunculaceae

<i>Clematis fawcettii</i> F. Muell.	
<i>Ranunculus anemoneus</i> F. Muell.	15

Restionaceae

<i>Restio longipes</i> L.A.S Johnson & O.D. Evans	
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Rhamnaceae

<i>Pomaderris brunnea</i> Wakef.	
<i>Pomaderris gilmourii</i> var. <i>cana</i> N. Walsh	20
<i>Pomaderris pallida</i> Wakef.	
<i>Pomaderris parrisiae</i> N. Walsh	

Rubiaceae

<i>Asperula asthenes</i> Airy Shaw & Turrill	
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Rutaceae

<i>Boronia deanei</i> Maiden & E. Betcher	25
<i>Boronia umbellata</i> P. Weston	
<i>Bosistoa selwynii</i> T. Hartley	
<i>Bosistoa transversa</i> J. Bailey & C. White	
<i>Correa baeuerlenii</i> F. Muell.	30
<i>Eriostemon ericifolius</i> Cunn. ex Benth.	

Plants

<i>Phebalium ralstonii</i> (F. Muell.) Benth.	
<i>Phebalium rhytidophyllum</i> Albrecht & N. Walsh	
<i>Phebalium sympetalum</i> Paul G. Wilson	
<i>Zieria citriodora</i> J.A. Armstrong ms	5
<i>Zieria involucrata</i> R. Br. ex Benth.	
<i>Zieria murphyi</i> Blakely	
<i>Zieria tuberculata</i> J.A. Armstrong unpub	
 Santalaceae	
<i>Thesium australe</i> R. Br.	10
 Sapindaceae	
<i>Dodonaea procumbens</i> F. Muell.	
 Sapotaceae	
<i>Amorphospermum whitei</i> Aubrev.	
 Scrophulaceae	15
<i>Euphrasia bella</i> S. T. Blake	
<i>Euphrasia bowdeniae</i> W.R. Barker	
 Solonaceae	
<i>Solanum karsense</i> Symon	
 Sterculiaceae	20
<i>Lasiopetalum longistamineum</i> Maiden & Betche	
<i>Rulingia procumbens</i> Maiden & Betche	
 Surianaceae	
<i>Cadellia pentastylis</i> F. Muell.	
 Symplocaceae	25
<i>Symplocos baeuerlenii</i> R. Baker	

Threatened Species Conservation Bill 1995 (No 2)

Schedule 2 Vulnerable species

Plants

Tremandraceae

Tetratheca glandulosa Smith

Tetratheca juncea Smith

Winteraceae

Tasmania glaucifolia J. Williams

Tasmania purpurascens (Vick.) A.C. Smith

5

Schedule 3 Key threatening processes

(Section 8)

Schedule 4 Amendment of National Parks and Wildlife Act 1974

(Section 147)

[1] Section 5 Definitions

Insert in alphabetical order in section 5 (1):

5

critical habitat has the same meaning as in the *Threatened Species Conservation Act 1995*.

ecological community has the same meaning as in the *Threatened Species Conservation Act 1995*.

endangered ecological community has the same meaning as in the *Threatened Species Conservation Act 1995*. 10

endangered population has the same meaning as in the *Threatened Species Conservation Act 1995*.

endangered species has the same meaning as in the *Threatened Species Conservation Act 1995*. 15

harm an animal (including an animal of a threatened species, population or ecological community) includes hunt, shoot, poison, net, snare, spear, pursue, capture, trap, injure or kill, but does not include harm by changing the habitat of an animal. 20

population has the same meaning as in the *Threatened Species Conservation Act 1995*.

species has the same meaning as in the *Threatened Species Conservation Act 1995*. 25

threatened interstate fauna means protected fauna of a species named in Schedule 12.

threatened species, populations and ecological communities and *threatened species, population or ecological community* have the same meanings as in the *Threatened Species Conservation Act 1995*. 30

vulnerable species has the same meaning as in the *Threatened Species Conservation Act 1995*.

[2] **Section 5 (1)**

Omit the definition of *endangered fauna*.

[3] **Section 5 (1)**

Omit the definition of *marine mammal*. Insert instead:

marine mammal means all animals of the orders of Cetacea, Sirenia and Pinnipedia. 5

[4] **Section 5 (1)**

Omit the definition of *pick*. Insert instead:

pick a native plant (including a threatened species, population or ecological community) means gather, pluck, cut, pull up, destroy, poison, take, dig up, remove or injure the plant or any part of the plant. 10

[5] **Section 5 (1)**

Omit "New South Wales" from the definition of *native plant*.
Insert instead "Australia". 15

[6] **Section 5 (1)**

Omit the definition of *take*.

[7] **Section 5 (3)**

Insert "or a licence under the *Threatened Species Conservation Act 1995*" after "under Part 9". 20

[8] **Section 6 The Service**

Insert ", the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995*" after "this Act" in section 6 (b).

[9] Section 8 Miscellaneous powers and functions of Director-General

Omit "taking or killing" from section 8 (2) (c1).
Insert instead "hunting".

[10] Section 8 (7)

5

Omit "animal and plant life".
Insert instead "and the need to conserve animal and plant life, including to conserve threatened species, populations and ecological communities, and their habitats".

[11] Section 10 Officers and employees

10

Omit "and the Wilderness Act 1987" from section 10.
Insert instead ", the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995*".

[12] Section 11 Use of services of personnel of public authorities

Omit "and the Wilderness Act 1987" from section 11 (5).
Insert instead ", the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995*".

15

[13] Section 12 Powers and functions of Service

Insert "(including threatened species, populations and ecological communities, and their habitats)" after "wildlife".

20

[14] Section 19 Powers and functions of ex-officio rangers

Insert ", the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995*" after "this Act" in section 19 (1).

[15] Section 20 Powers and functions of honorary rangers

Insert “, the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995*” after “this Act” in section 20.

[16] Section 21 Delegation

Omit “on him by this Act, the regulations or any other instrument under this Act” from section 21 (1). 5

Insert instead “the Minister or the Director-General, as the case may require, by or under this or any other Act”.

[17] Section 45 Provisions respecting animals in parks and sites

Omit “take or kill” from section 45 (1) (a). Insert instead “harm”. 10

[18] Section 45 (4)

Omit “taking or killing of any animal”.

Insert instead “harming of any animal (other than fauna or an animal of a threatened species)”.

[19] Section 56 Provisions respecting animals in nature reserves 15

Omit “take or kill” from section 56 (1) (a). Insert instead “harm”.

[20] Section 56 (1) (b)

Omit “taking or killing”. Insert instead “harming”.

[21] Section 56 (5)

Omit “taking or killing of an animal that is within those lands, other than fauna”. 20

Insert instead “harming of an animal that is within those lands (other than fauna or an animal of a threatened species)”.

[22] Section 57 Restrictions as to timber, vegetation, plants etc in nature reserves

Insert “(not being a plant of a threatened species)” after “native plant” in section 57 (5).

[23] Section 58A Dedication of state game reserves

5

Omit “taking or killing” wherever occurring from section 58A (3) (d) and (e).

Insert instead “hunting”.

[24] Section 58A (6)

Omit “taken or killed” wherever occurring. Insert instead “hunted”. 10

[25] Section 58H Provisions respecting animals in state game reserves

Omit “take or kill” from section 58H (1) (a). Insert instead “harm”.

[26] Section 58H (1) (b)

Omit “taking or killing”. Insert instead “harming”. 15

[27] Section 58H (5)

Omit “taking or killing of an animal that is within those lands, other than fauna”.

Insert instead “harming of an animal that is within those lands (other than fauna or an animal of a threatened species)”. 20

[28] Section 58I Restrictions as to timber, vegetation, plants etc in state game reserves

Insert “(not being a plant of a threatened species)” after “native plant” in section 58I (5).

[29] Section 58Q Provisions respecting animals in karst conservation areas

Omit "take or kill" from section 58Q (1) (a). Insert instead "harm".

[30] Section 58Q (1) (b)

Omit "taking or killing". Insert instead "harming".

5

[31] Section 58Q (5)

Omit "taking or killing of an animal that is within those lands, other than fauna".

Insert instead "harming of an animal that is within those lands (other than fauna or an animal of a threatened species)".

10

[32] Section 58R Restrictions as to timber, vegetation, plants etc in karst conservation reserves

Insert "(not being a plant of a threatened species)" after "native plant" in section 58R (5).

[33] Section 67 Wildlife districts

15

Omit "taken or killed" wherever occurring in section 67 (2).
Insert instead "harmed".

[34] Section 69 Wildlife management areas

Omit "taking or killing as" in section 69 (2) (a).

[35] Section 69 (2) (b)

20

Omit "the taking or killing of". Insert instead "hunting".

[36] Section 69 (3)

Omit "taken or killed" wherever occurring.
Insert instead "hunted".

[37] Section 69C Purpose and content of agreements

Omit "or" where secondly occurring in section 69C (1) (e1). 5

[38] Section 69C (1) (e2)

Insert after section 69C (1) (e1):

(e2) for the purpose of the conservation of critical
habitat or the conservation of threatened species,
populations or ecological communities, or their 10
habitats, or

[39] Section 69C (1) (f)

Omit "or (e)". Insert instead ", (e), (e1) or (e2)".

**[40] Section 70 Fauna in wildlife districts, wildlife refuges, wildlife
management areas, conservation areas and certain wilderness 15
areas**

Omit "take or kill" from section 70 (1) (a). Insert instead "harm".

[41] Section 70 (1) (b)

Omit "taking or killing". Insert instead "harming".

[42] Section 70 (3) 20

Omit "or a trapper's licence under section 123".
Insert instead ", a trapper's licence under section 123 or a licence
under Part 6 of the *Threatened Species Conservation Act 1995*".

[43] Section 70 (5) and (6)

Omit "taking or killing" wherever occurring.
Insert instead "harming".

[44] Section 70 (6AA)

Omit "taking or killing". Insert instead "harming".

5

[45] Section 70 (6A)

Omit "A person".
Insert instead "Subject to subsection (6B), a person".

[46] Section 70 (6B)

Insert after subsection (6A):

10

(6B) Subsection (6A) does not extend to the damaging of critical habitat or the harming of threatened species, populations or ecological communities.

[47] Section 71 Native plants in wildlife refuges, wildlife management areas, conservation areas and certain wilderness areas

15

Insert ", a licence under Part 6 of the *Threatened Species Conservation Act 1995*" after "Part 9" in section 71 (2) (a).

[48] Section 71 (3)

Insert "(not being a plant of a threatened species)" after "native plant".

20

[49] Section 71 (3A)

Omit "A person".
Insert "Subject to subsection (3B), a person".

[50] Section 71 (3B)

Insert after subsection (3A):

- (3B) Subsection (3A) does not extend to the damaging of critical habitat or the harming of threatened species, populations or ecological communities.

5

[51] Section 72 Plans of management

Insert "(including the conservation of critical habitat and threatened species, populations and ecological communities, and their habitats)" after "wildlife" in section 72 (4) (a).

[52] Part 6A

10

Omit the heading. Insert instead:

Part 6A Stop work orders and interim protection orders

Division 1 Stop work orders

91AA Director-General may make stop work order

15

- (1) If the Director-General is of the opinion that any action is being, or is about to be, carried out that is likely to significantly affect protected fauna or native plants or their environment, the Director-General may order that the action is to cease and that no action, other than such action as may be specified in the order, is to be carried out with respect to that environment within a period of 40 days after the date of the order.

20

- (2) An order takes effect on and from the date on which:

- (a) a copy of the order is affixed in a conspicuous place in the environment or place the subject of the order, or

25

- (b) the person performing or about to perform the action is notified that the order has been made, whichever is the sooner.

30

- (3) This section does not apply in relation to anything authorised to be done by or under:

-
- (a) a licence granted under this Act or the *Threatened Species Conservation Act 1975*, or
- (b) the *Bush Fires Act 1949* or the *State Emergency and Rescue Management Act 1989* that is reasonably necessary in order to avoid a threat to life or property. 5
- (4) This section does not apply in relation to anything that is essential for the carrying out of:
- (a) development in accordance with a development consent within the meaning of the *Environmental Planning and Assessment Act 1979*, or 10
- (b) an activity whether by a determining authority or pursuant to an approval of a determining authority, within the meaning of Part 5 of that Act if the determining authority has complied with that Part. 15
- (5) In this Division, a reference to action being, or about to be, carried out includes a reference to action that should be, but is not being, carried out and an order under this Division may be modified accordingly.
- 91BB Prior notification of making of stop work order not required** 20
- The Director-General is not required, before making an order under this Division, to notify any person who may be affected by the order.
- 91CC Appeal to Minister** 25
- (1) A person against whom an order is made under this Division may appeal to the Minister against the making of the order.
- (2) After hearing an appeal, the Minister may:
- (a) confirm the order, or 30
- (b) modify or rescind the order, but only if this is consistent with the principles of ecologically sustainable development (as described in section 6 (2) of the *Protection of the Environment Administration Act 1991*). 35
- 91DD Extension of stop work order**
- The Director-General may extend an order under this Division for such further period or periods of 40 days as the Director-General thinks fit.
-

91EE Consultation about modification of proposed detrimental action

- (1) After making an order under this Division, the Director-General must immediately consult with the person proposing to perform the action to determine whether any modification of the action may be sufficient to protect the environment of any protected fauna or native plants. 5
- (2) If, in the opinion of the Director-General, satisfactory provisions cannot be made to protect the environment the subject of an order under this Division, the Director-General must recommend the making of an interim protection order under Division 2. 10
- (3) The Director-General must not recommend the making of an interim protection order in relation to anything that is authorised to be done by or under an authority referred to in section 91AA (3) or that is essential for a purpose referred to in section 91AA (4). 15

91FF Order prevails over other instruments

- (1) If an order under this Division is in force in relation to an environment, an approval, notice or order (whether made or issued before or after the order pursuant to this Division) under any other Act that requires or permits the environment to be significantly affected is inoperative to the extent of the inconsistency with the order. 20 25
- (2) This section has effect whether the approval, notice, order or other instrument concerned was made before or after the making of the order under this Division.

Division 2 Interim protection orders 30

[53] Section 91A Interim protection of areas having significant values

Insert "or the *Threatened Species Conservation Act 1995*" after "this Act" in section 91A (b).

[54] Section 91A (b)

Omit "fauna or native plants".

Insert instead "fauna, native plants, threatened species, populations or ecological communities or critical habitat of endangered species, populations or ecological communities".

5

[55] Section 91A (c)

Insert at the end of paragraph (b):

, or

- (c) that is critical habitat or the habitat of a threatened species, population or ecological community.

10

[56] Section 91B Interim protection orders

Omit "fauna and plants".

Insert instead "fauna, plants, threatened species, populations and ecological communities and critical habitat of endangered species, populations and ecological communities".

15

[57] Section 91D Duration of interim protection order

Omit "12 months" from section 91C. Insert instead "2 years".

[58] Section 91D (3)

Omit the subsection.

[59] Sections 92A–92E

20

Omit the sections.

[60] Section 93 Amendment of Schedule 11 (unprotected fauna)

Omit ", but only on the recommendation of the Scientific Committee referred to in section 92A".

Threatened Species Conservation Bill 1995 (No 2)

Schedule 4 Amendment of National Parks and Wildlife Act 1974

[61] Section 94 Amendment of Schedule 12 (threatened interstate fauna)

Omit “, but only on the recommendation of the Scientific Committee referred to in section 92A”.

[62] Section 96 Locally unprotected fauna

5

Insert after section 96 (3):

- (4) An order under subsection (1) does not apply to, and must not be expressed to apply to, any threatened species, population or ecological community.

[63] Section 98 Harming protected fauna, other than threatened species, populations or ecological communities

10

Omit “endangered fauna” from subsection (1).

Insert instead “threatened interstate fauna, threatened species, populations or ecological communities,”.

[64] Section 98 (2) (a) and (a1)

15

Omit “take or kill” wherever occurring. Insert instead “harm”.

[65] Section 98 (2) (b)

Insert “substance,” after “any” where firstly occurring.

[66] Section 98 (2) (b)

Omit “taking or killing”. Insert instead “harming”.

20

[67] Section 98 (2)

Omit “20 penalty units”. Insert instead “30 penalty units”.

[68] Section 98 (3) (a)

Insert “or a licence under Part 6 of the *Threatened Species Conservation Act 1995*” before “; or”.

[69] Section 98 (4)

Omit the subsection.

5

[70] Section 99 Harming threatened interstate fauna

Omit section 99 (1) (a). Insert instead:

(a) harm any threatened interstate fauna, or

[71] Section 99 (1) (b)

Insert “substance,” after “any” where firstly occurring.

10

[72] Section 99 (1) (b)

Omit “taking or killing”. Insert instead “harming”.

[73] Section 99 (1) (c), (1A), (5) and (6)

Omit the provisions.

[74] Section 99 (1)

15

Omit the penalty provisions. Insert instead:

Penalty: 1,000 penalty units or imprisonment for 1 year or both.

[75] Section 100 Further provisions respecting harming protected fauna (including threatened interstate fauna)

20

Omit “or 99 (1)”. Insert instead “, 99 (1), 112G or 118A”.

[76] Section 100 (2)

Insert at the end of the section:

- (2) The regulations may make provision for or with respect to exempting, subject to conditions and restrictions (if any) prescribed by the regulations, any person or class or description of persons from the provisions of section 98 (2). 5

[77] Section 101 Buying, selling or possessing protected fauna

Omit the penalty provision. Insert instead:

Penalty: 10

- (a) in respect of any protected fauna other than threatened interstate fauna—100 penalty units or imprisonment for 6 months or both,
- (b) in respect of any threatened interstate fauna—1,000 penalty units or imprisonment for 1 year or both. 15

[78] Section 103 Harming fauna for sale

Omit “take or kill” from section 103 (1). Insert instead “harm”.

[79] Section 103 (3)

Omit “taking or killing”. Insert instead “harming”. 20

[80] Section 103 (4)

Omit “endangered fauna”.

Insert instead “threatened interstate fauna or threatened species, populations or ecological communities”.

[81] Section 110 Use of certain substances for harming fauna

Omit "taking or killing" wherever occurring in section 110 (1) and (2).

Insert instead "harming".

[82] Section 111 Method of shooting fauna

5

Omit "taking or killing". Insert instead "harming".

[83] Section 112 Harming snakes

Omit "taking or killing". Insert instead "harming".

[84] Section 112F Restriction on issue of licences to take marine mammals for exhibition etc

10

Omit "take, kill". Insert instead "harm".

[85] Section 112G

Insert after section 112F:

112G Approaching marine mammal

- (1) A person must not approach a marine mammal any closer than such distance as may be prescribed by the regulations or interfere with a marine mammal. 15

Penalty: 1,000 penalty units or imprisonment for 2 years or both.

- (2) If: 20

(a) a person is convicted by the Land and Environment Court of an offence arising under this section, and

(b) the Court is satisfied that the person committed the offence in the course of commercial operations relating to the killing of marine mammals, 25

the maximum penalty that the Court may impose in respect of the offence is 2,000 penalty units.

- (3) A person must not be convicted of an offence under this section if the person proves that the act constituting the offence was done under and in accordance with or by virtue of the authority conferred by a general licence under section 120 or a licence under Part 6 of the *Threatened Species Conservation Act 1995*. 5
- (4) If the provisions of any other Act or instrument made under any other Act authorise or require anything to be done that would constitute an offence under this section:
- (a) the provisions of this section prevail, except if the other Act is the *Bush Fires Act 1949* or the *State Emergency and Rescue Management Act 1989*, and 10
- (b) a person must not to be convicted of an offence against the other Act or instrument because of the person's failure to comply with the other Act or instrument if compliance with the other Act or instrument would constitute an offence under this section. 15
- (5) A reference in section 112F, 120, 129 or 171 to harming any fauna includes, so far as is applicable in relation to a marine mammal, approaching or interfering with the marine mammal as referred to in subsection (1). 20
- (6) In this section, *interfere with* includes harass, chase, herd, tag, mark and brand. 25

[86] **Part 8A**

Insert after Part 8:

Part 8A Threatened species, populations and ecological communities, and their habitats, and critical habitat 30

118A Harming or picking threatened species, populations or ecological communities

- (1) A person must not:
- (a) harm any threatened species, population or ecological community, being an animal, or 35

- (b) use any substance, animal, firearm, explosive, net, trap, hunting device or instrument or means whatever for the purpose of harming any such species, population or ecological community, being an animal.

5

Penalty:

- (a) in respect of any endangered species, population or ecological community—2,000 penalty units or imprisonment for 2 years or both,
- (b) in respect of any vulnerable species—500 penalty units or imprisonment for 1 year or both.

10

- (2) A person must not pick any threatened species, population or ecological community, being a plant.

Penalty:

- (a) in respect of any endangered species, population or ecological community—2,000 penalty units or imprisonment for 2 years or both,
- (b) in respect of any vulnerable species—500 penalty units or imprisonment for 1 year or both.

15

- (3) It is a defence to a prosecution for an offence against this section if the accused proves that the act constituting the alleged offence:

20

- (a) was authorised to be done, and was done in accordance with, a general licence under section 120 or a licence granted under Part 6 of the *Threatened Species Conservation Act 1995*, or

25

- (b) was essential for the carrying out of:

- (i) development in accordance with a development consent within the meaning of the *Environmental Planning and Assessment Act 1979*, or

30

- (ii) an activity, whether by a determining authority or pursuant to an approval of a determining authority within the meaning of Part 5 of that Act if the determining authority has complied with that Part, or

35

Threatened Species Conservation Bill 1995 (No 2)

Schedule 4 Amendment of National Parks and Wildlife Act 1974

- (c) was authorised to be done by or under the *Bush Fires Act 1949* or the *State Emergency and Rescue Management Act 1989* and was reasonably necessary in order to avoid a threat to life or property. 5
 - (4) If the provisions of any other Act or law or of any instrument made under any other Act or law authorise or require anything to be done that would constitute an offence under this section:
 - (a) this section prevails (except in relation to a matter referred to in subsection (3) (b) or (c)), and 10
 - (b) a person is not to be convicted of an offence against the other Act, law or instrument because of the person's failure to comply with the other Act, law or instrument if compliance with the other Act, law or instrument would constitute an offence under this section. 15
- 118B Buying, selling or possessing threatened species or endangered population**
- (1) A person must not buy, sell or have in possession or control any threatened species or endangered population. 20
Penalty:
 - (a) in respect of any endangered species or endangered population—2,000 penalty units or imprisonment for 2 years or both, 25
 - (b) in respect of any vulnerable species—500 penalty units or imprisonment for 1 year or both.
 - (2) The Governor may, by order published in the Gazette, exempt from subsection (1) threatened species named in the order, subject to such conditions and restrictions relating to the buying, selling or having in possession of any such threatened species as may be prescribed in the order. 30
 - (3) A person must not to be convicted of an offence against this section of having in the person's possession or control a plant of any threatened species if the plant is naturally occurring on land that the person owns or of which the person is the lessee or lawful owner. 35

-
- (4) It is a defence to a prosecution for an offence against this section if the accused proves that the act constituting the alleged offence was authorised to be done, and was done in accordance with, a general licence under section 120 or a licence granted under Part 6 of the *Threatened Species Conservation Act 1995*. 5
- (5) A person must not be convicted of an offence under this section in respect of the possession of any threatened species if the person satisfies the court that:
- (a) the species, being an animal, is the progeny of any animal lawfully in the possession of the person pursuant to a licence granted under this Act or under Part 6 of the *Threatened Species Conservation Act 1995* and that progeny is less than 6 months old, or 10
15
 - (b) the species, being an animal:
 - (i) was incapable of fending for itself in its natural habitat, and
 - (ii) the person notified the Director-General, in the manner and within the time prescribed by the regulations, that the animal came into the person's possession, and 20
 - (iii) the person complied with any direction given to the person about the animal by the Director-General, or 25
 - (c) the species, being a plant, was propagated from a plant lawfully in the possession of a person pursuant to a licence granted under this Act or under Part 6 of the *Threatened Species Conservation Act 1995* and that propagation took place not later than 6 months previously. 30
- (6) A reference in this section to a person's having threatened species in the person's possession includes a reference to the person having threatened species in a vehicle, building, lodging, apartment, field or other place whether belonging to or occupied by the person, and whether the species is then had or placed for the person's own use or the use of another person. 35
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118C Damage critical habitat

- (1) A person must not, by an act or an omission, do anything that causes damage to any critical habitat.
Maximum penalty: 2,000 penalty units or imprisonment for 2 years or both. 5
- (2) If a map of the critical habitat was published in the Gazette before the act constituting the offence was done or omitted to be done, it is not necessary for the prosecution to prove that the person knew that the habitat was declared as critical habitat or that the person knew that it was habitat of an endangered species, population or ecological community. 10
- (3) If a map of the critical habitat was not published in the Gazette before the act constituting the offence was done or omitted to be done, the prosecution must prove that the person knew that the habitat was declared as critical habitat or that the person knew, or ought to have known, that it was critical habitat. 15
- (4) It is a defence to a prosecution for an offence against this section in relation to an area of critical habitat that the Director-General has declined to publicly notify under section 141 of the *Threatened Species Conservation Act 1995* that the accused did not know and could not reasonably be expected to have known that the area was critical habitat. 20
25
- (5) It is a defence to a prosecution for an offence against this section if the accused proves that the act constituting the offence:
- (a) was authorised to be done, and was done in accordance with, a licence granted under this Act or under Part 6 of the *Threatened Species Conservation Act 1995*, or 30
- (b) was essential for the carrying out of:
- (i) development in accordance with a development consent within the meaning of the *Environmental Planning and Assessment Act 1979*, or 35

-
- (ii) an activity, whether by a determining authority or pursuant to an approval of a determining authority within the meaning of Part 5 of that Act if the determining authority has complied with the Part, or 5
 - (c) was authorised to be done by or under the *Bush Fires Act 1949* or the *State Emergency and Rescue Management Act 1989* and was reasonably necessary in order to avoid a threat to life or property. 10
 - (6) If the provisions of any other Act or law or of any instrument made under any other Act or law authorise or require anything to be done that would constitute an offence under this section:
 - (a) this section prevails (except in relation to a matter referred to in subsection (5) (b) or (c), and 15
 - (b) a person is not to be convicted of an offence against the other Act, law or instrument because of the person's failure to comply with the other Act, law or instrument if compliance with the other Act, law or instrument would constitute an offence under this section. 20

118D Damage habitat of threatened species, population or ecological community

- (1) A person must not, by an act or an omission, do anything that causes damage to any habitat (other than a critical habitat) of a threatened species, population or ecological community if the person knows that the land concerned is habitat of that kind. 25
 - Penalty: 1,000 penalty units or imprisonment for 1 year or both. 30
 - (2) It is a defence to a prosecution for an offence against this section if the accused proves that the act constituting the offence:
 - (a) was authorised to be done, and was done in accordance with, a licence granted under this Act or under Part 6 of the *Threatened Species Conservation Act 1995*, or 35
-

- (b) was essential for the carrying out of:
 - (i) development in accordance with a development consent within the meaning of the *Environmental Planning and Assessment Act 1979*, or 5
 - (ii) an activity, whether by a determining authority or pursuant to an approval of a determining authority within the meaning of Part 5 of that Act if the determining authority has complied with the Part, or 10
- (c) was authorised to be done by or under the *Bush Fires Act 1949* or the *State Emergency and Rescue Management Act 1989* and was reasonably necessary in order to avoid a threat to life or property. 15
- (3) If the provisions of any other Act or law or of any instrument made under any other Act or law authorise or require anything to be done that would constitute an offence under this section:
 - (a) this section prevails (except in relation to a matter referred to in subsection (2) (b) or (c)), and 20
 - (b) a person is not to be convicted of an offence against the other Act, law or instrument because of the person's failure to comply with the other Act, law or instrument if compliance with the other Act, law or instrument would constitute an offence under this section. 25

118E Court may order offender to restore critical habitat or habitat of threatened species, populations or ecological communities

- (1) If a court convicts a person of an offence under this Division involving damage to any critical habitat or habitat of a threatened species, population or ecological community, the court may, in addition to or in substitution for any pecuniary penalty for the offence, direct the person to take any action to mitigate the damage or to restore that critical habitat or habitat of a threatened species, population or ecological community. 35

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- (2) The court may specify the actions to be taken to mitigate the damage or restore the habitat and may order the person to maintain the habitat until the actions ordered to be done to mitigate the damage or restore the habitat have been fully performed. 5
- (3) The court may order the person to provide security for the performance of any obligation imposed under this section.
- (4) For the purposes of this section, a **conviction** includes the making of an order under section 556A of the *Crimes Act 1900*. 10

[87] Section 120 General licence

Omit "take or kill" from section 120 (1) (a). Insert instead "harm".

[88] Section 120 (1) (c) and (4) (a)

Omit "taken or killed" wherever occurring. 15
Insert instead "harmed".

[89] Section 120 (1) (e)

Omit the paragraph. Insert instead:

- (e) to harm any protected fauna (other than a threatened species, population or ecological community) in the course of carrying out specified development or specified activities. 20

[90] Section 120 (2)

Omit "taking or killing". Insert instead "harming".

[91] Section 120 (2A)

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Omit "taking or killing". Insert instead "harming".

Threatened Species Conservation Bill 1995 (No 2)

Schedule 4 Amendment of National Parks and Wildlife Act 1974

[92] Section 120 (2A)

Omit "take or kill". Insert instead "harm".

[93] Section 121 Occupier's licence

Omit "take or kill" wherever occurring from section 121 (1).
Insert instead "harm".

5

[94] Section 121 (1) and (2)

Omit "taken or killed" wherever occurring.
Insert instead "harmed".

[95] Section 121 (3)

Omit "endangered fauna".
Insert instead "threatened species, populations or ecological communities".

10

[96] Section 121 (3)

Omit "taken or killed". Insert instead "harmed".

[97] Section 121 (3)

15

Omit "take or kill". Insert instead "harm".

[98] Section 122 Game licence

Omit "take or kill" wherever occurring.

[99] Section 122 (2) (a)

Omit "endangered fauna".
Insert instead "threatened species, population or ecological community".

20

[100] Section 122 (d)

Omit "take or kill". Insert instead "harm".

[101] Section 123 Trapper's licence

Omit "take or kill" from section 123 (1). Insert instead "harm".

[102] Section 123 (2)

5

Omit "taking or killing". Insert instead "harming".

[103] Section 123 (3)

Insert after subsection (2):

- (3) A trapper's licence must not be issued with respect to threatened species, populations or ecological communities. 10

[104] Section 129 Certain licences authorising shooting etc in national parks etc

Omit "take or kill" wherever occurring. Insert instead "harm".

[105] Section 129

15

Omit "taking or killing" wherever occurring.
Insert instead "harming".

[106] Section 130 Certain licences and certificates deemed to authorise possession

Omit "take or kill" from section 130. Insert instead "harm". 20

[107] Section 131 Licence to pick native plants

Omit "for scientific or commercial purposes".

[108] Section 132 Licence to grow native plants for sale

Insert “or plants of a threatened species” after “protected native plants” in section 132.

[109] Section 133 Conditions and restrictions attaching to licences and certificates and variation of licences and certificates

5

Insert “under this Act or Part 6 of the *Threatened Species Conservation Act 1995*” after “certificate” where secondly occurring in section 133 (4).

[110] Section 138 Payments into the Fund

Insert “, the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995*” after “this Act” in section 138 (1) (a) and (g).

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[111] Section 138 (1) (b) (iii)

Insert “, the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995* or the regulations made under those Acts” after “the regulations”.

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[112] Section 139 Payments out of the Fund

Insert “, the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995*” after “this Act” in section 139 (2) (a), (c) and (d).

20

[113] Section 143 Charges and fees

Insert “, the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995* or the regulations under those Acts” after “the regulations” in section 143.

[114] Section 144A Overdue community service contributions, charges, fees etc

Insert “, the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995*” after “this Act” in section 144A (1) (c).

[115] Section 145 Acquisition of land for reservation or other purposes 5

Insert “, of conserving threatened species, populations or ecological communities, or their habitats” after “Part 4” in section 145.

[116] Section 146 Acquisition or occupation of lands for certain purposes 10

Insert “or acquired” after “dedicated” in section 146 (1) (a).

[117] Section 146 (2)

Insert “, the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995*” after “this Act”.

[118] Section 148 Power of Minister to accept gifts, devises or bequests 15

Omit “or the *Wilderness Act 1987*” in section 148 (1).
Insert instead “, the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995*”.

[119] Section 149 Disposal of lands, gifts etc 20

Insert “or the *Threatened Species Conservation Act 1995*” after “this Act” in section 149 (1) (b).

[120] Section 164 Powers of entry and seizure

Insert “or is being” after “has been” wherever occurring in section 164 (1) (a). 25

[121] Section 164 (1) (b1)

Insert after paragraph (b):

- (b1) may, at all times, on production of the prescribed evidence of authority, enter any premises for the purposes of: 5
 - (i) identifying and mapping critical habitat, and
 - (ii) inspecting any lands that are the subject of an application for a licence under Part 6 of the *Threatened Species Conservation Act 1995*, and 10
 - (iii) inspecting any lands that are the subject of proposed development or an activity (within the meaning of the *Environmental Planning and Assessment Act 1979*) and in respect of the grant of development consent or approval to which the Minister or the Director-General has been consulted or is (or is acting as) a concurrence authority in accordance with that Act, and 15
 - (iv) inspecting any lands for the purpose of investigating the presence or condition of threatened species, populations or ecological communities, and their habitats, for the purposes of the *Threatened Species Conservation Act 1995* or this Act. 20 25

[122] Section 169 Impersonating, assaulting, resisting or obstructing an officer etc

Insert "or the *Threatened Species Act 1995* or the regulations under that Act" after "that Act" wherever occurring in section 169 (2) and (3). 30

[123] Section 171 Authority to harm or pick

Omit "take or kill" from section 171 (1) (a). Insert instead "harm".

[124] Section 171 (4)

Omit "taking and killing". Insert instead "harming".

[125] Section 176 Proceedings for offences

Omit section 176 (1AA) and (1BB). Insert instead:

(1AA) Proceedings for an offence under section 98, 99, 101, 112G or Part 8A may be taken:

- (a) before the Land and Environment Court in its summary jurisdiction, or 5
- (b) before a Local Court constituted by a Magistrate sitting alone.

[126] Section 176 (1A)

Omit "50 penalty units". Insert instead "100 penalty units". 10

[127] Section 176A Restraint etc of breaches of Act

Insert at the end of the section:

- (4) Proceedings under this section may not be brought in connection with development, or an activity, carried out by, for or on behalf of the Olympic Co-ordination Authority in accordance with the *Olympic Co-ordination Authority Act 1995*. 15

[128] Section 179 Authority to take proceedings

Insert "or the *Threatened Species Conservation Act 1995* or the regulations under that Act" after "the regulations" in section 179 (1). 20

[129] Section 181 Evidentiary provisions etc

Insert after section 181 (2):

- (2A) An allegation, in an information in respect of an offence against this Act or the regulations, that an animal or plant is a member of a species, population or ecological community specified in that information is sufficient proof of the matter so alleged unless the defendant proves to the contrary. 25

[130] Section 181 (9)

Insert after subsection (8):

- (9) A copy of any declaration or map of critical habitat published in the Gazette, being a copy purporting to be certified by the Director-General or an officer of the Service authorised by the Director-General, as being a true copy of the declaration or map so published, is admissible in any legal proceedings and is evidence of the matter or matters contained in the declaration or map. 5

[131] Schedule 3 Savings, transitional and other provisions 10

Insert before clause 1:

Part 1 General

1 Regulations

- (1) The Governor may make regulations containing provisions of a saving or transitional nature consequent on the enactment of the following Acts: 15

Threatened Species Conservation Act 1995

- (2) A provision referred to in subsection (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or at a later date. 20
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or 25

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Special provisions

5

[132] Schedule 3, clause 1A

Re-number clause 1 as 1A.

[133] Schedule 8B

Omit the Schedule.

[134] Schedule 12 Threatened interstate fauna

10

Omit the Part headings and other matter from the Schedule.

[135] Schedule 13 Protected native plants

Insert "except *Boronia repanda*, *Boronia deanei* and *Boronia umbellata*" after "Boronia, all native species" in the list headed "SEED PLANTS".

15

[136] Schedule 13

Insert "except *Bulbophyllum globuliforme*" after "Bulbophyllum, all native species" in the list headed "SEED PLANTS".

[137] Schedule 13

Insert "except *Eriostemon ericofolius*" after "Eriostemon, all native species" in the list headed "SEED PLANTS".

20

Threatened Species Conservation Bill 1995 (No 2)

Schedule 4 Amendment of National Parks and Wildlife Act 1974

[138] Schedule 13

Omit from the list headed "SEED PLANTS":

<i>Grevillea caleyi</i>	Caley's Grevillea.	
<i>Microstrobos fitzgeraldii</i>		
<i>Phaius tancarvilliae</i>	Orchid.	5
<i>Wollemia nobilis</i> (proposed name)	Wollemi Pine	

[139] Schedule 13

Insert "except *Sarcochilus fitzgeraldii*, *Sarcochilus hartmannii* and *Sarcochilus weinthalii*" after "Sarcochilus, all native species" in the list headed "SEED PLANTS".

10

Schedule 5 Amendment of Environmental Planning and Assessment Act 1979

(Section 148)

[1] Section 4 Definitions

Insert in alphabetical order:

5

critical habitat has the same meaning as in the
Threatened Species Conservation Act 1995,

ecological community has the same meaning as in the
Threatened Species Conservation Act 1995,

endangered ecological community means an endangered
ecological community within the meaning of the
Threatened Species Conservation Act 1995, 10

endangered population means an endangered population
within the meaning of the *Threatened Species*
Conservation Act 1995, 15

endangered species means an endangered species within
the meaning of the *Threatened Species Conservation Act*
1995,

habitat has the same meaning as in the *Threatened*
Species Conservation Act 1995, 20

population has the same meaning as in the *Threatened*
Species Conservation Act 1995,

recovery plan has the same meaning as in the
Threatened Species Conservation Act 1995,

species has the same meaning as in the *Threatened*
Species Conservation Act 1995, 25

species impact statement has the same meaning as in the
Threatened Species Conservation Act 1995,

threat abatement plan has the same meaning as in the
Threatened Species Conservation Act 1995, 30

Threatened Species Conservation Bill 1995 (No 2)

Schedule 5 Amendment of Environmental Planning and Assessment Act 1979

threatened species, populations and ecological communities and *threatened species, population or ecological community* have the same meaning as in the *Threatened Species Conservation Act 1995*,

threatening process has the same meaning as in the *Threatened Species Conservation Act 1995*, 5

vulnerable species has the same meaning as in the *Threatened Species Conservation Act 1995*,

[2] **Section 4 (1)**

Omit the definition of *endangered fauna*. 10

[3] **Section 4A**

Omit the section.

[4] **Section 5 Objects**

Insert “, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats” after “environment” in section 5 (a) (vi). 15

[5] **Section 5A**

Insert after section 5:

5A Significant effect on threatened species, populations or ecological communities, or their habitats 20

For the purposes of this Act and, in particular, in the administration of sections 77, 90 and 112, the following factors must be taken into account in deciding whether there is likely to be a significant effect on threatened species, populations or ecological communities, or their habitats: 25

- (a) in the case of a threatened species, whether the life cycle of the species is likely to be disrupted such that a viable local population of the species is likely to be placed at risk of extinction, 30

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- | | | |
|-----|--|----------|
| (b) | in the case of an endangered population, whether the life cycle of the species that constitutes the endangered population is likely to be disrupted such that the viability of the population is likely to be significantly compromised, | 5 |
| (c) | in relation to the regional distribution of the habitat of a threatened species, population or ecological community, whether a significant area of known habitat is to be modified or removed, | |
| (d) | whether an area of known habitat is likely to become isolated from currently interconnecting or proximate areas of habitat for a threatened species, population or ecological community, | 10 |
| (e) | whether critical habitat will be affected, | |
| (f) | whether a threatened species, population or ecological community, or their habitats, are adequately represented in conservation reserves (or other similar protected areas) in the regional environment of the species, population or community, | 15
20 |
| (g) | whether the development or activity proposed is of a class of development or activity that is recognised as a threatening process, | |
| (h) | whether any threatened species, population or ecological community is at the limit of its known distribution. | 25 |

[6] Section 26 Contents of environmental planning instruments

Insert after section 26 (e):

- | | | |
|------|--|----|
| (e1) | protecting and conserving native animals and plants, including threatened species, populations and ecological communities, and their habitats, | 30 |
|------|--|----|

[7] Section 26 (2) and (3)

Insert at the end of section 26:

- (2) If land declared to be critical habitat is land to which an environmental planning instrument described in subsection (3) applies, the instrument must be amended as soon as practicable after the declaration to identify the land that is critical habitat. 5
- (3) The environmental planning instruments described in this subsection are regional environmental plans and local environmental plans that: 10
 - (a) are principal instruments, as distinct from amending instruments (that is, principal instruments contain provisions apart from citation, commencement, a statement of their relationship with other instruments, a description, by reference or otherwise, of the land to which they apply and savings and transitional provisions), and 15
 - (b) make provision for the development of land that is identified by a map or a description, and
 - (c) are prepared or made before or after the commencement of Part 3 of the *Threatened Species Conservation Act 1995*. 20

[8] Section 34A

Insert after section 34:

34A Consultation with Director-General of National Parks and Wildlife about preparation of studies or instruments 25

- (1) The Director must consult with the Director-General of National Parks and Wildlife before preparing:
 - (a) a draft State environmental planning policy, or
 - (b) an environmental study or a draft regional environmental plan, 30

if, in the opinion of the Director, critical habitat or threatened species, populations or ecological communities, or their habitats, will or may be affected by the draft policy, environmental study or draft plan.

- (2) A council must consult with the Director-General of National Parks and Wildlife before preparing: 5

- (a) an environmental study, or
- (b) a draft local environmental plan,

if, in the opinion of the council, critical habitat or threatened species, populations or ecological communities, or their habitats, will or may be affected by the environmental study or draft plan. 10

- (3) For the purpose of the consultation, the Director or council must provide the following information to the Director-General of National Parks and Wildlife: 15

- (a) the reasons for deciding to prepare the draft environmental planning instrument or the environmental study,
- (b) the proposed aims, objectives, policies and strategies whereby the draft instrument is designed to achieve any of the objects of this Act, 20
- (c) a description of the land to which the draft instrument or the study is intended to apply,
- (d) the types of matters to be dealt with in the draft instrument or the study. 25

- (4) For the purposes of the consultation, the Director or council may provide any other information that, in the Director's or council's opinion, would assist in understanding the draft environmental planning instrument or the environmental study. 30

- (5) The Director-General of National Parks and Wildlife may comment to the Director or council on the preparation of the draft environmental planning instrument or the environmental study within 40 days after the information required to be provided under subsection (3) is provided. 35

- (6) The consultation required by this section is completed when the Director or council has considered any comments so made.

[9] Section 76A

Insert after section 76:

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76A Consent authorities to have regard to register of critical habitat

Each consent authority must have regard to the register of critical habitat kept by the Director-General of National Parks and Wildlife under the *Threatened Species Conservation Act 1995* when exercising its functions under this Act.

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[10] Section 77 Making of development applications

Omit section 77 (3) (d1). Insert instead:

- (d1) if the application is in respect of development on land that is, or is a part of, critical habitat or is likely to significantly affect threatened species, populations or ecological communities, or their habitats, be accompanied by a species impact statement prepared in accordance with Division 2 of Part 6 of the *Threatened Species Conservation Act 1995*,

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20

[11] Section 77 (4A)

Omit the subsection.

[12] Sections 77A–77D

Insert after section 77:

77A Concurrence of or consultation with Director-General of National Parks and Wildlife in certain cases

- | | | |
|-----|--|----|
| (1) | If development consent is required for development on land that is, or is a part of, critical habitat, development consent must not be granted without the concurrence of the Director-General of National Parks and Wildlife. | 5 |
| (2) | If development consent is required for development and that development is likely to significantly affect a threatened species, population or ecological community, or its habitat, consent must not be granted: | 10 |
| (a) | in the case of an endangered species, population or ecological community, or its habitat—without the concurrence of the Director-General of National Parks and Wildlife, or | 15 |
| (b) | in the case of a vulnerable species, or its habitat—without consulting with the Director-General of National Parks and Wildlife. | |
| (3) | Despite subsections (1) and (2), if the Minister administering the <i>Threatened Species Conservation Act 1995</i> considers that it is appropriate, that Minister may: | 20 |
| (a) | elect to act in the place of the Director-General of National Parks and Wildlife for the purposes of those subsections, or | 25 |
| (b) | review and amend any recommendations that the Director-General proposes to make, or any advice that the Director-General proposes to offer, for the purposes of those subsections. | |
| (4) | Sections 78 (subsection (2) excepted), 79 (subsection (4) excepted), 80, 81 and 82 apply (with such modifications as may be necessary) to and in respect of the granting of | 30 |

concurrence under this section in the same way as they apply to and in respect of the granting or concurrence required by an environmental planning instrument.

- (5) Despite subsections (1) and (2), if a Minister is the consent authority, development consent must not be granted unless the Minister has consulted with the Minister administering the *Threatened Species Conservation Act 1995*. 5
- (6) If, in so consulting, the Minister administering the *Threatened Species Conservation Act 1995* provides the Minister who is the consent authority with any recommendations made by the Director-General of National Parks and Wildlife concerning determination of such a development application and that Minister does not accept any one or more of the recommendations, that Minister must include in the determination the recommendations not accepted and that Minister's reasons for not accepting them. 10
15

77B Determination by Minister without concurrence of or consultation with Director-General of National Parks and Wildlife 20

- (1) Despite section 77A, if the Minister is of the opinion that it is expedient in the public interest to do so, having regard to matters that in the opinion of the Minister are of significance for State or regional environmental planning, the Minister may determine a development application in accordance with section 101 and without the concurrence of, or consultation with, the Director-General of National Parks and Wildlife (or the concurrence of, or consultation with, the Minister administering the *Threatened Species Conservation Act 1995* if that Minister acts under section 77A). 25
30
- (2) However, in making such a determination, the Minister is to consult with the Minister administering the *Threatened Species Conservation Act 1995* if the 35

development the subject of the development application is on land that is, or is a part of, critical habitat or is likely to significantly affect an endangered species, population or ecological community, or its habitat.

- (3) If, in so consulting, the Minister administering the *Threatened Species Conservation Act 1995* provides the Minister with any recommendations made by the Director-General of National Parks and Wildlife concerning the determination of the development application and the Minister does not accept any one or more of the recommendations, the Minister must include in the determination the recommendations not accepted and the Minister's reasons for not accepting them. 5 10

77C Matters to be considered by Director-General of National Parks and Wildlife as concurrence authority 15

In deciding whether or not concurrence should be granted under section 77A, the Director-General of National Parks and Wildlife (or the Minister administering the *Threatened Species Conservation Act 1995*, if that Minister acts under that section) must take the following matters into consideration: 20

- (a) any species impact statement that accompanied the development application,
- (b) any assessment report prepared by the consent authority, 25
- (c) any submissions or objections received concerning the development application,
- (d) any relevant recovery plan or threat abatement plan,
- (e) whether the action proposed is likely to reduce the long-term viability of the species, population or ecological community in the region, 30
- (f) whether the development is likely to accelerate the extinction of the species, population or ecological community or place it at risk of extinction, 35

Threatened Species Conservation Bill 1995 (No 2)

Schedule 5 Amendment of Environmental Planning and Assessment Act 1979

- (g) the principles of ecologically sustainable development (as described by section 6 (2) of the *Protection of the Environment Administration Act 1991*),
- (h) the likely social and economic consequences of granting or of not granting concurrence. 5

77D Matters to be considered by Director-General of National Parks and Wildlife when consulted

For the purposes of consultation under section 77A, the Director-General of National Parks and Wildlife (or the Minister administering the *Threatened Species Conservation Act 1995*, if that Minister acts under that section) must take the following matters into consideration: 10

- (a) any species impact statement that accompanied the development application, 15
- (b) any assessment report prepared by the consent authority,
- (c) any submissions or objections received concerning the development application, 20
- (d) whether the development is likely to irretrievably reduce the long-term viability of the species in the region,
- (e) whether the development is likely to place the species at risk of becoming endangered as described in section 10 of the *Threatened Species Conservation Act 1995*, 25
- (f) the principles of ecologically sustainable development (as described by section 6 (2) of the *Protection of the Environment Administration Act 1991*), 30
- (g) the likely social and economic consequences if development consent is granted or refused.

[13] Section 78 Seeking concurrence of Minister or public authority

Insert "or section 77A" after "instrument" wherever occurring in section 78 (1).

[14] Section 79 Granting or refusal of concurrence by Minister or public authority

5

Insert "(other than the Minister and the public authority referred to in section 77A)" after "section 78" in section 79 (2).

[15] Section 81 Circumstances in which concurrence may be assumed

Insert "or section 77A" after "instrument" wherever occurring in section 81.

10

[16] Section 83 Avoidance of consents

Insert "or section 77A" after "instrument" in section 83.

[17] Section 90 (1) Matters for consideration

Omit section 90 (1) (c2). Insert instead:

15

(c2) the effect of that development on critical habitat,

(c3) whether there is likely to be a significant effect on threatened species, populations or ecological communities, or their habitats,

(c4) any relevant recovery plan or threat abatement plan,

20

(c5) the effect of that development on any other protected fauna or protected native plants within the meaning of the *National Parks and Wildlife Act 1974*,

25

[18] Section 110C

Insert after section 110B:

110C Determining authorities to have regard to register of critical habitat

Each determining authority must, for the purpose of exercising functions under this Part, have regard to the register of critical habitat kept by the Director-General of National Parks and Wildlife under the *Threatened Species Conservation Act 1995*. 5

[19] Section 111 Duty to consider environmental impact 10

Insert at the end of section 111 (2) (b):

, and

- (c) any joint management agreement entered into under the *Threatened Species Conservation Act 1995*. 15

[20] Section 111 (4)

Insert after section 111 (3):

- (4) Without limiting subsection (1), a determining authority must consider the effect of an activity on:
- (a) critical habitat, and 20
 - (b) in the case of threatened species, populations and ecological communities, and their habitats, whether there is likely to be a significant effect on those species, populations or ecological communities, or those habitats, and 25
 - (c) any other protected fauna or protected native plants within the meaning of the *National Parks and Wildlife Act 1974*.

[21] Section 112 Decision of determining authorities in relation to certain activities

Insert “(including critical habitat) or threatened species, populations or ecological communities, or their habitats,” after “environment” in section 112 (1).

5

[22] Section 112 (1B)

Omit section 112 (1B)–(1D). Insert instead:

(1B) Without limiting subsection (1), a determining authority must not carry out an activity, or grant an approval in relation to an activity, being an activity that is in respect of land that is, or is a part of, critical habitat or is likely to significantly affect threatened species, populations or ecological communities, or their habitats, unless a species impact statement, or an environmental impact statement that includes a species impact statement, has been prepared (in each case) in accordance with Division 2 of Part 6 the *Threatened Species Conservation Act 1995*.

10

15

[23] Section 112 (4)

Insert “(including critical habitat) or threatened species, populations or ecological communities, or their habitats” after “environment” wherever occurring.

20

[24] Sections 112A–112E

Insert after section 112:

112A Determining authorities to have regard to recovery plans and threat abatement plans

25

A determining authority, in considering a species impact statement, must have regard to the terms of any recovery plan or threat abatement plan relating to the land referred to in the species impact statement for the purposes of assessing any effect on a threatened species, population or ecological community, or its habitat.

30

**112B Consultation with Minister for the Environment if
Minister is determining authority**

- (1) A Minister who is a determining authority must not carry out, or grant an approval to carry out, an activity in respect of land that is, or is a part of, critical habitat or is likely to significantly affect threatened species, populations or ecological communities, or their habitats, unless that Minister has consulted with the Minister administering the *Threatened Species Conservation Act 1995*. 5 10
- (2) If, in so consulting, the Minister administering the *Threatened Species Conservation Act 1995* provides the Minister who is the determining authority with any recommendations made by the Director-General of National Parks and Wildlife concerning the determination of the activity and that Minister does not accept any one or more of the recommendations, that Minister must include in the determination the recommendations not accepted and that Minister's reasons for not accepting them. 15 20

**112C Concurrence of or consultation with Director-General of
National Parks and Wildlife if Minister is not determining
authority**

- (1) A determining authority (not being a Minister) must not carry out, or grant an approval to carry out, an activity in respect of land that is, or is a part of, critical habitat without the concurrence of the Director-General of National Parks and Wildlife. 25
- (2) A determining authority (not being a Minister) must not carry out, or grant an approval to carry out, an activity that is likely to significantly affect a threatened species, population or ecological community, or its habitat: 30
- (a) in the case of an endangered species, population or ecological community, or its habitat—without the concurrence of the Director-General of National Parks and Wildlife, or 35

-
- (b) in the case of a vulnerable species, or its habitat—without consultation with the Director-General of National Parks and Wildlife.
 - (3) Despite subsections (1) and (2), if the Minister administering the *Threatened Species Conservation Act 1995* considers that it is appropriate, that Minister may:
 - (a) elect to act in the place of the Director-General of National Parks and Wildlife for the purposes of those subsections, or
 - (b) review and amend any decision that the Director-General proposes to make, or any recommendations that the Director-General proposes to offer, for the purposes of those subsections.
 - (4) Sections 78 (subsection (2) excepted), 79 (subsection (4) excepted), 80, 81 and 82 apply (with such modifications as may be necessary) to and in respect of the granting of concurrence under this section in the same way as they apply to and in respect of the granting or concurrence required by an environmental planning instrument.

112D Matters to be considered by Director-General of National Parks and Wildlife as concurrence authority

In deciding whether or not concurrence should be granted under section 112C, the Director-General of National Parks and Wildlife (or the Minister administering the *Threatened Species Conservation Act 1995*, if that Minister acts under that section) must take the following matters into consideration:

- (a) any species impact statement prepared in relation to the activity,
- (b) any assessment report prepared by or on behalf of the proponent,
- (c) any representations made under section 113 concerning the species impact statement,

Threatened Species Conservation Bill 1995 (No 2)

Schedule 5 Amendment of Environmental Planning and Assessment Act 1979

-
- (d) any relevant recovery plan or threat abatement plan,
 - (e) whether the activity is likely to reduce the long-term viability of the species, population or ecological community in the region, 5
 - (f) whether the activity is likely to accelerate the extinction of the species or ecological community or place it at risk of extinction,
 - (g) the principles of ecologically sustainable development (as described by section 6 (2) of the *Protection of the Environment Administration Act 1991*), 10
 - (h) the likely social and economic consequences of granting or of not granting concurrence.
- 112E Matters to be considered by Minister or Director-General of National Parks and Wildlife when consulted** 15
- The Minister administering the *Threatened Species Conservation Act 1995* (for the purposes of consultation under section 112B) or the Director-General of National Parks and Wildlife (for the purposes of consultation under section 112C) (or the Minister administering the *Threatened Species Conservation Act 1995*, if that Minister acts under that section) must take the following matters into consideration: 20
- (a) any species impact statement prepared in relation to the activity, 25
 - (b) any assessment report prepared by or on behalf of the proponent,
 - (c) any representations made under section 113 concerning the species impact statement, 30
 - (d) whether the activity is likely to reduce the long-term viability of the species in the region,
 - (e) whether the activity is likely to place the species at risk of becoming endangered as described in section 10 of the *Threatened Species Conservation Act 1995*, 35

-
- (f) the principles of ecologically sustainable development (as described by section 6 (2) of the *Protection of the Environment Administration Act 1991*).

[25] Section 113 Publicity and examination of environmental, fauna and species impact statements 5

Insert after section 113 (7):

- (8) In this section, *environmental impact statement* includes a fauna impact statement and a species impact statement.

[26] Section 115B Provisions relating to Minister's approval 10

Insert at the end of section 115B (1) "The proponent must also have complied with section 112B or 112C, or both, as the case requires".

[27] Section 123 Restraint etc of breaches of this Act

Insert at the end of the section:

- (4) Proceedings under this section may not be brought in connection with development, or an activity, carried out by, for or on behalf of the Olympic Co-ordination Authority in accordance with the *Olympic Co-ordination Authority Act 1995*. 15

[28] Schedule 6 Savings, transitional and other provisions 20

Insert at the end of the list of Acts in clause 1 (1):

Threatened Species Conservation Act 1995

Schedule 6 Amendment of other Acts and regulations

(Section 149)

- 6.1 Commonwealth Powers (Poultry Processing) Act 1993 No 100** 5
- Section 3 Reference of matters relating to poultry processing**
- Omit "taken or killed" from the definition of *poultry* in section 3 (2).
Insert instead "harmed".
- 6.2 Dividing Fences Act 1991 No 72** 10
- Section 14 Orders as to fencing work**
- Insert after section 14 (1):
- (1A) Despite subsection (1), no order may be made for the carrying out of fencing work on critical habitat within the meaning of the *Threatened Species Conservation Act 1995* without the consent of the Director-General of National Parks and Wildlife. 15
- 6.3 Environmental Planning and Assessment Regulation 1994**
- Omit "or endangered" wherever occurring from clauses 65 (c) (i) and (ii) and 82 (2) (f). 20
- 6.4 Impounding Act 1993 No 31**
- Section 41 Special power to destroy animals**
- Insert "a threatened species (as defined in the *Threatened Species Conservation Act 1995*)," after "that is" in section 41 (3). 25

6.5 Land and Environment Court Act 1979 No 204

[1] Section 17 Class 1—environmental planning and protection appeals

Omit “section 92C of the *National Parks and Wildlife Act 1974*”
from paragraph (ea).

5

Insert instead “section 106 of the *Threatened Species Conservation Act 1995*”.

[2] Section 20 Class 4—environmental planning and protection and development contract civil enforcement

Insert after subsection (1) (cj):

10

(ck) proceedings under section 142 of the *Threatened Species Conservation Act 1995*,

[3] Section 20 (3)

Insert in alphabetical order of Acts:

Threatened Species Conservation Act 1995,

15

6.6 Local Government Act 1993 No 30

Section 428, Note

Insert after subsection (2) (c):

Note. Section 71 (2) of the *Threatened Species Conservation Act 1995* requires a council that is identified in a recovery plan (within the meaning of that Act) as responsible for the implementation of measures included in the plan to report on action taken by it to implement those measures in its annual report as to the state of the environment of its area.

20

Section 88 (2) of that Act imposes the same requirement in relation to threat abatement plans (within the meaning of that Act).

25

6.7 Meat Industry Act 1978 No 54

Section 41 Offences as to sale of meat and 41A Offences as to storage of meat

Omit "taken and" wherever occurring.

6.8 National Parks and Wildlife (Administration) Regulation 1995 5

Schedule 2 Penalty notice offences

Omit "take/kill" wherever occurring. Insert instead "harm".

6.9 National Parks and Wildlife (Fauna Protection) Regulation 1994 10

[1] Clause 8 (2) and (3)

Omit "taken or killed" wherever occurring.
Insert instead "harmed".

[2] Clause 9

Omit "take or kill" wherever occurring. Insert instead "harm". 15

[3] Clause 12

Omit "taken or killed". Insert instead "harmed".

[4] Clause 16 (2)

Omit "section 99 (1) (c)". Insert instead "section 112G".

[5] Clause 19 (1) 20

Omit "taking or killing". Insert instead "harming".

**6.10 National Parks and Wildlife (Land Management)
Regulation 1995**

[1] Clause 26 (2)

Insert "any threatened species, population or ecological community, or its habitat, (within the meaning of the *Threatened Species Conservation Act 1995*) or any" after "the land or" in clause 26 (2) (f).

5

[2] Clauses 37 (1) and 40

Omit "taking or killing" wherever occurring.
Insert instead "harming".

10

[3] Clause 37 (3)

Omit "endangered fauna".
Insert instead "threatened species, populations and ecological communities within the meaning of the *Threatened Species Conservation Act 1995*".

15

6.11 Non-Indigenous Animals Act 1987 No 166

Section 4 Application of Act

Insert at the end of section 4 (2):

Threatened Species Conservation Act 1995.

6.12 Rural Lands Protection Act 1989 No 197

20

[1] Section 3 Definitions

Insert after section 3 (2):

(2A) An order may not be made under subsection (2) (b) in respect of a species of insects that is a threatened species within the meaning of the *Threatened Species Conservation Act 1995* without the concurrence of the Director-General of National Parks and Wildlife.

25

[2] Section 138C Applications for control orders by boards and section 138D Control orders

Insert “threatened species within the meaning of the *Threatened Species Conservation Act 1995* or” after “other than” wherever occurring in sections 138C (3) (c) and 138D (3) (c).

5

6.13 Soil Conservation Act 1938 No 10

[1] Section 21B Protected land

Omit section 21B (6) (b). Insert instead:

- (b) critical habitat, or land containing threatened species, populations or ecological communities, or their habitats, within the meaning of the *Threatened Species Conservation Act 1995*,

10

[2] Section 21D Authority to destroy timber on protected land

Omit section 21D (3A) (c). Insert instead:

- (c) an adverse effect on critical habitat, or threatened species, populations or ecological communities, or their habitats, within the meaning of the *Threatened Species Conservation Act 1995*,

15

6.14 Timber Industry (Interim Protection) Act 1992 No 1

[1] Section 3 Objects of this Act

20

Insert “, section 114 of the *Threatened Species Conservation Act 1995* or section 91AA of the *National Parks and Wildlife Act 1974*” after “(as inserted by the *Endangered Fauna (Interim Protection) Act 1991*)” in section 3 (g).

[2] Section 11 Stop work orders

Insert at the end of the section:

- (2) In addition, during the period when the application of Part 5 of the EPA Act is suspended in respect of land specified in Schedule 4, an order under section 114 of the *Threatened Species Conservation Act 1995* or section 91AA of the *National Parks and Wildlife Act 1974* made on or after the commencement of those sections has no effect in respect of that land. 5

[3] Section 12 Logging operations on private land 10

Insert after section 12 (4) (b):

, and

- (c) an order under section 114 of the *Threatened Species Conservation Act 1995* or section 91AA of the *National Parks and Wildlife Act 1974* made on or after the commencement of those sections has no effect in respect of that land. 15

[4] Section 12 (7)

Insert "(or species impact statements under the *Threatened Species Conservation Act 1995*)" after "fauna impact statements". 20

[5] Section 13

Omit the section.

Schedule 7 Savings, transitional and other provisions

(Section 151)

Part 1 Savings and transitional regulations

1 Regulations

5

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or 15
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done before the date of its publication.

Part 2 Amendments consequent on Threatened Species Conservation Act 1995

20

2 Dissolution of Scientific Committee

- (1) The Scientific Committee established under section 92A of the *National Parks and Wildlife Act 1974*, as inserted by the *Endangered Fauna (Interim Protection) Act 1991*, is dissolved.
- (2) A person who, immediately before the dissolution of the Scientific Committee referred to in this clause, held office as a member of that Scientific Committee:
 - (a) ceases to hold that office, and
 - (b) is eligible (if otherwise qualified) to be appointed as a member of the Scientific Committee established under this Act. 30

- (3) A person who so ceases to hold office as a member of the Scientific Committee is not entitled to any remuneration or compensation because of the loss of that office.

3 Extension of certain licences under section 120 of the National Parks and Wildlife Act 1974

5

- (1) This clause applies to a licence to which section 4 of the *Endangered Fauna (Interim Protection) Amendment Act 1992* applied immediately before the repeal or expiry of that section.
- (2) A licence to which this clause applies continues in force, despite any expiry date specified in the licence, as if no such date had been so specified.
- (3) A licence to which this clause applies may be varied under section 133 of the *National Parks and Wildlife Act 1974*.

10

4 Certain licences taken to be licences under Part 6

- (1) A licence to which clause 3 refers is taken to be a licence under Part 6 of this Act and is as efficacious, in relation to the action that it authorises, as a licence granted under that Part.
- (2) In particular, a licence to which clause 3 refers is, in relation to the action that it authorises, taken to authorise the harming or picking of threatened species, populations or ecological communities, or the damaging of their habitats (including habitats that are critical habitats).

15

20

5 Savings in respect of planning matters

- (1) The amendments made by this Act to the *Environmental Planning and Assessment Act 1979* do not affect:
- (a) any development consent granted before the commencement of this clause or any development carried out in accordance with such a consent, or
- (b) any activity to which Part 5 of that Act applies (or any approval for the carrying out of any such activity) if the provisions of that Part were complied with for that activity before the commencement of this clause.

25

30

- (2) If an application for development consent has not been finally determined on the commencement of this clause, the amendments made by this Act to the *Environmental Planning and Assessment Act 1979* do not apply to the determination of the application or to any development carried out in accordance with a development consent granted on the determination of the application. However, the Minister for Planning may, by notice served on the consent authority, direct that all or any specified amendments apply to the determination of the application. 5
- (3) If, in respect of any activity to which Part 5 of that Act applies (or any approval for carrying out any such activity): 10
- (a) an environmental impact statement was duly obtained before the commencement of this clause, but the provisions of that Part had not been fully complied with before that commencement, or 15
- (b) the Director-General of the Department of Planning had duly notified the person preparing an environmental impact statement before the commencement of this clause of requirements with respect to the form and contents of the statement, but the statement had not been obtained before that commencement, 20
- the statement (so long as it is obtained in accordance with the provisions of that Act as in force immediately before that commencement) is taken to have been obtained in accordance with that Act, as amended by this Act. 25
- (4) Subclause (3) does not apply to an activity that has not been carried out before the commencement of this clause if the Minister for Planning (by notice served on the person obtaining the statement concerned) so directs.

6 Savings in respect of stop work orders 30

A stop work order made under section 92E of the National Parks and Wildlife Act 1974 is, if it has any force or effect immediately before the repeal of that section, taken to be a stop work order under Part 6A of that Act, as inserted by this Act.



New South Wales

Threatened Species Conservation Bill 1995 (No 2)

Contents

	Page
Part 1 Preliminary	
1 Name of Act	2
2 Commencement	2
3 Objects of Act	2
4 Definitions	3
5 Notes in text	6
Part 2 Listing of threatened species, populations and ecological communities and key threatening processes	
Division 1 Lists of threatened species, populations and ecological communities and key threatening processes	
6 Schedule 1 list of endangered species, populations and ecological communities	7

Threatened Species Conservation Bill 1995 (No 2)

Contents

	Page
7 Schedule 2 list of vulnerable species	8
8 Schedule 3 list of key threatening processes	8
9 Listing of nationally threatened species and ecological communities	8
 Division 2 Eligibility for listing	
10 Species eligible for listing as endangered species	9
11 Populations eligible for listing as endangered populations	9
12 Ecological communities eligible for listing as endangered ecological communities	10
13 Species eligible for listing as species presumed extinct	10
14 Species eligible for listing as vulnerable species	10
15 Threatening processes eligible for listing as key threatening processes	10
 Division 3 Procedure for listing	
16 Operation of Division	11
17 Scientific Committee responsible for lists	11
18 Who may initiate action for listing	11
19 Making nomination for inclusion on, omission from or amendment of list	12
20 Scientific Committee may request additional information	12
21 Consideration of nomination by Scientific Committee	12
22 Scientific Committee's preliminary determination	13
23 Scientific Committee to refer proposed final determination to Minister	14
24 Scientific Committee's final determination	14
25 Publication of final determination	15
26 Revision of Schedule on publication of final determination	15
 Division 4 Procedure for provisional listing of endangered species on emergency basis	
27 Operation of Division	16
28 Scientific Committee responsible for provisional listing	16
29 Eligibility for provisional listing	16
30 Who may initiate action for provisional listing	16
31 Making nomination for provisional listing	17

Contents

	Page
32 Scientific Committee may request additional information	17
33 Consideration of nomination for provisional listing by Scientific Committee	17
34 Publication of determination for provisional listing	18
35 Effect of publication of determination for provisional listing	18
36 Scientific Committee to review status of provisionally listed species	19
37 Termination of provisional listing	19

Part 3 Critical habitat of endangered species, populations and ecological communities

Division 1 Identification and declaration of critical habitat

38 Habitat eligible to be declared to be critical habitat	20
39 Director-General responsible for identifying critical habitat	21
40 Director-General to consult with Scientific Committee	21
41 Preparation of recommendation for identification of critical habitat	21
42 Publication of recommendation	21
43 Consideration of submissions by Director-General	22
44 Director-General to refer recommendation to Minister	23
45 Consideration of recommendation by Minister	23
46 Consultation between Ministers	24
47 Minister may return recommendation to Director-General for amendment	24
48 Declaration of critical habitat by Minister	24
49 Publication of declaration of critical habitat	25
50 Amendment or revocation of declaration of critical habitat	25
51 Public authorities to have regard to critical habitat	26
52 Regulations may prohibit certain actions on critical habitat	26
53 Effect of failure to comply with procedural requirements	27

	Page
<hr/>	
Division 2 Maps and register of critical habitat	
54 Map of critical habitat to be prepared and published	27
55 Maps of critical habitat to be served	27
56 Director-General to keep register of critical habitat	27
<hr/>	
Part 4 Recovery plans for threatened species, populations and ecological communities	
<hr/>	
Division 1 Preparation of recovery plans	
57 Director-General to prepare recovery plans	29
58 Guidelines for recovery plans	30
59 Priorities for recovery plans	30
60 Contents of recovery plans	31
61 Consultation between Ministers	32
62 Publication of draft recovery plan	32
63 Consideration of submissions by Director-General	33
64 Director-General to refer draft recovery plan to Minister	33
65 Minister may return draft recovery plan to Director-General for amendment	33
66 Approval of recovery plan by Minister	33
67 Reasons for departure from draft recovery plan to be stated	34
68 Recovery plans to be published	34
69 Review of recovery plans	35
Division 2 Implementation of recovery plans	
70 Ministers and public authorities to implement recovery plans	35
71 Public authorities to report on implementation of recovery plans	35
72 Notification of proposed departures from recovery plan	36
73 Consultations with Director-General concerning proposed departures	36
74 Reference of proposed departures to Ministers and Premier	37

	Page
Part 5 Threat abatement plans to manage key threatening processes	
Division 1 Preparation of threat abatement plans	
75 Director-General may prepare threat abatement plans	38
76 Guidelines for threat abatement plans	38
77 Priorities for threat abatement plans	39
78 Contents of threat abatement plans	39
79 Consultation between Ministers	40
80 Publication of draft threat abatement plan	40
81 Consideration of submissions by Director-General	41
82 Director-General to refer draft threat abatement plan to Minister	41
83 Minister may return draft threat abatement plan to Director-General for amendment	41
84 Approval of threat abatement plan by Minister	42
85 Threat abatement plans to be published	42
86 Review of threat abatement plans	42
Division 2 Implementation of threat abatement plans	
87 Ministers and public authorities to implement threat abatement plans	43
88 Public authorities to report on implementation of threat abatement plans	43
89 Notification of proposed departures from threat abatement plan	44
90 Consultations with Director-General concerning proposed departures	44
91 Reference of proposed departures to Ministers and Premier	45

Part 6 Licensing	
Division 1 Grant of licences	
92 Licence to harm or pick threatened species, population or ecological communities or damage habitat	47
93 Application for licence	48

Threatened Species Conservation Bill 1995 (No 2)

Contents

	Page
94 Payment of licence processing fee	49
95 Significant effect on threatened species, populations or ecological communities, or their habitats	50
96 Determination by Director-General as to significant effect	51
97 Publication of licence application	51
98 Matters that Director-General must take into account	51
99 Director-General may request additional information	52
100 Determination of licence application	52
101 Licence may extend to protected fauna or protected native plants	53
102 Conditions and restrictions to licence	53
103 Notification of licence determination	53
104 Director-General to keep register of licences	54
105 Cancellation of licence	54
106 Appeal by applicant or person commenting on licence application	54
107 Time for appeal, and deemed approval	54
108 Stay of operation of licence pending appeal	55
 Division 2 Species impact statements	
109 Form of species impact statements	55
110 Content of species impact statements	55
111 Director-General's requirements	58
112 Regulations	58
113 Director-General may accredit persons to prepare assessments of species impact statements	59

Part 7 Other conservation measures

Division 1 Stop work orders

114 Director-General may make stop work order	60
115 Prior notification of making of stop work order not required	61
116 Appeal to Minister	62
117 Extension of stop work order	62
118 Consultation about modification of proposed detrimental action	62

Threatened Species Conservation Bill 1995 (No 2)

Contents

	Page
119 Recommendation for making of interim protection order	63
120 Stop work order prevails over other instruments	63
 Division 2 Joint management agreements	
121 Joint management agreements	63
122 Role of Scientific Committee	64
123 Contents of joint management agreements	64
124 Publication of draft joint management agreement	65
125 Consideration of submissions by Director-General	65
126 Amendment of joint management agreement	66

Part 8 Scientific Committee	
127 Establishment of Scientific Committee	67
128 Functions of Scientific Committee	67
129 Members of Scientific Committee	68
130 Provisions relating to members of Scientific Committee	69
131 Chairperson and Deputy Chairperson	70
132 Disclosure of pecuniary interests	70
133 Procedure of Scientific Committee	71
134 Transaction of business outside meeting or by telephone or other means	72
135 Scientific Committee not subject to Ministerial control	73
136 Service of documents on Scientific Committee	73

Part 9 Miscellaneous	
137 Act binds Crown	74
138 Annual report by Director-General on operation of Act	74
139 Relationship of Act to National Parks and Wildlife Act 1974	75
140 Native title rights and interests	75
141 Decision not to disclose location of critical habitat	75
142 Restraint of breaches of Act	76
143 Form of notices	76
144 Service of documents	77

Threatened Species Conservation Bill 1995 (No 2)

Contents

	Page
145 Regulations	77
146 Proceedings for offences	77
147 Amendment of National Parks and Wildlife Act 1974 No 80	77
148 Amendment of Environmental Planning and Assessment Act 1979 No 203	77
149 Amendment of other Acts and regulations	78
150 Repeal of Endangered Fauna (Interim Protection) Act 1991 No 66 and amending Acts	78
151 Savings, transitional and other provisions	78
152 Review of Act	78

Schedules

1	Endangered species, populations and ecological communities	79
2	Vulnerable species	98
3	Key threatening processes	114
4	Amendment of National Parks and Wildlife Act 1974	115
5	Amendment of Environmental Planning and Assessment Act 1979	148
6	Amendment of other Acts and regulations	165
7	Savings, transitional and other provisions	171

This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

*Clerk of the Legislative Assembly.
Legislative Assembly*



New South Wales

Threatened Species Conservation Bill 1995 (No 2)

Act No , 1995

An Act to conserve threatened species, populations and ecological communities of animals and plants; to amend the *National Parks and Wildlife Act 1974*, the *Environmental Planning and Assessment Act 1979* and certain other Acts; to repeal the *Endangered Fauna (Interim Protection) Act 1991*; and for other purposes.

The Legislature of New South Wales enacts:

Part 1 Preliminary

Introductory note

This Part contains provisions that set out the objects of this Act and define terms used in this Act. The Part also contains machinery provisions.

5

1 Name of Act

This Act is the *Threatened Species Conservation Act 1995*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided in this section. 10
- (2) Section 150 (2) commences on the date of assent to this Act.

3 Objects of Act

The objects of this Act are as follows:

- (a) to conserve biological diversity and promote ecologically sustainable development, and 15
- (b) to prevent the extinction and promote the recovery of threatened species, populations and ecological communities, and
- (c) to protect the critical habitat of those threatened species, populations and ecological communities that are endangered, and 20
- (d) to eliminate or manage certain processes that threaten the survival or evolutionary development of threatened species, populations and ecological communities, and
- (e) to ensure that the impact of any action affecting threatened species, populations and ecological communities is properly assessed, and 25
- (f) to encourage the conservation of threatened species, populations and ecological communities by the adoption of measures involving co-operative management. 30

4 Definitions

(1) In this Act:

animal means any animal-life that is indigenous to New South Wales or is known to periodically or occasionally migrate to New South Wales, whether vertebrate or invertebrate and in any stage of biological development, but does not include:

5

- (a) humans, or
- (b) fish within the meaning of the *Fisheries Management Act 1994*.

biological diversity means the diversity of life and is made up of the following 3 components:

10

- (a) genetic diversity—the variety of genes (or units of heredity) in any population,
- (b) species diversity—the variety of species,
- (c) ecosystem diversity—the variety of communities or ecosystems.

15

council has the same meaning as in the *Local Government Act 1993*.

critical habitat means habitat declared to be critical habitat under Part 3.

20

Director-General means the Director-General of National Parks and Wildlife appointed under the *National Parks and Wildlife Act 1974*.

ecological community means an assemblage of species occupying a particular area.

25

ecologically sustainable development has the same meaning as under section 6 (2) of the *Protection of the Environment Administration Act 1991*.

endangered ecological community means an ecological community specified in Part 3 of Schedule 1.

30

endangered population means a population specified in Part 2 of Schedule 1.

endangered species means a species specified in Part 1 of Schedule 1.

endangered species, populations and ecological communities means species, populations and ecological communities specified in Schedule 1 and ***endangered species, population or ecological community*** means a species, population or ecological community respectively specified in that Schedule. 5

exercise a function includes perform a duty.

function includes a power, authority or duty.

habitat means an area or areas occupied, or periodically or occasionally occupied, by a species, population or ecological community and includes any biotic or abiotic component. 10

harm has the same meaning as in the *National Parks and Wildlife Act 1974*.

joint management agreement means an agreement entered into under Division 2 of Part 7. 15

key threatening process means a threatening process specified in Schedule 3.

land includes:

- (a) buildings and other structures permanently fixed to land, and 20
- (b) land covered with water, and
- (c) the sea or an arm of the sea, and
- (d) a bay, inlet, lagoon, lake or body of water, whether inland or not and whether tidal or not, and 25
- (e) a river, stream or watercourse, whether tidal or not.

landholder of land means a person who owns land or who, whether by reason of ownership or otherwise, is in lawful occupation or possession, or has lawful management or control, of land. 30

list means a list set out in Schedule 1, 2 or 3 and includes a list in one or more of those Schedules that does not contain any entries.

pick has the same meaning as in the *National Parks and Wildlife Act 1974*.

plant means any plant-life that is indigenous to New South Wales, whether vascular or non-vascular and in any stage of biological development, and includes fungi and lichens, but does not include marine vegetation within the meaning of the *Fisheries Management Act 1994*.

5

population means a group of organisms, all of the same species, occupying a particular area.

public authority means any public or local authority constituted by or under an Act, a government department, a statutory body representing the Crown, or a State owned corporation, and includes a person exercising any function on behalf of the authority, department, body or corporation and any person prescribed by the regulations to be a public authority.

10

15

recovery plan means a plan prepared and approved under Part 4.

region means, for the purposes of the provision in which it is used, a bioregion defined in a national system of bioregionalisation that is determined (by the Director-General by order published in the Gazette) to be appropriate for those purposes. If the bioregion occurs partly within and partly outside New South Wales, the region consists only of so much of the bioregion as occurs within New South Wales.

20

Scientific Committee means the Scientific Committee constituted under Part 8.

25

species of animal or plant includes any defined sub-species and taxon below a sub-species and any recognisable variant of a sub-species or taxon.

species impact statement means a statement referred to in Division 2 of Part 6 and includes an environmental impact statement, prepared under the *Environmental Planning and Assessment Act 1979*, that contains a species impact statement.

30

species presumed extinct means a species specified in Part 4 of Schedule 1.

threat abatement plan means a plan prepared and approved under Part 5.

threatened species means a species specified in Part 1 or 4 of Schedule 1 or in Schedule 2.

threatened species, populations and ecological communities 5
means species, populations and ecological communities specified in Schedules 1 and 2 and ***threatened species, population or ecological community*** means a species, population or ecological community specified in either of those Schedules.

threatening process means a process that threatens, or may have 10
the capability to threaten, the survival or evolutionary development of species, populations or ecological communities.

vulnerable species means a species specified in Schedule 2.

(2) A reference in this Act to animal-life or plant-life indigenous to 15
New South Wales is a reference to animal-life or plant-life of a species that was established in New South Wales before European settlement.

(3) A reference in this Act to New South Wales includes a reference 20
to the coastal waters of the State.

Note. ***Coastal waters of the State*** is defined in section 58 of the 20
Interpretation Act 1987.

5 Notes in text

Introductory notes to Parts and other notes do not form part of this Act.

Part 2 Listing of threatened species, populations and ecological communities and key threatening processes

Introductory note

This Part provides for the identification, and classification, of the species, populations and ecological communities with which this Act is concerned. It also provides for the identification of key threatening processes that are most likely to jeopardise the survival of those species, populations and ecological communities. To this end, this Part provides for the listing: 5

- in Schedule 1, of endangered species, endangered populations and ecological communities and species that are presumed to be extinct, and 10
- in Schedule 2, of vulnerable species, and
- in Schedule 3, of key threatening processes.

The initial lists of threatened species, that is, species that are endangered, presumed extinct or vulnerable are contained in this Act on its commencement. Responsibility for inserting lists of endangered populations and endangered ecological communities and threatening processes, and for adding items to, omitting items from or amending items in the lists of threatened species, populations and ecological communities and threatening processes rests with the Scientific Committee. The Scientific Committee must however refer a proposed determination for listing to the Minister for review. 15 20

Division 1 makes provision with respect to Schedules 1–3 that are to contain lists of the species, populations and ecological communities and key threatening processes with which this Act is concerned. 25

Division 2 deals with eligibility for listing.

Division 3 describes the process by which the items may be added to or omitted from lists and by which items in lists may be amended, and makes provision for public participation in that process. 30

Division 4 describes the process by which species that are endangered may be listed provisionally in Schedule 1, on an emergency basis, before the formal listing process described in Division 3 has been undertaken or completed, and makes provision for public participation in that process.

Offences relating to the harming of threatened species, populations and ecological communities (being animals) and the picking of threatened species, populations and ecological communities (being plants) are contained in the *National Parks and Wildlife Act 1974*. 35

Division 1 Lists of threatened species, populations and ecological communities and key threatening processes 40

6 Schedule 1 list of endangered species, populations and ecological communities

- (1) Part 1 of Schedule 1 contains a list of endangered species for the purposes of this Act. 45

Clause 6 Threatened Species Conservation Bill 1995 (No 2)

Part 2 Listing of threatened species, populations and ecological communities and
Division 1 key threatening processes

- (2) Part 2 of Schedule 1 contains a list of endangered populations for the purposes of this Act.
- (3) Part 3 of Schedule 1 contains a list of endangered ecological communities for the purposes of this Act.
- (4) Part 4 of Schedule 1 contains a list of species presumed extinct for the purposes of this Act. 5
- (5) Endangered species or ecological communities listed in Schedule 1 that are also listed in Part 1 of Schedule 1 or in Schedule 2 to the *Endangered Species Protection Act 1992* of the Commonwealth are marked with asterisks to show that they are endangered nationally. 10
- (6) Species presumed extinct listed in Schedule 1 that are also listed in Part 3 of Schedule 1 to the *Endangered Species Protection Act 1992* of the Commonwealth are marked with asterisks to show that they are presumed extinct nationally. 15

7 Schedule 2 list of vulnerable species

- (1) Schedule 2 contains a list of vulnerable species for the purposes of this Act.
- (2) Vulnerable species listed in Schedule 2 that are also listed in Part 2 of Schedule 1 to the *Endangered Species Protection Act 1992* of the Commonwealth are marked with an asterisk to show that they are vulnerable nationally. 20

8 Schedule 3 list of key threatening processes

Schedule 3 contains a list of key threatening processes for the purposes of this Act. 25

9 Listing of nationally threatened species and ecological communities

- (1) As soon as practicable after a species or ecological community that is or was indigenous to New South Wales is inserted in Schedule 1 or 2 to the *Endangered Species Protection Act 1992* of the Commonwealth, the Scientific Committee is to consider whether, in accordance with Divisions 2 and 3, the species or ecological community should be listed as a threatened species or endangered ecological community in Schedule 1 or 2 to this Act. 30

- (2) Any species or ecological community that is inserted in a Schedule pursuant to this section is to be marked with an asterisk to show its national status.
- (3) If a threatened species or endangered ecological community is omitted from Schedule 1 or 2 to the *Endangered Species Protection Act 1992* of the Commonwealth: 5
- (a) the Minister is, by order published in the Gazette, to amend Schedule 1 or 2 to this Act to omit the asterisk showing its national status, and
 - (b) the Scientific Committee is to consider, in accordance with Division 3, whether the species or ecological community should be omitted from Schedule 1 or 2 to this Act. 10

Division 2 Eligibility for listing

10 Species eligible for listing as endangered species

A species is eligible to be listed as an endangered species if, in the opinion of the Scientific Committee: 15

- (a) it is likely to become extinct in nature in New South Wales unless the circumstances and factors threatening its survival or evolutionary development cease to operate, or
- (b) its numbers have been reduced to such a critical level, or its habitats have been so drastically reduced, that it is in immediate danger of extinction, or 20
- (c) it might already be extinct, but is not presumed extinct.

11 Populations eligible for listing as endangered populations

A population is eligible to be listed as an endangered population if, in the opinion of the Scientific Committee, its numbers have been reduced to such a critical level, or its habitat has been so drastically reduced, that it is in immediate danger of extinction and it is not a population of a species already listed in Schedule 1, and: 25

- (a) it is disjunct and at or near the limit of its geographic range, or
- (b) it is or is likely to be genetically distinct, or
- (c) it is otherwise of significant conservation value. 30

**12 Ecological communities eligible for listing as endangered
ecological communities**

An ecological community is eligible to be listed as an endangered ecological community if, in the opinion of the Scientific Committee:

5

- (a) it is likely to become extinct in nature in New South Wales unless the circumstances and factors threatening its survival or evolutionary development cease to operate, or
- (b) it might already be extinct.

13 Species eligible for listing as species presumed extinct

10

A species is eligible to be listed as a species that is presumed extinct at a particular time if, to the knowledge of the Scientific Committee, it has not been definitely located in nature during the preceding 50 years despite searching of known and likely habitats during that period.

15

14 Species eligible for listing as vulnerable species

A species is eligible to be listed as a vulnerable species if, in the opinion of the Scientific Committee, the species is likely to become endangered unless the circumstances and factors threatening its survival or evolutionary development cease to operate.

20

15 Threatening processes eligible for listing as key threatening processes

- (1) A threatening process is eligible to be listed as a key threatening process if, in the opinion of the Scientific Committee, it:
 - (a) adversely affects 2 or more threatened species, populations or ecological communities, or
 - (b) could cause species, populations or ecological communities that are not threatened to become threatened.

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- (2) A threatening process is not to be listed unless the making of a threat abatement plan under Part 5 is an effective and efficient way to abate, ameliorate or eliminate its adverse effects on threatened species, populations or ecological communities.

Division 3 Procedure for listing

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16 Operation of Division

- (1) This Division sets out the procedure to be adopted for the purposes of inserting matter in, omitting matter from or amending matter in Schedule 1, 2 or 3.
- (2) The procedure set out in this Division does not apply to the provisional listing of endangered species, populations or ecological communities, on an emergency basis, by the Scientific Committee under Division 4. 10

17 Scientific Committee responsible for lists

- (1) The Scientific Committee is responsible for determining whether any species, population, ecological community or threatening process should be inserted in or omitted from Schedule 1, 2 or 3 or whether any matter in those Schedules should be amended. 15
- (2) Accordingly, the Scientific Committee must keep the lists in those Schedules under review and must, at least bi-annually, determine whether any changes to the lists are necessary. 20

18 Who may initiate action for listing

- (1) The Scientific Committee may make a determination for the purposes of this Division on its own initiative.
- (2) The Scientific Committee may also make a determination: 25
- (a) following a request by the Minister, or
 - (b) on a nomination, made in accordance with this Division, of any other person.

19 Making nomination for inclusion on, omission from or amendment of list

- (1) Any person may nominate any species, population or ecological community for insertion in or omission from Schedule 1 or 2.
- (2) Any person may nominate any matter in Schedule 1 or 2 for amendment. 5
- (3) Any person may nominate any threatening process for insertion in or omission from Schedule 3.
- (4) Any person may nominate any matter in Schedule 3 for amendment. 10
- (5) A nomination must be in writing addressed to the Chairperson of the Scientific Committee and must include any information prescribed by the regulations.

20 Scientific Committee may request additional information

- The Scientific Committee may request a person who makes a nomination to provide additional information about the subject matter of the nomination within a specified period. 15

21 Consideration of nomination by Scientific Committee

- (1) The Scientific Committee is to consider each nomination as soon as practicable after it is made or, if additional information has been requested, after that information has been provided or the period specified for its provision has expired. 20
- (2) The Scientific Committee may consider different nominations about the same subject together.
- (3) The Scientific Committee may reject a nomination if: 25
 - (a) the subject of the nomination has already been dealt with, or
 - (b) the nomination is vexatious, or
 - (c) the nomination is not accompanied by the information prescribed by the regulations, or 30

- (d) any additional information requested by the Scientific Committee is not provided within the period specified for its provision, or
 - (e) any additional information provided is inadequate and does not satisfy the Scientific Committee's request. 5
- (4) If the Scientific Committee rejects a nomination, it is to notify the Minister, the Director-General and the person who made the nomination and is to give reasons for the rejection.

22 Scientific Committee's preliminary determination

- (1) The Scientific Committee, after considering a proposal raised on its own initiative or in response to a request from the Minister or a nomination by another person, must make a preliminary determination as to whether the proposal should be supported or not supported. 10
- (2) As soon as possible after making a preliminary determination, the Scientific Committee must: 15
 - (a) in a case involving a nomination, notify the person who made the nomination, the Minister and the Director-General, and
 - (b) in a case of a proposal raised on its own initiative or in response to a request from the Minister, notify the Minister and the Director-General, and 20
 - (c) publish notice of its preliminary determination and the reasons for it in a newspaper circulating generally throughout the State and, if the determination is likely to affect a particular area or areas (other than the State as a whole), in a newspaper circulating generally in that area or areas, and 25
 - (d) publish notice of the making of the preliminary determination in the Gazette. 30
- (3) The notice must:
 - (a) state that the preliminary determination has been prepared, and
 - (b) specify the address of the place at which copies of the determination may be inspected, and 35

- (c) invite persons to make written submissions to the Director-General about the determination, and
 - (d) specify the address of the place to which submissions about the determination may be forwarded and the date by which submissions must be made. 5
- (4) The notice must specify the date by which and the address of the place to which any person may forward written submissions to the Scientific Committee about a preliminary determination.
- (5) The Scientific Committee must consider all written submissions received by it on or before the date specified in the notice. 10

23 Scientific Committee to refer proposed final determination to Minister

- (1) The Scientific Committee must, after considering public submissions but before making a final determination, refer its proposed final determination to the Minister for review. 15
- (2) The Minister may accept the proposed final determination or refer it back to the Scientific Committee for further consideration.
- (3) The Minister may take such advice as the Minister thinks appropriate for the purpose of considering a proposed final determination. 20
- (4) The Minister is to consider a proposed final determination within one month after it is referred to the Minister or within such further time as the Minister notifies to the Scientific Committee is necessary to enable the Minister to obtain advice concerning the proposed final determination. 25

24 Scientific Committee's final determination

- (1) The Scientific Committee must, if the Minister accepts the proposed final determination, either accept (with or without such amendment as may also be acceptable to the Minister), or reject, a proposal for inclusion, or amendment, of matter in or omission of matter from Schedule 1, 2 or 3, and must give reasons for the determination. 30

- (2) In a case involving a nomination, the Scientific Committee must make a determination under this section within 6 months after:
- (a) the making of the nomination, or
 - (b) if additional information has been requested by the Scientific Committee, after that information has been provided or the period specified for its provision has expired. 5

25 Publication of final determination

On making a final determination, the Scientific Committee must, as soon as practicable: 10

- (a) in a case involving a nomination, notify the person who made the nomination of the determination, and
- (b) notify the Minister and the Director-General of the determination, and
- (c) publish notice of the determination and the reasons for it in a newspaper circulating generally throughout the State and, if the determination is likely to affect a particular area or areas (other than the State as a whole), in a newspaper circulating generally in that area or areas, and 15
- (d) publish notice of the making of the determination in the Gazette. 20

26 Revision of Schedule on publication of final determination

On the publication of a final determination in the Gazette that:

- (a) a species, population, ecological community or threatening process be inserted in Schedule 1, 2 or 3—the relevant Schedule is amended by inserting the species, population, ecological community or threatening process, or 25
- (b) a species, population, ecological community or threatening process be omitted from Schedule 1, 2 or 3—the relevant Schedule is amended by omitting the species, population, ecological community or threatening process, or 30
- (c) a species, population, ecological community or threatening process listed in Schedule 1, 2 or 3 be amended—the relevant Schedule is amended by omitting the species,

Clause 26 Threatened Species Conservation Bill 1995 (No 2)

Part 2 Listing of threatened species, populations and ecological communities and
Division 3 key threatening processes

population, ecological community or threatening process that is set out in the Schedule and by inserting instead a description of the species, population, ecological community or threatening process in the manner required by the determination.

5

Division 4 Procedure for provisional listing of endangered species on emergency basis

27 Operation of Division

This Division sets out the procedure to be adopted for the purposes of enabling matter to be provisionally listed in Schedule 1 on an emergency basis. 10

Note. Only species that are likely to be endangered may be provisionally listed.

28 Scientific Committee responsible for provisional listing

The Scientific Committee is responsible for determining whether any species should be provisionally listed in Schedule 1 as an endangered species on an emergency basis. 15

29 Eligibility for provisional listing

A species is eligible to be provisionally listed in Schedule 1 as an endangered species if, in the opinion of the Scientific Committee: 20

- (a) the species:
 - (i) although not previously known to have existed in New South Wales, is believed on current knowledge to be indigenous to New South Wales, or
 - (ii) was presumed to be extinct in New South Wales but has been rediscovered, and 25
- (b) the species is not listed in Part 1 of Schedule 1.

30 Who may initiate action for provisional listing

- (1) The Scientific Committee may make a determination for the purposes of this Division on its own initiative. 30

- (2) The Scientific Committee may also make a determination:
- (a) following a request by the Minister, or
 - (b) on a nomination, made in accordance with this Division, of any other person.

31 Making nomination for provisional listing

5

- (1) Any person may nominate any species for provisional listing in Schedule 1.
- (2) A nomination must be in writing addressed to the Chairperson of the Scientific Committee and must include any information prescribed by the regulations.

10

32 Scientific Committee may request additional information

The Scientific Committee may request a person who makes a nomination for provisional listing to provide additional information about the subject matter of the nomination within a specified period.

15

33 Consideration of nomination for provisional listing by Scientific Committee

- (1) The Scientific Committee is to consider each nomination as soon as practicable after it is made or, if additional information has been requested, after that information has been provided or the period specified for its provision has expired. 20
- (2) In any event, the Scientific Committee must make a determination about a nomination within 6 months after it is made or, if additional information has been requested, after that information has been provided or the period specified for its provision has expired. 25
- (3) The Scientific Committee may consider different nominations about the same subject together.
- (4) The Scientific Committee may reject a nomination if:
 - (a) the subject of the nomination has already been dealt with, or 30
 - (b) the nomination is vexatious, or

Clause 33 Threatened Species Conservation Bill 1995 (No 2)

Part 2 Listing of threatened species, populations and ecological communities and
Division 4 key threatening processes

- (c) the nomination is not accompanied by the information prescribed by the regulations, or
 - (d) any additional information requested by the Scientific Committee is not provided within the period specified for its provision, or 5
 - (e) any additional information provided is inadequate and does not satisfy the Scientific Committee's request.
- (5) If the Scientific Committee rejects a nomination, it is to notify the Minister, the Director-General and the person who made the nomination and is to give reasons for the rejection. 10

34 Publication of determination for provisional listing

On making a determination for provisional listing, the Scientific Committee must, as soon as practicable:

- (a) in a case involving a nomination, notify the person who made the nomination of the determination, and 15
- (b) notify the Minister and the Director-General of the determination, and
- (c) publish notice of the determination and the reasons for it in a newspaper circulating generally throughout the State and, if the determination is likely to affect a particular area or areas (other than the State as a whole), in a newspaper circulating generally in that area or areas, and 20
- (d) publish notice of the making of the determination in the Gazette.

35 Effect of publication of determination for provisional listing 25

On the publication of the determination that a species be provisionally listed in Schedule 1, Schedule 1 is taken for all purposes to have been amended by the insertion of the description of the species that is the subject of the determination until such time as the provisional listing ceases to have effect in accordance with this Division. 30

36 Scientific Committee to review status of provisionally listed species

- (1) As soon as practicable after the publication of a determination under this Division, the Scientific Committee must review the status of a provisionally listed species, population or ecological community to determine whether or not the species should be listed as a threatened species. 5
- (2) The requirements of sections 22–26 apply to the review of a provisional listing.

37 Termination of provisional listing

10

The provisional listing of a species in Schedule 1 ceases to have effect:

- (a) if the Scientific Committee makes a final determination in accordance with Division 3 that the species should be listed in Schedule 1 or 2—when that determination is published in the Gazette, or 15
 - (b) if the Scientific Committee makes a final determination in accordance with Division 3 that the species should not be listed in Schedule 1 or 2—when the Scientific Committee publishes a notice to that effect in the Gazette, or 20
 - (c) within 12 months after the provisional listing,
- whichever first occurs.

Part 3 Critical habitat of endangered species, populations and ecological communities

Introductory note

This Part makes the Director-General responsible for identifying (where this is possible) habitat that is critical to the survival of endangered species, populations and ecological communities (that is, those species, populations and ecological communities listed for the time being in Schedule 1) and for recommending to the Minister that the habitat so identified be declared critical habitat. The Director-General must consult with the Scientific Committee before preparing a recommendation and must have regard to any advice given by the Scientific Committee concerning identification of critical habitat of endangered populations and ecological communities. 5 10

Division 1 describes the process by which critical habitat is identified by the Director-General and declared by the Minister and makes provision for public participation in that process. 15

Division 2 deals with the preparation, publication and other dissemination of maps of critical habitat, and the maintenance of a register of critical habitat by the Director-General.

An offence relating to the damaging of critical habitat is contained in the *National Parks and Wildlife Act 1974*. That Act also makes it an offence for a person to damage the habitat of a threatened species, population or ecological community. 20

Division 1 Identification and declaration of critical habitat

38 Habitat eligible to be declared to be critical habitat

- (1) The whole or any part or parts of the area or areas of land comprising the habitat of an endangered species, population or ecological community that is critical to the survival of the species, population or ecological community is eligible to be declared under this Part to be the critical habitat of the species, population or ecological community. 25 30
- (2) The regulations may provide that a specified habitat, or habitat of a specified kind, may, or may not, be declared to be critical habitat for the purposes of this Part.

39 Director-General responsible for identifying critical habitat

The Director-General is responsible for identifying (where this is possible) the area or areas of land comprising the critical habitat of each endangered species, population and ecological community.

5

40 Director-General to consult with Scientific Committee

(1) The Director-General must consult with the Scientific Committee before preparing a recommendation for the identification of an area or areas of land comprising critical habitat for the purposes of this Act.

10

(2) In particular, the Director-General must consult with the Scientific Committee concerning the identification of the area or areas of land comprising the critical habitat of endangered populations and endangered ecological communities and must have regard to its advice in preparing any recommendation for that purpose.

15

41 Preparation of recommendation for identification of critical habitat

(1) After considering the Scientific Committee's advice, the Director-General must, if the Director-General considers that it is possible to identify the critical habitat of a species, population or ecological community, prepare a recommendation for identification of the area or areas of land comprising the critical habitat of that species, population or ecological community.

20

(2) In so doing, the Director-General must consider the likely social and economic consequences of the making of the recommendation in the manner proposed.

25

42 Publication of recommendation

(1) After preparing a recommendation for identification of the area or areas of land comprising the critical habitat of a species, population or ecological community, the Director-General must:

30

(a) give a copy of it to the Scientific Committee, and

- (b) give notice of the recommendation to all persons known by the Director-General, following the making of reasonable searches and inquiries, to be affected by the recommendation, being:
 - (i) landholders (including public authorities who are landholders), and 5
 - (ii) other public authorities known to the Director-General to exercise relevant functions in relation to the land, and
 - (iii) if the land is subject to a mortgage, charge or positive covenant—the mortgagee, chargee or person entitled to the benefit of the covenant, and 10
- (c) publish notice of the recommendation in a newspaper circulating generally throughout the State and, if the recommendation is likely to affect a particular area or areas (other than the State as a whole), in a newspaper circulating generally in that area or areas, and 15
- (d) publish notice of the recommendation in the Gazette.
- (2) The notice must:
 - (a) state that the recommendation has been prepared, and 20
 - (b) specify the address of the place at which copies of the recommendation may be inspected, and
 - (c) invite persons to make written submissions to the Director-General about the recommendation, and
 - (d) specify the address of the place to which submissions about the recommendation may be forwarded and the date by which submissions must be made. 25

43 Consideration of submissions by Director-General

- (1) The Director-General must consider all written submissions received by the Director-General on or before the date specified in the notice. 30
- (2) The Director-General may amend the recommendation to take account of any of those submissions or any advice given by the Scientific Committee.

44 Director-General to refer recommendation to Minister

After considering the submissions and making amendments (if any) to the recommendation, the Director-General:

- (a) must forward the recommendation, identifying the area or areas of land comprising the critical habitat of the species, population or ecological community concerned, to the Minister, and 5
- (b) must also provide the Minister with a summary of any advice given by the Scientific Committee concerning the matter and of all submissions received about the recommendation, and details of any amendments made to the recommendation by the Director-General to take account of that advice or those submissions. 10

45 Consideration of recommendation by Minister

- (1) On receiving a recommendation from the Director-General, the Minister must consider the recommendation and have regard to the following: 15
 - (a) the likely social and economic consequences of a declaration of critical habitat in the manner indicated in the recommendation, 20
 - (b) without limiting paragraph (a), the likely consequences of a declaration of critical habitat in the manner indicated in the recommendation for landholders of, or other persons having an interest in, or on lawful uses of, the land,
 - (c) the advice of the Scientific Committee concerning the matter, 25
 - (d) any submissions made about the recommendation and, in particular, any submissions received from public authorities exercising relevant functions in relation to the land. 30
- (2) In so doing, the Minister must also consider whether, consistent with the principles of ecologically sustainable development, the recommendation might be amended to avoid or lessen any adverse consequences of the making of a declaration of critical habitat. 35

46 Consultation between Ministers

If a submission from a public authority indicates that a recommendation is likely to affect the exercise of functions by the public authority, the Minister is to consult with the responsible Minister for the public authority concerning the recommendation before making a decision about the recommendation. 5

47 Minister may return recommendation to Director-General for amendment

- (1) If the Minister thinks that a recommendation should be amended in some respect, the Minister may request the Director-General to amend the recommendation. 10
- (2) On receiving such a request, the Director-General must:
- (a) amend the recommendation in the manner requested by the Minister, and 15
 - (b) return the recommendation, as so amended, to the Minister.

48 Declaration of critical habitat by Minister

- (1) The Minister may:
- (a) approve a recommendation, without amendment or with any amendments that the Minister considers appropriate, or 20
 - (b) refuse a recommendation (on the basis of one or more of the factors referred to in section 45 (1) or otherwise), or
 - (c) refer it back to the Director-General for further consideration. 25
- (2) If the Minister approves of a recommendation, with or without amendments, the Minister may, by notification published in the Gazette, declare the area or areas of land identified in the recommendation (with any appropriate amendment) and described in the notification to be the critical habitat of the endangered species, population or ecological community concerned. 30
- (3) Section 54 (2) applies to the publication of a map of the critical habitat.

49 Publication of declaration of critical habitat

As soon as practicable after the declaration of critical habitat by the Minister, the Director-General must:

- (a) give notice of the declaration to all persons known by the Director-General, following the making of reasonable searches and inquiries, to be affected by the declaration, being:
 - (i) landholders (including public authorities who are landholders), and
 - (ii) other public authorities known by the Director-General to exercise relevant functions in relation to the land, and
 - (iii) if the land is subject to a mortgage, charge or positive covenant—the mortgagee, chargee or person entitled to the benefit of the covenant, and
- (b) publish notice of the declaration in a newspaper circulating generally throughout the State and, if the declaration is likely to affect a particular area or areas (other than the State as a whole), in a newspaper circulating generally in that area or areas, and
- (c) publish notice of the declaration in the Gazette.

50 Amendment or revocation of declaration of critical habitat

- (1) The Minister may amend or revoke a declaration of critical habitat by a further notification published in the Gazette. However, the Minister must not revoke a declaration unless the Minister has obtained from, and considered, the advice of the Director-General.
- (2) The Director-General may consult with the Scientific Committee before providing advice about a proposed revocation, and must consult with the Scientific Committee if the proposed revocation relates to the critical habitat of an endangered population or an endangered ecological community.

- (3) If a declaration is amended or revoked by the Minister, the Director-General must:
- (a) give notice of the amendment or revocation to:
 - (i) those persons who were given notice of the making of the declaration and who retain the requisite interest in the land, and 5
 - (ii) any other person known by the Director-General, following the making of reasonable searches and inquiries, to have become a landholder, public authority exercising relevant functions in relation to the land, mortgagee, chargee or person entitled to the benefit of a positive covenant in the land after notice of the making of the declaration was given, and 10
 - (b) publish notice of the amendment or revocation in the Gazette. 15
- (4) A notice under subsection (3) must give the reasons for the amendment or revocation of the declaration.

51 Public authorities to have regard to critical habitat

A public authority must, on and after publication of a declaration of critical habitat (whether or not a map of the critical habitat is published at the same time), have regard to the existence of critical habitat: 20

- (a) in relation to use of land that it owns or controls that is within or contains critical habitat, or 25
- (b) in exercising its functions in relation to land that is within or contains critical habitat.

52 Regulations may prohibit certain actions on critical habitat

The regulations may prohibit or regulate, for the purposes of this Act, the carrying out of specified actions, or actions of a specified class or description, on specified critical habitat. 30

53 Effect of failure to comply with procedural requirements

A declaration of critical habitat is not open to challenge because of a failure to comply with the procedural requirements of this Division after the declaration has been published in the Gazette.

Division 2 Maps and register of critical habitat

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54 Map of critical habitat to be prepared and published

- (1) On or as soon as practicable after the publication of a declaration, or an amendment of a declaration, of critical habitat, the Director-General must arrange for the preparation of a map that shows the location of the critical habitat as so declared or amended. 10
- (2) A copy of the map is to be published in the Gazette on or after the publication of the declaration of the critical habitat.

55 Maps of critical habitat to be served

The Director-General must serve a copy of a map of critical habitat on the following: 15

- (a) the Director-General of the Department of Land and Water Conservation,
- (b) the Director of Planning,
- (c) each council within whose area the whole or part of the critical habitat is located, 20
- (d) landholders of land on which critical habitat is located (including public authorities who are landholders),
- (e) other public authorities known by the Director-General to exercise relevant functions in relation to the land. 25

56 Director-General to keep register of critical habitat

- (1) The Director-General must keep a register containing copies of declarations of critical habitat as in force from time to time, and maps of the critical habitat that are published in the Gazette, and must make that register available to public authorities. 30

Clause 56 Threatened Species Conservation Bill 1995 (No 2)

Part 3 Critical habitat of endangered species, populations and ecological
Division 2 communities

- (2) The register is to be open for public inspection, without charge, during ordinary business hours, and copies of or extracts from the register are to be made available to the public on request, on payment of the fee fixed by the Director-General.

Part 4 Recovery plans for threatened species, populations and ecological communities

Introductory note

This Part is the first of 4 Parts that address responses to threats to the survival of threatened species, populations and ecological communities, and their habitats. This Part deals with recovery plans for threatened species, populations and ecological communities and makes further provision as to the protection of their critical habitats (if any).

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The Director-General must prepare recovery plans for endangered species (other than species presumed extinct), populations and ecological communities and may prepare recovery plans for vulnerable species. The object of a recovery plan is to promote the recovery of the threatened species, population or ecological community to which it relates to a position of viability in nature. If critical habitat has been declared for the species, population or ecological community, the plan must include reference to that fact.

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Division 1 deals with the preparation, contents, publication and adoption of recovery plans.

Division 2 deals with the implementation of recovery plans, and includes procedures for public authorities to report on their implementation of, or on proposed departures from, measures specified to be taken in recovery plans.

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In accordance with the *Environmental Planning and Assessment Act 1979*, the terms of recovery plans are to be taken into account by consent authorities and determining authorities (within the meaning of that Act) when they are considering development applications under Part 4, or the carrying out, or applications for approval for the carrying out, of activities under Part 5, of that Act.

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Division 1 Preparation of recovery plans

57 Director-General to prepare recovery plans

- (1) The Director-General is required to prepare a recovery plan for each endangered species (other than a species presumed extinct), population and ecological community, as soon as practicable after it is listed in Schedule 1, to promote the recovery of the species, population or ecological community to a position of viability in nature.
- (2) The Director-General may also prepare recovery plans for vulnerable species.

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58 Guidelines for recovery plans

- (1) The Director-General must, in preparing a recovery plan and in deciding which measures to include in it, have regard to the following:
 - (a) the objects of this Act, 5
 - (b) the likely social and economic consequences of the making of the plan,
 - (c) the most efficient and effective use of available resources for the conservation of threatened species, populations and ecological communities, 10
 - (d) the desirability of minimising any significant adverse social and economic consequences.
- (2) The Director-General is to consider, when preparing a recovery plan, any measures by which the public may co-operate in the conservation of a threatened species, population or ecological community. 15

59 Priorities for recovery plans

- (1) The Director-General must, after consulting with the Scientific Committee, determine priorities in the preparation of recovery plans. 20
- (2) The highest priority is to be given to the preparation of recovery plans for species, populations and ecological communities that are identified by asterisks in Schedule 1 as being endangered nationally.
- (3) After complying with subsection (2), priorities in the preparation of recovery plans are to be determined in accordance with the following criteria and any other criteria that the Director-General, after consultation with the Scientific Committee, considers relevant: 25
 - (a) likelihood of extinction—whether the species, population or ecological community has a greater likelihood of extinction than other species, populations or ecological communities, 30

- (b) likelihood of recovery—whether the species, population or ecological community is more likely to recover, if it is the subject of a recovery plan, than other species, populations or ecological communities,
- (c) keystone species—whether many other species are dependant for survival on the species, 5
- (d) indicator species—whether the relative abundance of the species is a measure of the overall health of its ecosystem.

60 Contents of recovery plans

- A recovery plan must: 10
 - (a) identify the threatened species, population or ecological community to which it applies, and
 - (b) identify any critical habitat declared in relation to the threatened species, population or ecological community, and 15
 - (c) identify any threatening process or processes threatening the threatened species, population or ecological community, and
 - (d) identify methods by which adverse social and economic consequences of the making of the plan can be minimised, and 20
 - (e) state what must be done to ensure the recovery of the threatened species, population or ecological community, and
 - (f) state what must be done to protect the critical habitat (if any) identified in the plan, and 25
 - (g) state, with reference to the objects of this Act:
 - (i) the way in which those objects are to be implemented or promoted for the benefit of the threatened species, population or ecological community, and 30
 - (ii) the method by which progress towards achieving those objects is to be assessed, and
 - (h) identify the persons or public authorities who are responsible for the implementation of the measures included in the plan, and 35
 - (i) state the date by which the recovery plan should be subject to review by the Director-General.

61 Consultation between Ministers

- (1) The Minister must, if the Director-General informs the Minister that the Director-General considers that a public authority should be responsible for the implementation of a measure to be included in a recovery plan, consult with the Minister responsible for the public authority before completing the preparation of the draft recovery plan. 5
- (2) A measure must not be included in a recovery plan for implementation by a public authority unless the Minister responsible for the public authority approves of the inclusion of the measure. 10

62 Publication of draft recovery plan

- (1) As soon as practicable after preparing a draft recovery plan, the Director-General must:
 - (a) give a copy of the draft recovery plan to the Scientific Committee, and 15
 - (b) give notice of the preparation of the draft recovery plan to any public authority that the Director-General knows is likely to be affected by the recovery plan, and
 - (c) publish notice of the preparation of the draft recovery plan in a newspaper circulating generally throughout the State and, if the recovery plan is likely to affect a particular area or areas (other than the State as a whole), in a newspaper circulating generally in that area or areas, and 20
 - (d) publish notice of the preparation of the draft recovery plan in the Gazette. 25
- (2) The notice must:
 - (a) state that the draft recovery plan has been prepared, and
 - (b) specify the address of the place at which copies of the draft recovery plan may be inspected, and 30
 - (c) invite persons to make written submissions to the Director-General about the draft recovery plan, and
 - (d) specify the address of the place to which submissions about the draft recovery plan may be forwarded and the date by which submissions must be made. 35

63 Consideration of submissions by Director-General

- (1) The Director-General must consider all written submissions received by the Director-General on or before the date specified in the notice.
- (2) The Director-General may amend the draft recovery plan to take account of those submissions or any advice given by the Scientific Committee. 5

64 Director-General to refer draft recovery plan to Minister

After considering the submissions and making amendments (if any) to the draft recovery plan, the Director-General must: 10

- (a) forward the draft recovery plan to the Minister, and
- (b) provide the Minister with a summary of any advice given by the Scientific Committee and of all submissions received about the draft recovery plan, and details of any amendments made to the draft recovery plan by the Director-General to take account of that advice or those submissions. 15

65 Minister may return draft recovery plan to Director-General for amendment

- (1) If the Minister thinks that a draft recovery plan should be amended in some respect, the Minister may request the Director-General to amend the plan. 20
- (2) On receiving such a request, the Director-General must:
 - (a) amend the proposal in the manner requested by the Minister, and 25
 - (b) return the plan, as so amended, to the Minister.

66 Approval of recovery plan by Minister

- (1) In considering whether to approve or to refuse to approve a draft recovery plan, the Minister must have regard to the likely social and economic consequences of the approval of the plan. 30

(2) The Minister may:

- (a) approve a draft recovery plan without amendment or with any amendments that the Minister considers appropriate, or
- (b) refuse to approve the plan (on the basis of the likely social or economic consequences of the plan or otherwise), or 5
- (c) refer it back to the Director-General for further consideration.

67 Reasons for departure from draft recovery plan to be stated

If a recovery plan approved by the Minister is not in the form of the draft recovery plan submitted to the Minister by the Director-General, the recovery plan approved must state the reasons for any departures from the draft plan. 10

68 Recovery plans to be published

- (1) As soon as practicable after the Minister approves a draft recovery plan, the Director-General must: 15
 - (a) give a copy of the recovery plan to the Scientific Committee, and
 - (b) publish notice of the approval of the plan in a newspaper circulating generally throughout the State and, if the recovery plan is likely to affect a particular area or areas (other than the State as a whole), in a newspaper circulating generally in that area or areas, and 20
 - (c) notify any public authority likely to be affected by the plan, and 25
 - (d) publish notice of the approval of the plan in the Gazette.
- (2) The Director-General must also make a copy of the recovery plan available for public inspection, without charge, during business hours and copies of or extracts from the recovery plan are to be made available to the public on request, on payment of the fee fixed by the Director-General. 30

69 Review of recovery plans

- (1) The Director-General is required to keep each recovery plan under review and, if a date by which a plan is to be reviewed is stated in it, is to review the plan by that date.
- (2) The Director-General is also to consider any submissions about recovery plans received from public authorities or the public. 5
- (3) If the Director-General considers that any change (other than a minor change) should be made to a recovery plan, the Director-General is to prepare a new plan in accordance with this Part. 10

Division 2 Implementation of recovery plans**70 Ministers and public authorities to implement recovery plans**

- (1) Ministers and public authorities (including the Director-General) are to take any appropriate action available to them to implement those measures included in a recovery plan for which they are responsible and must not make decisions that are inconsistent with the provisions of a recovery plan. 15
- (2) If the implementation of a recovery plan affects a statutory discretion of a Minister or public authority, this section does not operate to exclude the discretion, but the Minister or authority must take the recovery plan into account. 20
- (3) This section does not operate to require or authorise any action by a Minister or public authority that is inconsistent with any statutory or other legal obligation of the Minister or public authority. 25

71 Public authorities to report on implementation of recovery plans

- (1) A public authority (including the Director-General but not including a council) identified in a recovery plan as responsible for the implementation of measures included in the plan must report on action taken by it to implement those measures in its annual report to Parliament. 30

- (2) A council identified in a recovery plan as responsible for the implementation of measures included in the plan must report on action taken by it to implement those measures in its annual report as to the state of the environment of its area.

72 Notification of proposed departures from recovery plan 5

- (1) A public authority must not exercise a function (other than the exercise of a discretion of a kind referred to in section 70 (2)) in a manner that is inconsistent with the implementation of measures included in a recovery plan unless:
- (a) in the case of a public authority other than the Director-General—it has given written notice of the proposed exercise of the function to the Director-General, or 10
- (b) in the case of the Director-General—the Director-General has given written notice of the proposed exercise of the function to the Minister. 15
- (2) The Director-General must comply with any directions given by the Minister concerning a proposed departure from a recovery plan.
- (3) This section does not apply in relation to anything authorised to be done by or under the *Bush Fires Act 1949* or the *State Emergency and Rescue Management Act 1989* that is reasonably necessary in order to avoid a threat to life or property. 20

73 Consultations with Director-General concerning proposed departures 25

- (1) The Director-General must, on receiving notice of a proposed departure from a recovery plan from a public authority, determine whether exercise of the function in the manner proposed is acceptable or whether it is likely to jeopardise the effective implementation of the plan. 30
- (2) If the Director-General considers that the departure is acceptable, the Director-General must notify the public authority accordingly.

- (3) If the Director-General considers that the departure is unacceptable because it is likely to jeopardise the effective implementation of the recovery plan, the Director-General must consult with the public authority in an endeavour to resolve the matter by modification of the action proposed or by other mutually acceptable means. 5

74 Reference of proposed departures to Ministers and Premier

- (1) A matter that has not been resolved after consultation between the Director-General and the public authority concerned must be referred by the parties to their respective Ministers. 10
- (2) In the case of a council, the reference is to the Minister administering the *Local Government Act 1993* unless the matter relates, in whole or in part, to the exercise of functions under the *Environmental Planning and Assessment Act 1979*. In that event, the reference is to be to the Minister administering the *Environmental Planning and Assessment Act 1979*. 15
- (3) The Ministers, on receiving a reference, are to consult in an endeavour to resolve the matter by means that the Ministers consider to be appropriate.
- (4) If the Ministers are unable to resolve the matter after consultation, it is to be referred to the Premier for resolution. 20
- (5) A public authority (including the Director-General) must give effect to any decision of, or directions made or given by, the Premier on the matter and is, despite the requirements of any other Act or law, empowered to comply with any such decision or directions. 25

Clause 75 Threatened Species Conservation Bill 1995 (No 2)

Part 5 Threat abatement plans to manage key threatening processes
Division 1

Part 5 Threat abatement plans to manage key threatening processes

Introductory note

Part 2 provides for the identification of key threatening processes by the Scientific Committee. This Part deals with the preparation, at the discretion of the Director-General, and implementation of threat abatement plans to manage key threatening processes with a view to their abatement, amelioration or elimination. 5

Division 1 deals with the preparation, contents, publication and adoption of threat abatement plans. 10

Division 2 deals with the implementation of threat abatement plans, and includes procedures for public authorities to report on their implementation of, or on proposed departures from, measures specified to be taken in threat abatement plans.

In accordance with the *Environmental Planning and Assessment Act 1979*, the terms of threat abatement plans are to be taken into account by consent authorities and determining authorities (within the meaning of that Act) when they are considering development applications under Part 4, or the carrying out, or applications for approval for the carrying out, of activities under Part 5, of that Act. 15
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Division 1 Preparation of threat abatement plans

75 Director-General may prepare threat abatement plans

The Director-General may prepare a threat abatement plan for each key threatening process to manage the threatening process so as to abate, ameliorate or eliminate its adverse effects on threatened species, populations or ecological communities. 25

76 Guidelines for threat abatement plans

- (1) The Director-General must, in preparing threat abatement plans and in deciding which measures to include in those plans, have regard to the following: 30
- (a) the objects of this Act,
 - (b) the likely social and economic consequences of the making of the plan,

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- (c) the most efficient and effective use of available resources for the conservation of threatened species, populations and ecological communities,
 - (d) the desirability of minimising any significant adverse social and economic consequences. 5
- (2) The Director-General is to consider, when preparing a threat abatement plan, any measures by which the public may co-operate in the abatement, amelioration or elimination of the adverse effects of key threatening processes on the prospects of survival of threatened species, populations or ecological communities and their recovery to a position of viability in nature. 10

77 Priorities for threat abatement plans

The Director-General must, after consulting with the Scientific Committee, determine priorities in the preparation of threat abatement plans. 15

78 Contents of threat abatement plans

A threat abatement plan must:

- (a) state the criteria for assessing the achievement of the objective, and 20
- (b) identify the actions needed to abate, ameliorate or eliminate the effects of the key threatening process, and
- (c) identify the persons or public authorities who are responsible for the implementation of the measures included in the plan, and 25
- (d) where practicable, provide a proposed timetable for the implementation of the plan, and
- (e) state the estimated cost of the measures included in the plan, and
- (f) state the date by which the plan should be subject to review by the Director-General, and 30
- (g) include any other matter relating to the impact of the plan as the Director-General considers appropriate.

79 Consultation between Ministers

- (1) The Minister must, if the Director-General informs the Minister that the Director-General considers that a public authority should be responsible for the implementation of a measure to be included in a threat abatement plan, consult with the Minister responsible for the public authority before completing the preparation of the draft threat abatement plan. 5
- (2) A measure must not be included in a threat abatement plan for implementation by a public authority unless the Minister responsible for the public authority approves of the inclusion of the measure. 10

80 Publication of draft threat abatement plan

- (1) As soon as practicable after preparing a draft threat abatement plan, the Director-General must:
 - (a) give a copy of the draft threat abatement plan to the Scientific Committee, and 15
 - (b) give notice of the preparation of the draft threat abatement plan to any public authority that the Director-General knows is likely to be affected by the threat abatement plan, and 20
 - (c) publish notice of the preparation of the draft threat abatement plan in a newspaper circulating generally throughout the State and, if the threat abatement plan is likely to affect a particular area or areas (other than the State as a whole), in a newspaper circulating generally in that area or areas, and 25
 - (d) publish notice of the preparation of the draft threat abatement plan in the Gazette.
- (2) The notice must:
 - (a) state that the draft threat abatement plan has been prepared, and 30
 - (b) specify the address of the place at which copies of the draft threat abatement plan may be inspected, and
 - (c) invite persons to make written submissions to the Director-General about the draft threat abatement plan, and 35

- (d) specify the address of the place to which submissions about the draft threat abatement plan may be forwarded and the date by which submissions must be made.

81 Consideration of submissions by Director-General

- (1) The Director-General must consider all written submissions received by the Director-General on or before the date specified in the notice. 5
- (2) The Director-General may amend the draft threat abatement plan to take into account any of those submissions or any advice given by the Scientific Committee. 10

82 Director-General to refer draft threat abatement plan to Minister

After considering the submissions and making amendments (if any) to the draft threat abatement plan, the Director-General must:

- (a) forward the draft threat abatement plan to the Minister, and 15
- (b) provide the Minister with a summary of any advice given by the Scientific Committee and of all submissions received about the draft threat abatement plan, and details of any amendments made to the draft threat abatement plan by the Director-General to take account of that advice or those submissions. 20

83 Minister may return draft threat abatement plan to Director-General for amendment

- (1) If the Minister thinks that a draft threat abatement plan should be amended in some respect, the Minister may request the Director-General to amend the plan. 25
- (2) On receiving such a request, the Director-General must:
- (a) amend the plan in the manner requested by the Minister, and
- (b) return the plan, as so amended, to the Minister. 30

84 Approval of threat abatement plan by Minister

- (1) In considering whether to approve or to refuse to approve a draft threat abatement plan, the Minister must have regard to the likely social and economic consequences of the approval of the plan.
- (2) The Minister may:
 - (a) approve a threat abatement plan without amendment or with any amendments that the Minister considers appropriate, or
 - (b) refuse to approve the plan (on the basis of the likely social or economic consequences of the plan or otherwise), or
 - (c) refer it back to the Director-General for further consideration.

85 Threat abatement plans to be published

- (1) As soon as practicable after the Minister approves a threat abatement plan, the Director-General must:
 - (a) give a copy of the threat abatement plan to the Scientific Committee, and
 - (b) publish notice of the approval of the plan in a newspaper circulating generally throughout the State and, if the threat abatement plan is likely to affect a particular area or areas (other than the State as a whole), in a newspaper circulating generally in that area or areas, and
 - (c) notify any public authority that the Director-General knows is likely to be affected by the plan, and
 - (d) publish notice of the approval of the plan in the Gazette.
- (2) The Director-General must also make a copy of the threat abatement plan available for public inspection, without charge, during ordinary business hours and copies of or extracts from the threat abatement plan are to be made available to the public on request, on payment of the fee fixed by the Director-General.

86 Review of threat abatement plans

- (1) The Director-General is required to keep each threat abatement plan under review and, if a date by which a plan is to be reviewed is stated in it, is to review the plan by that date.

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- (2) The Director-General is also to consider any submissions about threat abatement plans received from public authorities or the public.
 - (3) If the Director-General considers that any change (other than a minor change) should be made to a threat abatement plan, the Director-General is to prepare a new plan in accordance with this Part. 5

Division 2 Implementation of threat abatement plans

87 Ministers and public authorities to implement threat abatement plans 10

- (1) Ministers and public authorities (including the Director-General) are to take any appropriate action available to them to implement those measures included in a threat abatement plan for which they are responsible and must not make decisions that are inconsistent with the provisions of a threat abatement plan. 15
- (2) If the implementation of a threat abatement plan affects a statutory discretion of a Minister or public authority, this section does not operate to exclude the discretion, but the Minister or authority must take the plan into account.
- (3) This section does not operate to require or authorise any action by a Minister or public authority that is inconsistent with any statutory or other legal obligation of the Minister or public authority. 20

88 Public authorities to report on implementation of threat abatement plans 25

- (1) A public authority (including the Director-General but not including a council) identified in a threat abatement plan as responsible for the implementation of measures included in the plan must report on action taken by it to implement those measures in its annual report to Parliament. 30
- (2) A council identified in a threat abatement plan as responsible for the implementation of measures included in the plan must report on action taken by it to implement those measures in its annual report as to the state of the environment of its area.

89 Notification of proposed departures from threat abatement plan

- (1) A public authority must not exercise a function (other than the exercise of a discretion of a kind referred to in section 87 (2)) in a manner that is inconsistent with the implementation of measures included in a threat abatement plan unless: 5
- (a) in the case of a public authority other than the Director-General—it has given written notice of the proposed exercise of the function to the Director-General, or
- (b) in the case of the Director-General—the Director-General has given written notice of the proposed exercise of the function to the Minister. 10
- (2) The Director-General must comply with any directions given by the Minister concerning a proposed departure from a threat abatement plan. 15
- (3) This section does not apply in relation to anything authorised to be done by or under the *Bush Fires Act 1949* or the *State Emergency and Rescue Management Act 1989* that is reasonably necessary in order to avoid a threat to life or property.

90 Consultations with Director-General concerning proposed departures 20

- (1) The Director-General must, on receiving notice of a proposed departure from a threat abatement plan from a public authority, determine whether exercise of the function in the manner proposed is acceptable or whether it is likely to jeopardise the effective implementation of the plan. 25
- (2) If the Director-General considers that the departure is acceptable, the Director-General must notify the public authority accordingly.
- (3) If the Director-General considers that the departure is unacceptable because it is likely to jeopardise the effective implementation of the threat abatement plan, the Director-General must consult with the public authority in an endeavour to resolve the matter by modification of the action proposed or by other mutually acceptable means. 30 35

91 Reference of proposed departures to Ministers and Premier

- (1) A matter that has not been resolved after consultation between the Director-General and the public authority concerned must be referred by the parties to their respective Ministers.
- (2) In the case of a council, the reference is to the Minister administering the *Local Government Act 1993* unless the matter relates, in whole or in part, to the exercise of functions under the *Environmental Planning and Assessment Act 1979*. In that event, the reference is to be to the Minister administering the *Environmental Planning and Assessment Act 1979*. 5
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- (3) The Ministers, on receiving a reference, are to consult in an endeavour to resolve the matter by means that the Ministers consider to be appropriate.
- (4) If the Ministers are unable to resolve the matter after consultation, it is to be referred to the Premier for resolution. 15
- (5) A public authority (including the Director-General) must give effect to any decision of, or directions made or given by, the Premier on the matter and is, despite the requirements of any other Act or law, empowered to comply with any such decision or directions. 20

Part 6 Licensing

Introductory note

This Part deals with the licensing by the Director-General of actions that are likely:

- to harm threatened species, populations or ecological communities (in so far as animals are concerned) or to result in the picking of threatened species, populations or ecological communities (in so far as plants are concerned), or 5
- to damage critical habitat or other habitat of those species, populations or ecological communities. 10

Harm and **pick** are defined in the *National Parks and Wildlife Act 1974*.

A person does not commit an offence under Part 8A of the *National Parks and Wildlife Act 1974* of harming or picking threatened species, populations or ecological communities or damaging a critical habitat or the habitat of threatened species, populations or ecological communities if the action taken by the person is essential for the carrying out of: 15

- (a) development in accordance with a development consent within the meaning of the *Environmental Planning and Assessment Act 1979*, or
- (b) an activity, whether by a determining authority or pursuant to an approval of a determining authority, within the meaning of Part 5 of that Act if the determining authority has complied with that Part. 20

Accordingly, a licence under this Act is not required for the taking of action that is so authorised under the *Environmental Planning and Assessment Act 1979*. However, the same tests are applied (with the involvement of the Minister administering this Act or the Director-General of National Parks and Wildlife) to assess the consequences of a development or an activity under that Act before a decision is made concerning it as are applied by the Director-General in determining whether a licence should be granted under this Part. 25

The Part also contains provisions about species impact statements. These statements are employed to measure the significance of the effect of actions on threatened species, populations or ecological communities, or their habitats. A species impact statement must be lodged with an application for a licence under this Part if the Director-General determines that the action proposed is likely to significantly affect threatened species, populations or ecological communities, or their habitats. A similar requirement applies when a development application is lodged, or an activity proposed, under the *Environmental Planning and Assessment Act 1979* over critical habitat or that is likely to significantly affect threatened species, populations or ecological communities, or their habitats. 30

Division 1 deals with the grant of licences, including the making of applications, fees, determinations as to whether actions proposed will significantly affect threatened species, populations or ecological 35

communities, publication of applications and the making of submissions concerning them, and matters that the Director-General must take into account before granting licences and appeals.

Division 2 deals with the form and content of species impact statements and the notification of the Director-General's requirements as to their preparation. It also makes provision for the accreditation of persons to prepare assessments of species impact statements.

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Division 1 Grant of licences

- 92 Licence to harm or pick threatened species, population or ecological communities or damage habitat** 10
- (1) The Director-General may grant a licence authorising a person to take action that is likely to result in one or more of the following:
 - (a) harm to a threatened species, population or ecological community (so far as animals are concerned),
 - (b) picking of a threatened species, population or ecological community (so far as plants are concerned), 15
 - (c) damage to a critical habitat,
 - (d) damage to a habitat of a threatened species, population or ecological community.
 - (2) A general licence under section 120 of the *National Parks and Wildlife Act 1974* may only be issued for a purpose referred to in subsection (1):
 - (a) for scientific purposes, or
 - (b) for the welfare of an animal, or
 - (c) if there is a threat to life or property. 25
 - (3) Despite subsection (1), a licence under this Part is not required for the carrying out of routine agricultural activities unless the actions are, or are of a class of actions, that the regulations prescribe may be carried out only under the authority of a licence under this Part. 30
 - (4) The Minister must not recommend the making of a regulation that identifies actions, or actions of a class of actions, that may be carried out only under the authority of a licence under this Part unless the Minister certifies that the Director-General has consulted with the Director-General of the Department of Agriculture concerning the making of the regulation. 35

- (5) The Director-General may, for the purposes of this Act, approve of a property management plan for land prepared by a landholder. Any action identified in, and carried out in accordance with, a property management plan so approved by the Director-General does not require a licence under this Part even if the action is, or is of a class of actions, that may, in accordance with the regulations, be carried out only under the authority of a licence under this Part. 5
- (6) It is a defence to a prosecution for an offence under Part 8A of the *National Parks and Wildlife Act 1974* if the accused proves that the action constituting the alleged offence: 10
- (a) was a routine agricultural activity, or
- (b) is identified in, and carried out in accordance with, a property management plan approved by the Director-General for the purposes of this Act. 15

93 Application for licence

- (1) An application for a licence must be in a form approved, and be accompanied by an application fee of the amount prescribed, by the Director-General.
- (2) If the action proposed to be taken under the authority of the licence is on land that is critical habitat, the application must be accompanied by a species impact statement prepared in accordance with Division 2. 20
- (3) If the action proposed is not on land that is critical habitat, the application must include the following: 25
- (a) details of the types, and condition, of habitats in and adjacent to the land to be affected by the action,
- (b) particulars of any known records of a threatened species in the same or similar known habitats in the locality,
- (c) details of any known or potential habitat for a threatened species on the land to be affected by the action, 30
- (d) details of the amount of such habitat to be affected by the action proposed in relation to the known distribution of the species and its habitat in the locality and region,

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- (e) an assessment of the likely nature and intensity of the effect of the action on the life cycle and habitat of the species,
 - (f) details of possible measures to avoid or ameliorate the effect of the action.
- (4) An applicant may lodge a species impact statement with an application even if the action proposed is not on land that is critical habitat. In that event, the application need not include the information referred to in subsection (3).

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94 Payment of licence processing fee

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- (1) The Director-General is to levy a processing fee, being not more than the costs (including on-costs) incurred by the National Parks and Wildlife Service in the assessment and processing of a licence application (whether or not the application is successful).
- (2) The fee is recoverable by the Director-General as a debt due to the Crown in a court of competent jurisdiction.
- (3) The Director-General may, before dealing with an application, require the applicant to pay an amount not exceeding one-half of the estimated processing fee.
- (4) The Director-General may reduce the amount of a processing fee levied for any licence application having regard to the following:
 - (a) the extent of scientific examination necessary for the processing of the application,
 - (b) the adequacy of any species impact statement or environmental impact statement that includes a species impact component supplied by the applicant,
 - (c) the capacity of the applicant or persons with whom the applicant is associated to meet the fee levied,
 - (d) whether and to what extent the activity sought to be licensed may confer a commercial benefit on the applicant if the licence is granted.

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95 Significant effect on threatened species, populations or ecological communities, or their habitats

- (1) If the action proposed to be taken by the applicant is not on land that is critical habitat and the application is not accompanied by a species impact statement, the Director-General must determine whether the action proposed is likely to significantly affect threatened species, populations or ecological communities, or their habitats. 5
- (2) For that purpose, the Director-General must take into account the following: 10
- (a) in the case of a threatened species, whether the life cycle of the species is likely to be disrupted such that a viable local population of the species is likely to be placed at risk of extinction, 15
 - (b) in the case of an endangered population, whether the life cycle of the species that constitutes the endangered population is likely to be disrupted such that the viability of the population is likely to be significantly compromised, 20
 - (c) in relation to the regional distribution of the habitat of a threatened species, population or ecological community, whether a significant area of known habitat is to be modified or removed, 25
 - (d) whether an area of known habitat is likely to become isolated from currently interconnecting or proximate areas of habitat for a threatened species, population or ecological community, 30
 - (e) whether critical habitat will be affected,
 - (f) whether a threatened species, population or ecological community, or their habitats, are adequately represented in conservation reserves (or other similar protected areas) in the region, 35
 - (g) whether the action proposed is of a class of action that is recognised as a threatening process,
 - (h) whether any threatened species or ecological community is at the limit of its known distribution.

96 Determination by Director-General as to significant effect

- (1) If the Director-General determines that an action proposed by an applicant for a licence is likely to significantly affect threatened species, populations or ecological communities, or their habitats, the Director-General must notify the applicant that, if the application is to proceed, a species impact statement prepared in accordance with Division 2 must be provided. 5
- (2) If the Director-General determines that an action proposed is not likely to significantly affect threatened species, populations or ecological communities, or their habitats, a licence under this Act is not required and the Director-General must, as soon as practicable after making the determination, issue to the applicant a certificate to that effect. 10

Note. An action that is not required to be licensed under this Act may however be required to be licensed under the *National Parks and Wildlife Act 1974* if it is likely to affect protected fauna or protected native plants or may otherwise constitute an offence under that Act. 15

97 Publication of licence application

On the receipt of a licence application accompanied by a species impact statement or a species impact statement provided in response to a notification from the Director-General that a statement is required, the Director-General must cause to be placed in a newspaper circulating throughout the State a notice: 20

- (a) outlining the nature of the application, and
- (b) specifying the address of the place at which copies of the species impact statement may be inspected or purchased, and 25
- (c) inviting written submissions within a period of not less than 28 days after the date of the notice.

98 Matters that Director-General must take into account 30

- (1) In considering whether to grant or to refuse to grant a licence application, the Director-General must take into account the following:
- (a) any species impact statement,
- (b) any written submissions received concerning the application within the period, and at the address for submissions, specified in the notice, 35

- (c) the factors specified in sections 10–15,
 - (d) any relevant recovery plan or threat abatement plan,
 - (e) the principles of ecologically sustainable development,
 - (f) whether the action proposed is likely to irretrievably reduce the long-term viability of the species, population or ecological community in the region, 5
 - (g) whether the action proposed is likely to accelerate the extinction of the species or ecological community or place it at risk of extinction.
- (2) The Director-General must also consider the likely social and economic consequences of granting or refusing to grant a licence application. 10

99 Director-General may request additional information

The Director-General may request the applicant to provide additional information in support of an application for a licence. 15

100 Determination of licence application

- (1) After considering an application for a licence and accompanying material, the Director-General may:
 - (a) grant the application, unconditionally or subject to conditions or restrictions, or 20
 - (b) refuse the application.
- (2) The Director-General must, subject to subsection (3), make a decision about an application within 120 days after the Director-General receives a species impact statement or within such further period as may be agreed with the applicant for the licence. 25
- (3) The Director-General must not grant an application until the processing fee levied in respect of it has been paid.
- (4) A licence may authorise specified persons in addition to the person to whom the licence is granted to do the things authorised by the licence. In any such case, the specified persons are taken to be the holders of the licence for the purposes of this Act. 30
- (5) For the avoidance of doubt, it is declared that the Director-General is not a determining authority for the purposes of Part 5 of the *Environmental Planning and Assessment Act 1979* when granting a licence. 35

101 Licence may extend to protected fauna or protected native plants

- (1) The Director-General may, in a licence granted under this Part, authorise a person to take action that is likely to result in either or both of the following: 5
- (a) harm to protected fauna,
 - (b) picking of protected native plants.
- (2) In this section, *protected fauna* and *protected native plant* have the same meanings as in the *National Parks and Wildlife Act 1974*. 10

102 Conditions and restrictions to licence

- (1) Without limiting section 100 (1) (a), the Director-General may grant an application for a licence subject to a condition that the applicant:
- (a) make specified modifications to the action proposed, whether in relation to the area of land proposed to be affected or otherwise, or 15
 - (b) make a monetary contribution towards the cost of preparation of a recovery plan for any threatened species, population or ecological community, or any of their habitats, likely to be affected by the action proposed. 20
- (2) The Director-General may, by notice in writing served on the holder of a licence:
- (a) attach any conditions or restrictions to the licence after its issue, or 25
 - (b) vary or remove any conditions or restrictions attached to any licence, or
 - (c) otherwise vary the licence.
- Note.** Section 133 of the *National Parks and Wildlife Act 1974* requires that the holder of a licence under this Part must not contravene or fail to comply with any condition or restriction attached to the licence. 30

103 Notification of licence determination

The Director-General is to notify an applicant and any person who has made submissions of the Director-General's determination of a licence application. 35

104 Director-General to keep register of licences

- (1) The Director-General must keep a register containing copies of licences issued under this Division as in force from time to time.
- (2) The register is to be open for public inspection, without charge, during ordinary business hours, and copies of or extracts from the register are to be made available to the public on request, on payment of the fee fixed by the Director-General. 5

105 Cancellation of licence

- (1) A licence granted under this Part may be cancelled by the Director-General. 10
- (2) The Director-General is to notify the holder of a licence of its cancellation and is to include the reasons for the cancellation in that notification.

106 Appeal by applicant or person commenting on licence application

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- (1) An applicant for a licence or a person who has made written submissions (within the period specified in this Division) about an application for a licence, or a person to whose licence conditions or restrictions have been attached or whose licence has been varied or cancelled may, if dissatisfied with the Director-General's decision, appeal to the Land and Environment Court. 20
- (2) In determining an appeal about an application for a licence, the Court must take into account the matters set out in section 98, but this requirement does not limit the operation of section 39 of the *Land and Environment Court Act 1979*. 25

107 Time for appeal, and deemed approval

- (1) An appeal may be made by a person within 28 days after notification has been given to the person under section 102 (2), 103 or 105 (2) or, if the appellant is dissatisfied with any condition or restriction attached to a licence when it is granted, within 28 days after the licence is granted. 30

- (2) If the Director-General fails to grant, but does not refuse, a licence application by the expiry of the period of 120 days referred to in section 100 (2) or of any extension of that period agreed to by the Director-General and the applicant for the licence, the application is taken to have been granted. 5

108 Stay of operation of licence pending appeal

- (1) If an appeal relates to the grant of a licence, the licence has no operation until the expiration of the period within which a person entitled to lodge an appeal may do so or, if an appeal has been lodged, until the appeal is finally determined. 10
- (2) If no written submissions about an application of a licence are received at the specified place and by the specified date and the applicant informs the Director-General in writing that the applicant does not wish to lodge an appeal but that the applicant wishes the licence to commence, the licence is to operate from a date stipulated by the Director-General. 15

Division 2 Species impact statements

109 Form of species impact statements

- (1) A species impact statement must be in writing.
- (2) A species impact statement must be signed by the principal author of the statement and by: 20
- (a) the applicant for the licence, or
 - (b) if the species impact statement is prepared for the purposes of the *Environmental Planning and Assessment Act 1979*, the applicant for development consent or the proponent of the activity proposed to be carried out (as the case requires). 25

110 Content of species impact statements

- (1) A species impact statement must include a full description of the action proposed, including its nature, extent, location, timing and layout and, to the fullest extent reasonably practicable, the information referred to in this section. 30

- (2) A species impact statement must include the following information as to threatened species and populations:
- (a) a general description of the threatened species or populations known or likely to be present in the area that is the subject of the action and in any area that is likely to be affected by the action, 5
 - (b) an assessment of which threatened species or populations known or likely to be present in the area are likely to be affected by the action,
 - (c) for each species or population likely to be affected, details of its local, regional and State-wide conservation status, the key threatening processes generally affecting it, its habitat requirements and any recovery plan or threat abatement plan applying to it, 10
 - (d) an estimate of the local and regional abundance of those species or populations, 15
 - (e) a general description of the threatened species or populations known or likely to be present in the area that is the subject of the action and in any area that is likely to be affected by the action, 20
 - (f) a full description of the type, location, size and condition of the habitat (including critical habitat) of those species and populations and details of the distribution and condition of similar habitats in the region,
 - (g) a full assessment of the likely effect of the action on those species and populations, including, if possible, the quantitative effect of local populations in the cumulative effect in the region, 25
 - (h) a description of any feasible alternatives to the action that are likely to be of lesser effect and the reasons justifying the carrying out of the action in the manner proposed, having regard to the biophysical, economic and social considerations and the principles of ecologically sustainable development, 30
 - (i) a full description and justification of the measures proposed to mitigate any adverse effect of the action on the species and populations, including a compilation (in a single section of the statement) of those measures, 35

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- (j) a list of any approvals that must be obtained under any other Act or law before the action may be lawfully carried out, including details of the conditions of any existing approvals that are relevant to the species or population.
- (3) A species impact statement must include the following information as to ecological communities: 5
- (a) a general description of the ecological community present in the area that is the subject of the action and in any area that is likely to be affected by the action,
- (b) for each ecological community present, details of its local, regional and State-wide conservation status, the key threatening processes generally affecting it, its habitat requirements and any recovery plan or any threat abatement plan applying to it, 10
- (c) a full description of the type, location, size and condition of the habitat of the ecological community and details of the distribution and condition of similar habitats in the region, 15
- (d) a full assessment of the likely effect of the action on the ecological community, including, if possible, the quantitative effect of local populations in the cumulative effect in the region, 20
- (e) a description of any feasible alternatives to the action that are likely to be of lesser effect and the reasons justifying the carrying out of the action in the manner proposed, having regard to the biophysical, economic and social considerations and the principles of ecologically sustainable development, 25
- (f) a full description and justification of the measures proposed to mitigate any adverse effect of the action on the ecological community, including a compilation (in a single section of the statement) of those measures, 30
- (g) a list of any approvals that must be obtained under any other Act or law before the action may be lawfully carried out, including details of the conditions of any existing approvals that are relevant to the ecological community. 35
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- (4) A species impact statement must include details of the qualifications and experience in threatened species conservation of the person preparing the statement and of any other person who has conducted research or investigations relied on in preparing the statement.

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111 Director-General's requirements

- (1) The person applying for the licence (or, if the species impact statement is being prepared for the purposes of the *Environmental Planning and Assessment Act 1979*, the applicant for development consent or the proponent of the activity) must request from the Director-General and must, in preparing the species impact statement, have regard to any requirements notified to the person by the Director-General concerning the form and content of the statement. 10
- (2) The Director-General must notify any requirements under this section within 28 days after having been requested to provide them. 15
- (3) Despite the other provisions of this Division, the Director-General may, having regard to the circumstances of a particular case, limit or modify (or limit and modify) the matters to be included in a species impact statement in such manner as may be specified by the Director-General in the particular case. 20
- (4) Despite anything in this Act or the *Environmental Planning and Assessment Act 1979*, the Director-General may, having regard to the circumstances of a particular case, dispense with the requirement for a species impact statement in the particular case if the Director-General is satisfied that the impact of the activity concerned will be trivial or negligible. 25

112 Regulations

The regulations may make further provision for or with respect to the form and contents of species impact statements. 30

113 Director-General may accredit persons to prepare assessments of species impact statements

- (1) The Director-General is to institute arrangements for the accreditation of suitably qualified and experienced persons to prepare assessment reports on species impact statements for the purposes of this Act. 5
- (2) An applicant for accreditation must furnish the Director-General with such information as the Director-General requires to effectively determine the application and must be accompanied by the fee fixed by the Director-General for the consideration of the application. 10
- (3) An accreditation is to be for the period 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. 15
- (4) The Director-General may vary conditions or restrictions (if any) attaching to an accreditation and may suspend or cancel an accreditation.

Part 7 Other conservation measures

Introductory note

This Part deals with certain other measures that may be taken to conserve threatened species, populations and ecological communities, and their habitats. These involve the making of stop work orders by the Director-General or the making of joint management agreements between the Director-General and other public authorities to manage or regulate actions on land that may jeopardise the survival of threatened species, populations or ecological communities, or their habitats. 5

Measures available under the *National Parks and Wildlife Act 1974*, involving the making of interim protection orders by the Minister or the entering into of conservation agreements by the Minister with land owners, may also be employed for the conservation of threatened species, populations or ecological communities, or their habitats. 10

Division 1 deals with the making of stop work orders by the Director-General, appeals, consultations about modification of detrimental action and recommendations for the making of interim protection orders under the *National Parks and Wildlife Act 1974*. 15

Division 2 deals with the preparation, contents and publication of joint management agreements, and provides for review of joint management agreements, and the performance of parties to them, by the Scientific Committee. 20

Division 1 Stop work orders

114 Director-General may make stop work order

(1) If the Director-General is of the opinion that any action is being, or is about to be, carried out that is likely to result in one or more of the following: 25

- (a) harm to a threatened species, population or ecological community (so far as animals are concerned),
- (b) picking of a threatened species, population or ecological community (so far as plants are concerned), 30
- (c) damage to critical habitat,
- (d) damage to habitats of threatened species, populations or ecological communities,

the Director-General may order that the action is to cease and that no action, other than such action as may be specified in the order, is to be carried out in or in the vicinity of the critical 35

habitat or the habitat of the threatened species, population or ecological community within a period of 40 days after the date of the order.

- (2) An order takes effect on and from the date on which:
 - (a) a copy of the order is affixed in a conspicuous place in the critical habitat or other habitat the subject of the order, or 5
 - (b) the person performing or about to perform the action is notified that the order has been made,

whichever is the sooner.
- (3) This section does not apply in relation to anything authorised to be done by or under: 10
 - (a) a license granted under this Act or the *National Parks and Wildlife Act 1974*, or
 - (b) the *Bush Fires Act 1949* or the *State Emergency and Rescue Management Act 1989* that is reasonably necessary in order to avoid a threat to life or property. 15
- (4) This section does not apply in relation to anything that is essential for the carrying out of:
 - (a) development in accordance with a development consent within the meaning of the *Environmental Planning and Assessment Act 1979*, or 20
 - (b) an activity, whether by a determining authority or pursuant to an approval of a determining authority within the meaning of Part 5 of that Act if the determining authority has complied with that Part. 25
- (5) In this Division, a reference to action being, or about to be, carried out includes a reference to action that should be, but is not being, carried out and the Director-General may make an order, in accordance with this Division, that any such action is to be carried out. 30

115 Prior notification of making of stop work order not required

The Director-General is not required, before making an order under this Division, to notify any person who may be affected by the order.

116 Appeal to Minister

- (1) A person against whom an order is made under this Division may appeal to the Minister against the making of the order.
- (2) After hearing an appeal, the Minister may:
 - (a) confirm the order, or
 - (b) modify or rescind the order, but only if this is consistent with the principles of ecologically sustainable development.

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117 Extension of stop work order

The Director-General may extend an order under this Division for such further period or periods of 40 days as the Director-General thinks fit.

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118 Consultation about modification of proposed detrimental action

- (1) After making an order under this Division, the Director-General must immediately consult with the person proposing to perform the action to determine whether any modification of the action may be sufficient to protect the threatened species, populations or ecological communities, critical habitat or other habitat concerned.
- (2) The Director-General may, for the purposes of making such determination and considering whether the adoption of any other steps, such as the grant of a licence under Part 6, may be appropriate, request the person proposing to perform the action to provide the information referred to in section 93 (3).
- (3) After considering any information provided under subsection (2) in accordance with the requirements of section 95, the Director-General may, if appropriate and if the person concerned wishes to apply for a licence under Part 6, request the person to provide an application for a licence and a species impact statement for determination under that Part.

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119 Recommendation for making of interim protection order

- (1) The Director-General must recommend to the Minister the making of an interim protection order under Part 6A of the *National Parks and Wildlife Act 1974* if, after consulting with the person proposing to perform the action, the Director-General is of the opinion that satisfactory arrangements cannot be made to protect the threatened species, populations or ecological communities, critical habitat or other habitat that is the subject of an order under this Division. 5
- (2) The Director-General must not recommend the making of an interim protection order in relation to anything that is authorised to be done by or under an authority referred to in section 114 (3) or that is essential for a purpose referred to in section 114 (4). 10

120 Stop work order prevails over other instruments

- (1) An approval, notice, order or other instrument made or issued by or under any other Act or law that requires or permits critical habitat, the subject of an order in force under this Division, to be significantly affected is inoperative to the extent of any inconsistency with the order under this Division. 15
- (2) This section has effect whether the approval, notice, order or other instrument concerned was made or issued before or after the making of the order under this Division. 20

Division 2 Joint management agreements**121 Joint management agreements**

The Director-General may enter into a joint management agreement with one or more public authorities for the management, control, regulation or restriction of an action that is jeopardising the survival of a threatened species, population or ecological community. 25

122 Role of Scientific Committee

- (1) Before a joint management agreement is entered into, the Scientific Committee must review the draft joint management agreement and provide the Director-General with comments on the review by the date specified for the making of public submissions on the draft agreement. 5
- (2) The Scientific Committee must also:
 - (a) conduct an annual review of the performance of all parties to a joint management agreement, and
 - (b) advise the Director-General of any deficiencies in implementation of any joint management agreement by any party to it. 10
- (3) The Director-General is to incorporate the Scientific Committee's advice on the annual review of joint management agreements in the Director-General's annual report to Parliament under the *National Parks and Wildlife Act 1974*. 15

123 Contents of joint management agreements

- (1) A joint management agreement is to contain terms, binding on all parties, that:
 - (a) identify the threatened species, population or ecological community to which the agreement applies, and 20
 - (b) identify the action that it manages, controls, regulates or restricts, and
 - (c) state its objective (for example, maintenance of a habitat in a state that will contribute to the long-term survival of the species, population or ecological community), and 25
 - (d) state the way in which the objective is to be achieved, and
 - (e) specify the measures by which progress towards achieving the objective is to be assessed, and
 - (f) identify the parties who are responsible for the implementation of those measures. 30

- (2) A joint management agreement entered into with a council or a consent authority (within the meaning of the *Environmental Planning and Assessment Act 1979*) is void to the extent to which it fetters any discretion of the council or consent authority in the granting or refusal of a consent or approval under the *Environmental Planning and Assessment Act 1979* or the *Local Government Act 1993*. 5

124 Publication of draft joint management agreement

- (1) As soon as practicable after preparing a draft joint management agreement, the Director-General must: 10
- (a) give a copy of the draft joint management agreement to the Scientific Committee for review, and
 - (b) publish notice of the preparation of the draft joint management agreement in a newspaper circulating generally throughout the State and in a newspaper circulating generally in the area or areas likely to be affected by the agreement, and 15
 - (c) publish notice of the preparation of the draft agreement in the Gazette.
- (2) The notice must: 20
- (a) state that the draft joint management agreement has been prepared, and
 - (b) specify the address of the place at which copies of the draft joint management agreement may be inspected, and
 - (c) invite persons to make written submissions to the Director-General about the draft joint management agreement, and 25
 - (d) specify the address of the place to which submissions about the draft joint management agreement may be forwarded and the date by which submissions must be made. 30

125 Consideration of submissions by Director-General

- (1) The Director-General must consider all written submissions received by the Director-General on or before the date specified in the notice. 35

Clause 125 Threatened Species Conservation Bill 1995 (No 2)

Part 7 Other conservation measures
Division 2

- (2) The Director-General may, with the consent of the other parties to the agreement, amend the draft joint management agreement to take into account any of those submissions and any comments made by the Scientific Committee about the draft agreement.

126 Amendment of joint management agreement

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A joint management agreement may only be amended by a joint management agreement.

Part 8 Scientific Committee

Introductory note

This Part establishes, and describes the functions, membership and procedure of, and the manner of service of documents on, the Scientific Committee. The Part provides that the Scientific Committee is not subject to Ministerial control or direction.

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127 Establishment of Scientific Committee

There is established by this Act a body corporate with the corporate name "Scientific Committee".

128 Functions of Scientific Committee

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- (1) The Scientific Committee has the functions conferred or imposed on it by or under this or any other Act or law.
- (2) The principal functions of the Scientific Committee are as follows:
 - (a) to determine which species are to be listed under this Act as threatened species, 15
 - (b) to determine which populations are to be listed under this Act as endangered populations and to advise the Director-General on the identification of their critical habitat, 20
 - (c) to determine which ecological communities are to be listed under this Act as endangered ecological communities and to advise the Director-General on the identification of their critical habitat,
 - (d) to determine which threatening processes are to be listed under this Act as key threatening processes, 25
 - (e) to review draft joint management agreements and the performance of parties under executed joint management agreements,
 - (f) to advise the Director-General on the exercise of the Director-General's functions under this Act, 30
 - (g) to advise the Minister on any matter relating to the conservation of threatened species, populations or ecological communities that is referred to the Committee by the Minister or that the Committee considers appropriate. 35

- (3) The Scientific Committee may, in the exercise of its functions, make use of consultants or obtain assistance or advice from other persons.

129 Members of Scientific Committee

- (1) The Scientific Committee is to consist of 10 members appointed by the Minister. 5
- (2) Of the members of the Scientific Committee:
- (a) two are to be scientists employed by the National Parks and Wildlife Service nominated by the Director-General,
 - (b) one is to be a scientist employed by a public authority, having expertise in one or more of the areas of study referred to in subsection (3), selected by the Minister, 10
 - (c) one is to be a scientist nominated by the Commonwealth Scientific and Industrial Research Organisation,
 - (d) one is to be a scientist employed and nominated by the Australian Museum Trust, 15
 - (e) one is to be a scientist employed and nominated by the Royal Botanic Gardens and Domain Trust,
 - (f) one is to be a scientist nominated by the Ecological Society of Australia, 20
 - (g) one is to be a scientist nominated by the Entomological Society of Australia,
 - (h) one is to be a scientist who is employed by a tertiary educational institution and who is selected by the Minister,
 - (i) one is to be a scientist having expertise in agricultural science and natural resource management who is selected by the Minister. 25
- (3) A person appointed as a member of the Scientific Committee is to have expertise in one or more of the following areas of study:
- (a) vertebrate biology, 30
 - (b) invertebrate biology,
 - (c) plant biology,
 - (d) terrestrial ecology,

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- (e) plant community ecology,
 - (f) limnology,
 - (g) marine ecology,
 - (h) genetics of small populations,
 - (i) population dynamics (including population viability analysis or evolutionary ecology). 5

130 Provisions relating to members of Scientific Committee

- (1) Subject to this Act, a member of the Scientific Committee holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment. 10
- (2) A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.
- (3) The office of a member becomes vacant if the member: 15
 - (a) dies, or
 - (b) completes a term of office and is not reappointed, or
 - (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) is removed from office by the Minister under this section or by the Governor under Part 8 of the *Public Sector Management Act 1988*, or 20
 - (e) is absent from 4 consecutive meetings of the Scientific Committee of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Scientific Committee or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Scientific Committee for having been absent from those meetings, or 25
 - (f) becomes a mentally incapacitated person, or 30
 - (g) ceases to have the qualification required for the member's appointment.
- (4) The Minister may remove a member from office.

- (5) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member.
- (6) If by or under any Act provision is made:
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or 5
 - (b) prohibiting the person from engaging in employment outside the duties of that office,
- the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member. 10

131 Chairperson and Deputy Chairperson

A Chairperson and a Deputy Chairperson of the Scientific Committee are to be appointed by the Minister from among the members of the Scientific Committee. 15

132 Disclosure of pecuniary interests

- (1) If:
- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Scientific Committee, and 20
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,
- the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Scientific Committee. 25
- (2) A disclosure by a member at a meeting of the Scientific Committee that the member:
- (a) is a member, or is in the employment, of a specified company or other body, or 30
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person, 35

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subsection (1).

- (3) Particulars of any disclosure made under this section must be recorded by the Scientific Committee in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee (if any) determined by the Scientific Committee. 5
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Scientific Committee otherwise determines: 10
 - (a) be present during any deliberation of the Scientific Committee with respect to the matter, or
 - (b) take part in any decision of the Scientific Committee with respect to the matter. 15
- (5) For the purposes of the making of a determination by the Scientific Committee under subsection (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not: 20
 - (a) be present during any deliberation of the Scientific Committee for the purpose of making the determination, or
 - (b) take part in the making by the Scientific Committee of the determination.
- (6) A contravention of this section does not invalidate any decision of the Scientific Committee. 25

133 Procedure of Scientific Committee

- (1) The procedure for the calling of meetings of the Scientific Committee and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Scientific Committee. 30
- (2) The quorum for a meeting of the Scientific Committee is 6 members.

- (3) The Chairperson of the Scientific Committee or, in the absence of the Chairperson, the Deputy Chairperson or, in the absence of both the Chairperson and the Deputy Chairperson, another member elected to chair the meeting, is to preside at a meeting of the Scientific Committee. The person presiding at a meeting has a deliberative vote but not a casting vote. 5
- (4) A decision supported by a majority of the votes cast at a meeting of the Scientific Committee at which a quorum is present is the decision of the Scientific Committee.
- (5) The Scientific Committee may invite suitably qualified persons to attend meetings to advise or inform the Scientific Committee on any matter. 10

134 Transaction of business outside meeting or by telephone or other means

- (1) The Scientific Committee may, if it thinks fit, transact any of its business by the circulation of papers among all the members for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Scientific Committee. 15
- (2) The Scientific Committee may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members. 20
- (3) For the purposes of: 25
 - (a) the approval of a resolution under subsection (1), or
 - (b) a meeting held in accordance with subsection (2),the Chairperson and each other member have the same voting rights as they have at an ordinary meeting of the Scientific Committee. 30
- (4) A resolution approved under subsection (1) is, subject to the regulations, to be recorded in the minutes of the meeting of the Scientific Committee.

-
- (5) Papers may be circulated among the members for the purposes of subsection (1) by facsimile or other transmission of the information in the papers concerned.

135 Scientific Committee not subject to Ministerial control

The Scientific Committee is not subject to the control or direction of the Minister. 5

136 Service of documents on Scientific Committee

For the purposes of this Act, a nomination for listing under Part 2 or any other document is made, issued or given to the Scientific Committee if it is addressed to the Scientific Committee and is: 10

- (a) lodged at the head office of the National Parks and Wildlife Service, or
- (b) sent by post to the head office of the National Parks and Wildlife Service, or
- (c) sent by facsimile transmission or other electronic means notified by the Scientific Committee as being an available means of communication, or 15
- (d) sent by any means provided for the service of documents by another Act or law.

Part 9 Miscellaneous

Introductory note

This Part makes provision for a number of miscellaneous matters relating to the operation of the Act. These include:

- a statement that the Act binds the Crown 5
 - a requirement that the Director-General report on the operation of the Act in the Director-General's annual report to Parliament
 - a provision enabling third parties to bring proceedings in the Land and Environment Court for orders remedying or restraining breaches of the Act 10
 - a statement that the Act is not intended to affect native title rights and interests
 - a provision providing that the Director-General may decline to disclose the location of critical habitat (or proposed critical habitat) other than to specified persons if the Director-General is of the opinion that disclosure would be likely to expose the critical habitat (or proposed critical habitat) to a significant risk and that withholding of the location is in the public interest, and if affected landholders have requested, or are agreeable to, the withholding of the location 15
 - a provision enabling third parties to bring proceedings in the Land and Environment Court for orders remedying or restraining breaches of the Act 20
 - provisions as to the form and service of notices and other documents under the proposed Act
 - a provision concerning review of the operation of the Act as soon as possible after the period of 2 years after the date of assent to the proposed Act. 25
- The Part also authorises the making of regulations, and contains formal provisions giving effect to the Schedules amending other Acts and inserting savings, transitional and other provisions. 30

137 Act binds Crown

This Act binds the Crown, not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its capacities.

138 Annual report by Director-General on operation of Act 35

The Director-General is to report on the operation of this Act in the annual report of the National Parks and Wildlife Service.

139 Relationship of Act to National Parks and Wildlife Act 1974

Except as otherwise provided by this Act, nothing in this Act affects the operation of the *National Parks and Wildlife Act 1974* in relation to animals and plants.

140 Native title rights and interests

5

This Act does not affect the operation of the *Native Title Act 1993* of the Commonwealth or the *Native Title (New South Wales) Act 1994* in respect of the recognition of native title rights and interests within the meaning of the Commonwealth Act or in any other respect.

10

141 Decision not to disclose location of critical habitat

(1) Despite the other provisions of this Act, the Director-General may decline:

(a) to give public notice (by publication in a newspaper or in the Gazette) of a proposal (or amended proposal) to identify an area or areas of land as critical habitat, the approval of such a proposal, a declaration of critical habitat or the amendment or revocation of such a declaration, and 15

(b) to serve a copy of a map of critical habitat on any one or more of the persons or bodies referred to in section 55 (Maps of critical habitat to be served on certain public authorities), and 20

(c) to include a copy of a declaration of critical habitat or a map of critical habitat in the register kept under section 56 (Director-General to keep register of critical habitat). 25

(2) The Director-General may exercise the function under subsection (1) only if:

(a) the Director-General is of the opinion that:

(i) not to exercise the function would be likely to expose the critical habitat (or the proposed critical habitat) and the endangered species, population or ecological community that occupies it to a significant threat, and 30

(ii) the public interest requires the function to be exercised, and 35

- (b) each landholder of land concerned has requested or is agreeable to the exercise of the function.
- (3) Nothing in this section prevents the Director-General from disclosing the location of critical habitat to:
 - (a) landholders or other persons having any legal or equitable estate, interest, easement, servitude, privilege or right in or over the land, or 5
 - (b) public authorities exercising functions in relation to the land, or
 - (c) any other person entitled by or under this or any other Act or law to notice of the declaration of critical habitat or the existence of interests in or proposals affecting the land. 10

142 Restraint of breaches of Act

- (1) Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of this Act, whether or not any right of that person has been or may be infringed by or as a consequence of that breach. 15
- (2) Proceedings under this section may be brought by a person on the person's own behalf or on behalf of the person and other persons (with their consent), or a body corporate or unincorporated (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings. 20
- (3) 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. 25
- (4) Proceedings under this section may not be brought in connection with development carried out by, for or on behalf of the Olympic Co-ordination Authority in accordance with the *Olympic Co-ordination Authority Act 1995*.

143 Form of notices

30

Any notice or other document issued, made or given for the purposes of this Act or the regulations must be in writing, except where this Act expressly authorises another means of giving notice.

144 Service of documents

- (1) Any notice or other document that is authorised or required under this Act or the regulations to be served on any person may be served:
- (a) personally or by post, or 5
 - (b) by leaving it with a person apparently of or above the age of 16 years at, or by posting it to, the person's place of business or, in the case of a corporation, the registered office of the corporation.
- (2) This section does not apply with respect to the service of documents in accordance with section 136 (Service of documents on Scientific Committee). 10

145 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for the carrying out or giving effect to this Act. 15
- (2) A regulation may create an offence punishable by a penalty not exceeding 50 penalty units.

146 Proceedings for offences 20

Proceedings for an offence against the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

147 Amendment of National Parks and Wildlife Act 1974 No 80

The *National Parks and Wildlife Act 1974* is amended as set out in Schedule 4. 25

148 Amendment of Environmental Planning and Assessment Act 1979 No 203

The *Environmental Planning and Assessment Act 1979* is amended as set out in Schedule 5. 30

149 Amendment of other Acts and regulations

The Acts and regulations specified in Schedule 6 are amended as set out in that Schedule.

150 Repeal of Endangered Fauna (Interim Protection) Act 1991 No 66 and amending Acts

5

(1) The *Endangered Fauna (Interim Protection) Act 1991* is repealed.

(2) Section 7 of the *Endangered Fauna (Interim Protection) Act 1991* has no operation and is taken never to have had any operation. This subsection applies whether or not it commences before or after 31 December 1995. 10

(3) The following Acts are also repealed:

Endangered Fauna (Interim Protection) Amendment Act 1992 No 97

Endangered Fauna (Interim Protection) Amendment Act 1993 No 53 15

Endangered Fauna (Interim Protection) Amendment Act 1995 No 33.

151 Savings, transitional and other provisions

Schedule 7 has effect. 20

152 Review of Act

(1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 2 years from the date of assent to this Act. 25

(3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 2 years.

Schedule 1 Endangered species, populations and ecological communities

(Section 6)

Part 1 Endangered species

Animals

5

Amphibians

Hylidae

Litoria aurea

Green and Golden Bell Frog

*Litoria castanea**Litoria raniformis*

10

Litoria spenceri

Birds

Falconiformes

Erythrorhynchus radiatus

Red Goshawk

Anseriformes

15

Nettion coromandelianus

Cotton Pygmy-Goose

Galliformes

Leipoa ocellata

Malleefowl

Gruiformes

Ardeotis australis

Australian Bustard

20

Tricholimnas sylvestris

Woodhen

Tumix melanogaster

Black-breasted Button Quail

Charadriiformes

Burhinus magnirostris

Bush Thick-knee

Burhinus neglectus

Beach Thick-knee

25

Charadrius rubricollis

Hooded Plover

Pedionomus torquatus

Plains-wanderer

Sterna albifrons

Little Tern

Threatened Species Conservation Bill 1995 (No 2)

Schedule 1 Endangered species, populations and ecological communities

Part 1 Endangered species—continued

Animals

Columbiformes

<i>Geophaps scripta</i>	Squatter Pigeon	
<i>Phaps histrionica</i>	Flock Bronzewing	5

Psittaciformes

<i>Polytelis anthopeplus</i>	Regent Parrot	
<i>Psittaculirostris diophthalma coxeni</i>	Double-eyed Fig Parrot	

Passeriformes

<i>Amytornis textilis</i>	Thick-billed Grasswren	10
<i>Manorina melanotis</i>	Black-eared Miner	
<i>Pachycephala rufogularis</i>	Red-lored Whistler	
<i>Poephila cincta</i>	Black-throated Finch	
<i>Xanthomyza phrygia</i>	Regent Honeyeater	

Mammals

15

Dasyuridae

<i>Antechinomys laniger</i>	Kultarr	
<i>Dasyurus viverrinus</i>	Eastern Quoll	

Macropodidae

<i>Macropus dorsalis</i>	Black-striped Wallaby	20
<i>Petrogale xanthopus</i>	Yellow-footed Rock-Wallaby	

Muridae

<i>Pseudomys apodemoides</i>	Silky Mouse	
<i>Pseudomys bolami</i>	Bolam's Mouse	
<i>Pseudomys fumeus</i>	Smoky Mouse	25
<i>Pseudomys oralis</i>	Hastings River Mouse	

Peramelidae

<i>Isodon obesulus</i>	Southern Brown Bandicoot	
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Part 1 Endangered species—continued

Animals

Potoroidae*Potorous longipes*

Long-footed Potoroo

Marine mammals

5

Cetacea*Balaenoptera musculus musculus*

Blue Whale

Reptiles**Elapidae***Hoplocephalus bungaroides*

Broad-headed Snake

10

Scincidae*Anomalopus mackayi**Eulamprus leuraensis*

Plants

Acanthaceae

15

Calophanoides hygrophiloides (F. Muell.) R. Barker*Dipteracanthus australasicus* subsp. *corynothecus* (F. Muell. ex Benth.) R. Barker**Isoglossa eranthemoides* (F. Muell.) R. Barker*Xerothamnella parvifolia* C. White**Anthericaceae**

20

Caesia parviflora var. *minor* R.J.F. Hind.**Apiaceae***Gingidia montana* (Forster & Forster f.) J. Wyndham Dawson*Trachymene saniculifolia* Stapf

Threatened Species Conservation Bill 1995 (No 2)

Schedule 1 Endangered species, populations and ecological communities

Part 1 Endangered species—continued

Plants

Apocynaceae

Ochrosia moorei (F. Muell.) F. Muell. ex Benth.

Araliaceae

5

**Astrotricha roddii* Makinson

Araucariaceae

Wollemia noblei W. Jones & K. Hill ms

Asclepiadaceae

10

**Cynanchum elegans* (Benth.) Domin

**Marsdenia longiloba* Benth.

**Tylophora linearis* P. Forster

**Tylophora woollsii* Benth.

Asteraceae

15

Calotis moorei P. Short

Cratystylis conocephala (F. Muell.) S. Moore

Erodiophyllum elderi F. Muell.

Kippistia suaedifolia F. Muell.

Leptorhynchus waitzia Sonder

**Olearia flocktoniae* Maiden & E. Bettle

20

**Rutidosia leptorrhynchoides* F. Muell.

Senecio spathulatus A. Rich.

Senecio squarrosus A. Rich.

Brassicaceae

25

Irenepharsus magicus Hewson

Irenepharsus trypherus Hewson

**Lepidium hyssopifolium* Desv.

**Lepidium monolocoides* F. Muell.

Lepidium pseudopapillosum Thell.

Part 1 Endangered species—continued

Plants

Campanulaceae*Wahlenbergia scopulicola* Carolin ex P.J. Smith**Capparaceae**

5

Capparis loranthifolia var. *loranthifolia* Lindley**Caryophyllaceae***Polycarpaea spirostylis* subsp. *glabra* (C. White & Francis) Pedley**Casuarinaceae****Allocasuarina defungens* L. Johnson

10

Allocasuarina glareicola L. Johnson**Allocasuarina portuensis* L. Johnson*Casuarina obesa* Miq.**Celastraceae****Apatophyllum constablei* McGillivray

15

Chenopodiaceae*Atriplex rhagodioides* F. Muell.*Atriplex sturtii* S. Jacobs*Dysphania platycarpa* Paul G. Wilson*Dysphania plantaginella* F. Muell.

20

Osteocarpum scleropterum (F. Muell.) Volkens*Threlkeldia inchoata* (J. Black) J. Black**Convolvulaceae***Ipomoea diamentinensis* J. Black*Ipomoea polymorpha* Roemer & Schultes

25

Cupressaceae*Callitris baileyi* C. White

Threatened Species Conservation Bill 1995 (No 2)

Schedule 1 Endangered species, populations and ecological communities

Part 1 Endangered species—continued

Plants

Cyperaceae

Carex raleighii Nelmes

Cyperus aquatilis R. Br.

Cyperus conicus (R. Br.) Boeck

5

Davalliaceae

Arthropteris palisotii (Desv.) Alston

Davidsoniaceae

Davidsonia pruriens var. *jerseyana* Bailey

**Davidsonia* sp. A Mullumbimby-Currimbin Ck (A.G. Floyd 1595)

10

Dilleniaceae

Hibbertia hexandra C. White

Hibbertia procumbens (Labill.) DC.

Droseraceae

Aldrovanda vesiculosa L.

15

Dryopteridaceae

Lastreopsis hispida (Sw.) Tind.

Ebenaceae

**Diospyros mabacea* (F. Muell.) F. Muell.

Diospyros major var. *ebenus* (Sprengel) Bakh.

20

Elaeocarpaceae

Elaeocarpus sp. Rocky Creek (G. Read AQ 562114)

**Elaeocarpus williamsianus* Guymer

Part 1 Endangered species—continued

Plants

Epacridaceae*Epacris hamiltonii* Maiden & E. Betcher*Leucopogon confertus* Benth.*Melichrus hirsutus* J.B. Williams ms*Monotoca rotundifolia* J.H. Willis

5

Eriocaulaceae**Eriocaulon carsonii* F. Muell.**Euphorbiaceae***Acalypha eremorum* Muell. Arg.*Bertya ingramii* T. James*Euphorbia sarcostemmoides* J.H. Willis**Fontainea oraria* Jessup & Guymer*Monotaxis macrophylla* Benth.*Phyllanthus maderaspatanus* L.*Pseudanthus ovalifolius* F. Muell.*Sauropus albiflorus* subsp. *microcladus* (Muell. Arg.) Airy Shaw

10

15

Fabaceae*Acacia acanthoclada* F. Muell.*Acacia acrionastes* Pedley*Acacia jucunda* Maiden & Blakely*Acacia macnuttiana* Maiden & Blakely*Acacia notabilis* F. Muell.*Acacia petraea* Pedley*Acacia pubifolia* Pedley*Acacia rivalis* J. Black*Acacia ruppii* Maiden & E. Betcher*Almaleea cambagei* (Maiden & E. Betcher) Crisp & P. Weston*Crotalaria cunninghamii* R. Br.*Desmodium campylocaulon* F. Muell.*Indigofera efoliata* F. Muell.

20

25

30

Threatened Species Conservation Bill 1995 (No 2)

Schedule 1 Endangered species, populations and ecological communities

Part 1 Endangered species—continued

Plants

<i>Indigofera helmsii</i> Peter G. Wilson	
<i>Indigofera leucotricha</i> E. Pritzel	
<i>Indigofera longibractea</i> J. Black	5
* <i>Psoralea parva</i> F. Muell.	
<i>Pultenaea parrisiae</i> subsp. <i>elusa</i> J.D. Briggs & Crisp	
<i>Pultenaea parviflora</i> Sieber ex DC.	
<i>Senna acclinis</i> (F. Muell.) Randell	
<i>Swainsona adenophylla</i> J. Black	10
<i>Swainsona colutoides</i> F. Muell.	
<i>Swainsona flavicarinata</i> J. Black	
* <i>Swainsona recta</i> A. Lee	
<i>Swainsona viridis</i> J. Black	
 Gentianaceae	 15
* <i>Gentiana baeuerlenii</i> L. Adams	
* <i>Gentiana wingecarribiensis</i> L. Adams	
 Goodeniaceae	
<i>Goodenia occidentalis</i> Carolin	
<i>Scaevola collaris</i> F. Muell.	20
<i>Velleia perfoliata</i> R. Br.	
 Grammitaceae	
<i>Grammitis stenophylla</i> B.S. Parris	
 Haloragaceae	
<i>Haloragodendron lucasii</i> (Maiden & E. Betcher) Orch.	25
 Lamiaceae	
<i>Plectranthus alloplectus</i> S.T. Blake	
<i>Plectranthus nitidus</i> P. Forst.	
<i>Prostanthera</i> sp. Somersby (B.J. Conn 4024)	
<i>Westringia kydrenis</i> Conn	30

Part 1 Endangered species—continued

Plants

Lauraceae**Endiandra floydii* B. Hyland*Endiandra muelleri* subsp. *bracteata* B. Hyland

5

Lindsaeaceae*Lindsaea brachypoda* (Baker) Salomon*Lindsaea fraseri* Hook.*Lindsaea incisa* Prent.**Loranthaceae**

10

Amyema scandens (Tieghem) Danser*Muellerina myrtifolia* (Cunn. ex Benth.) Barlow**Malvaceae***Sida rohlenae* Domin**Marattiaceae**

15

Angiopteris evecta Hoffm.**Marsileaceae***Pilularia novae-hollandiae* A. Braun**Menispermaceae***Tinospora smilacina* Benth.

20

Monimiaceae*Daphnandra* sp. C Illawarra (R. Schodde 3475)**Myrtaceae****Austromyrtus fragrantissima* (F. Muell. ex Benth.) Burret*Baeckea camphorata* R. Br.*Choricarpia subargentea* (C. White) L. Johnson*Eucalyptus approximans* Maiden

25

Threatened Species Conservation Bill 1995 (No 2)

Schedule 1 Endangered species, populations and ecological communities

Part 1 Endangered species—continued

Plants

<i>Eucalyptus camphora</i> subsp. <i>relicta</i> L. Johnson & K. Hill	
<i>Eucalyptus copulans</i> L. Johnson & K. Hill	
<i>Eucalyptus imlayensis</i> Crisp & Brooker	5
<i>Eucalyptus microcodon</i> L. Johnson & K. Hill	
<i>Eucalyptus pachycalyx</i> Maiden & Blakely	
* <i>Eucalyptus recurva</i> Crisp	
<i>Eucalyptus saxatilis</i> Kirkpatr. & Brooker	
<i>Eucalyptus</i> sp. Howes Swamp Creek (M. Doherty 19/7/85, NSW 207054)	10
* <i>Kunzea rupestris</i> Blakely	
* <i>Uromyrtus australis</i> A.J. Scott	
Orchidaceae	
* <i>Caladenia rosella</i> G.W. Carr	
<i>Diuris pedunculata</i> R. Br.	15
* <i>Genoplesium rhyoliticum</i> D.L. Jones & M.A. Clem.	
<i>Phaius tankervilleae</i> (Banks ex L'Her.) Blume	
<i>Prasophyllum affine</i> Lindl.	
* <i>Prasophyllum petilum</i> D.L. Jones & R.J. Bates	
* <i>Prasophyllum uroglossum</i> Rupp	20
* <i>Pterostylis gibbosa</i> R. Br.	
<i>Pterostylis</i> sp. Botany Bay (A. Bishop J221/1-13)	
Platyzomataceae	
<i>Platyzoma microphyllum</i> R. Br.	
Poaceae	
<i>Deyeuxia appressa</i> Vickery	25
* <i>Digitaria porrecta</i> S.T. Blake	
<i>Stipa nullanulla</i> J. Everett & S.W.L. Jacobs	
<i>Stipa wakoolica</i> Vickery, S.W.L. Jacobs & J. Everett	
Podocarpaceae	
<i>Microstrobos fitzgeraldii</i> (F. Muell.) J. Garden & L. Johnson	30

Part 1 Endangered species—continued

Plants

Polygalaceae*Polygala linariifolia* Willd.**Primulaceae**

5

Lysimachia vulgaris var. *davurica* (Ledeb.) Knuth**Proteaceae***Grevillea acanthifolia* subsp. *paludosa* Makinson & Albrecht**Grevillea beadleana* McGillivray**Grevillea caleyi* R. Br.

10

Grevillea guthrieana P. Olde & N. Marriott**Grevillea iaspicula* McGillivray*Grevillea masonii* P. Olde & N. Marriott*Grevillea mollis* P. Olde & Molyneux*Grevillea molyneuxii* McGillivray

15

Grevillea obtusiflora R. Br.*Grevillea rivularis* L. Johnson & McGillivray**Grevillea wilkinsonii* R. Makinson**Hakea pulvinifera* L. Johnson*Hakea* sp. B Kowmung River (M. Doherty 17-24)

20

Persoonia mollis subsp. *maxima* Krauss & L. Johnson**Persoonia nutans* R. Br.**Psilotaceae***Psilotum complanatum* Sw.**Rhamnaceae**

25

Discaria nitida Tortosa**Pomaderris cotoneaster* Wakef.*Pomaderris elachophylla* F. Muell.*Pomaderris queenslandica* C. White*Pomaderris sericea* Wakef.

30

Threatened Species Conservation Bill 1995 (No 2)

Schedule 1 Endangered species, populations and ecological communities

Part 1 Endangered species—continued

Plants

Rubiaceae

- Dentella minutissima* C. White & Francis
Hedyotis galioides F. Muell. 5
**Randia moorei* F. Muell. ex Benth.
Tarenna cameronii (C.T. White) Ali & Robbr.

Rutaceae

- **Acronychia littoralis* T. Hartley & J. Williams
**Asterolasia elegans* McDougall & Porteners 10
**Boronia granitica* Maiden & E. Betcher
**Boronia repanda* (F. Muell. ex E. Betcher) Maiden & E. Betcher
Geijera paniculata (F. Muell.) Druce
Phebalium glandulosum subsp. *eglandulosum* (Blakely) Paul G. Wilson
**Phebalium lachnaeoides* Cunn. 15
Zieria adenodonta (F. Muell.) J.A. Armstrong ms
Zieria adenophora Blakely
**Zieria baeuerlenii* J.A. Armstrong ms
**Zieria buxijugum* J. Briggs & J.A. Armstrong ms
Zieria covenyi J.A. Armstrong ms 20
Zieria floydii J.A. Armstrong ms
**Zieria formosa* J. Briggs & J.A. Armstrong ms
Zieria granulata (F. Muell.) C. Moore ex Benth.
Zieria ingramii J.A. Armstrong ms
Zieria lasiocaulis J.A. Armstrong ms 25
**Zieria obcordata* Cunn.
**Zieria parrisiae* J. Briggs & J.A. Armstrong ms
**Zieria prostrata* J.A. Armstrong ms

Santalaceae

- Santalum murrayanum* (Mitchell) Gardner 30

Part 1 Endangered species—continued

Plants

Sapindaceae

**Diploglottis campbellii* Cheel

Dodonaea microzyga var. *microzyga* F. Muell.

5

Dodonaea sinuolata subsp. *acrodentata* J. West

Scrophulariaceae

**Euphrasia collina* subsp. *muelleri* (Wettst.) W.R. Barker

Simaroubaceae

**Quassia* sp. *Mooney Creek* (J. King s.n., 1949)

10

Sinopteridaceae

Cheilanthes sieberi subsp. *pseudovellea* H. Quirk & T.C. Chambers

Stackhousiaceae

Stackhousia clementii Domin

Sterculiaceae

15

Rulingia prostrata Maiden & Betche

Thymelaeaceae

Pimelea elongata Threlfall

Pimelea serpyllifolia subsp. *serpyllifolia* R. Br.

**Pimelea spicata* R. Br.

20

Pimelea venosa Threlfall

Tiliaceae

**Corchorus cunninghamii* F. Muell.

Urticaceae

Dendrocnide moroides (Wedd.) Chew

25

Violaceae

Viola cleistogamoides (L. Adams) Seppelt

Threatened Species Conservation Bill 1995 (No 2)

Schedule 1 Endangered species, populations and ecological communities

Part 1 Endangered species—continued

Plants

Zamiaceae

Macrozamia moorei F. Muell.

Part 2 Endangered populations

5

Part 3 Endangered ecological communities

Part 4 Species presumed extinct

Animals

Birds

Gruiformes

Notornis alba

White Gallinule

10

Columbiformes

Columba vitiensis godmanae

Lord Howe Pigeon

Part 4 Species presumed extinct—continued

Animals

Psittaciformes

<i>Cyanorhamphus novaezelandiae</i> <i>subflavescens</i>	Lord Howe Parrakeet	5
<i>Geopsittacus occidentalis</i>	Night Parrot	
<i>Psephotus pulcherrimus</i>	Paradise Parrot	

Strigiformes

<i>Ninox novaeseelandiae albaria</i>	Lord Howe Boobook Owl
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Passeriformes

<i>Aplonis fuscus hullianus</i>	Lord Howe Starling	10
<i>Gerygone insularis</i>	Lord Howe Warbler	
<i>Neochmia ruficauda</i>	Star Finch	15
<i>Rhipidura cervina</i>	Lord Howe Fantail	
<i>Turdus xanthopus vinitinetus</i>	Vinous-tinted Thrush	
<i>Zosterops strenua</i>	Robust silvereye	

Mammals**Dasyuridae**

<i>Dasycercus cristicauda</i>	Mulgara	20
<i>Dasyurus geoffroii</i>	Western Quoll	
<i>Phascogale calura</i>	Red-tailed Phascogale	

Macropodidae

<i>Lagorchestes leporides</i>	Eastern Hare-wallaby	25
<i>Onychogalea fraenata</i>	Bridled Nailtail Wallaby	
<i>Onychogalea lunata</i>	Crescent Nailtail Wallaby	

Muridae

<i>Conilurus albipes</i>	White-footed Rabbit-rat	30
<i>Leporillus apicalis</i>	Lesser Stick-nest Rat	
<i>Leporillus conditor</i>	Greater Stick-nest Rat	
<i>Notomys cervinus</i>	Fawn Hopping-mouse	

Threatened Species Conservation Bill 1995 (No 2)

Schedule 1 Endangered species, populations and ecological communities

Part 4 Species presumed extinct—continued

Animals

<i>Notomys fuscus</i>	Dusky Hopping-mouse	
<i>Notomys longicaudatus</i>	Long-tailed Hopping-mouse	
<i>Notomys mitchellii</i>	Mitchell's Hopping-mouse	5
<i>Pseudomys australis</i>	Plain's Rat	
<i>Pseudomys desertor</i>	Desert Mouse	
<i>Pseudomys gouldii</i>	Gould's Mouse	
Myrmecobiidae		
<i>Myrmecobius fasciatus</i>	Numbat	10
Peramelidae		
<i>Chaeropus ecaudatus</i>	Pig-footed Bandicoot	
<i>Isodon auratus</i>	Golden Bandicoot	
<i>Perameles bougainville</i>	Western Barred Bandicoot	
Potoroidae		
<i>Bettongia gaimardi</i>	Tasmanian Bettong	15
<i>Bettongia lesueur</i>	Burrowing Bettong	
<i>Bettongia penicillata</i>	Brush-tailed Bettong	
<i>Bettongia tropica</i>		
Thylacomyidae		
<i>Macrotis lagotis</i>	Bilby	20
Vespertilionidae		
<i>Nyctophilus howensis</i>		
Vombatidae		
<i>Lasiorninus krefftii</i>	Northern Hairy-nosed Wombat	25
Reptiles		
Elapidae		
<i>Oxyuranus microlepidota</i>	Fierce Snake	

Part 4 Species presumed extinct—continued

Plants

Acanthaceae*Rhaphidospora bonneyana* (F. Muell.) R. Barker**Aizoaceae**

5

Glinus orygioides F. Muell.**Trianthema cypseloides* (Fenzl) Benth.**Amaranthaceae***Ptilotus extenuatus* Benl**Asteraceae**

10

Acanthocladium dockeri F. Muell.*Blumea lacera* (Burman f.) DC.**Olearia oliganthema* F. Muell. ex Benth.*Senecio behrianus* Sonder & F. Muell.**Senecio georgianus* DC.

15

Stemmacantha australis (Gaudich.) Dittr.**Brassicaceae***Lepidium foliosum* Desv.**Lepidium peregrinum* Thell.*Stenopetalum velutinum* F. Muell.

20

Chenopodiaceae*Atriplex acutiloba* R. Anderson*Maireana lanosa* (Lindley) Paul G. Wilson*Osteocarpum pentapterum* (F. Muell. & Tate) Volkens**Cyperaceae**

25

Eleocharis tetraquetra Nees**Dennstaedtiaceae***Hypolepis elegans* Carruth.

Threatened Species Conservation Bill 1995 (No 2)

Schedule 1 Endangered species, populations and ecological communities

Part 4 Species presumed extinct—continued

Plants

Euphorbiaceae

Amperea xiphoclada var. *pedicellata* R.F.J. Hend.

Gyrostemonaceae

5

Codonocarpus pyramidalis (F. Muell.) F. Muell.

Haloragaceae

Haloragis stricta R. Br. ex Benth.

Myriophyllum implicatum Orch.

Lamiaceae

10

Prostanthera marifolia R. Br.

Lobeliaceae

**Hypsela sessiliflora* F. Wimmer

Myrsinaceae

**Rapanea* sp. A Richmond River (J.H. Maiden & J.L. Boorman NSW 26751)

15

Orchidaceae

Diuris bracteata Fitzg.

Thelymitra epipactoides F. Muell.

Polygalaceae

Comesperma scoparium Drummond

20

Polypodiaceae

Drynaria rigidula (Sw.) Beddome

Proteaceae

Grevillea nematophylla F. Muell.

Persoonia laxa L. Johnson & P. Weston

25

Part 4 Species presumed extinct—continued

Plants

Rhamnaceae

Pomaderris oraria F. Muell. ex Reisseck

Rosaceae

5

Aphanes pentamera Rothm.

Rubiaceae

Galium australe DC.

Knoxia sumatrensis (Retz.) DC.

Rutaceae

10

Eriostemon angustifolius subsp. *angustifolius* Paul G. Wilson

Micromelum minutum (Forster f.) Wight & Arn.

Sapindaceae

Dodonaea stenophylla F. Muell.

Scrophulariaceae

15

**Euphrasia arguta* R. Br.

**Euphrasia* sp. Tamworth (Rupp s.n., -/09/1904)

Tremandraceae

Tetradlea pilosa subsp. *pilosa* Labill.

Schedule 2 Vulnerable species

(Section 7)

Animals
Amphibians

Hylidae		5
<i>Litoria brevipalmata</i>	Green Thighed Frog	
<i>Litoria olongburensis</i>		
<i>Litoria piperata</i>		
<i>Litoria subglandulosa</i>		
Myobatrachidae		10
<i>Assa darlingtoni</i>	Pouched Frog	
<i>Crinia tinnula</i>		
<i>Heleioporus australiacus</i>	Giant Burrowing Frog	
<i>Mixophyes balbus</i>		
<i>Mixophyes fleayi</i>		15
<i>Mixophyes iteratus</i>	Giant Barred Frog	
<i>Phyllorhina kundagungan</i>		
<i>Phyllorhina loveridgei</i>	Loveridge's Frog	
<i>Phyllorhina sphagnicolus</i>	Sphagnum Frog	
<i>Pseudophryne australis</i>	Red-crowned Toadlet	20
<i>Pseudophryne corroboree</i>	Corroboree Frog	

Birds

Procellariiformes		
<i>Diomedea exulans</i>	Wandering Albatross	
<i>Fregetta grallaria</i>	White-bellied Storm-petrel	25
<i>Pterodroma leucoptera</i>	Gould's Petrel	
<i>Pterodroma neglecta</i>	Kermadec Petrel	
<i>Pterodroma nigripennis</i>	Black-winged Petrel	
<i>Pterodroma solandri</i>	Providence Petrel	
<i>Puffinus assimilus</i>	Little Shearwater	30
<i>Puffinus carneipes</i>	Fleshy-footed Shearwater	

Animals

Pelecaniformes

<i>Phaeton rubricauda</i>	Red-tailed Tropic-bird
<i>Sula dactylatra</i>	Masked Booby

Ciconiiformes

<i>Botaurus poiciloptilus</i>	Australasian Bittern
<i>Dupetor flavicollis</i>	Black Bittern
<i>Xenorhynchus asiaticus</i>	Black-necked Stork

5

Falconiformes

<i>Falco hypoleucos</i>	Grey Falcon
<i>Hamirostra melanosternon</i>	Black-breasted Buzzard
<i>Lophoictinia isura</i>	Square-tailed Kite
<i>Pandion haliaetus</i>	Osprey

10

Anseriformes

<i>Anseranas semipalmata</i>	Magpie Goose
<i>Oxyura australis</i>	Blue-billed Duck
<i>Stictonetta naevosa</i>	Freckled Duck

15

Gruiformes

<i>Gallinula olivacea</i>	Bush Hen
<i>Grus rubicundus</i>	Brolga

20

Charadriiformes

<i>Calidris alba</i>	Sanderling
<i>Calidris tenuirostris</i>	Great Knot
<i>Charadrius leschenaulti</i>	Large Sand-Plover
<i>Charadrius mongolus</i>	Mongolian Plover
<i>Gygis ciba</i>	White Tern
<i>Haematopus fuliginosus</i>	Sooty Oystercatcher
<i>Haematopus longirostris</i>	Pied Oystercatcher
<i>Irediparra gallinacea</i>	Comb-crested Jacana
<i>Limicola falcinellus</i>	Broad-billed Sandpiper
<i>Limosa limosa</i>	Black-tailed Godwit
<i>Procelsterna cerulea</i>	Grey Ternlet

25

30

Threatened Species Conservation Bill 1995 (No 2)

Schedule 2 Vulnerable species

Animals

<i>Rostratula benghalensis</i>	Painted Snipe	
<i>Sterna fuscata</i>	Sooty Tern	
<i>Tringa terek</i>	Terek Sandpiper	
Columbiformes		5
<i>Ptilinopus magnificus</i>	Wompoo Fruit-dove	
<i>Ptilinopus regina</i>	Rose-crowned Fruit-dove	
<i>Ptilinopus superbus</i>	Superb Fruit-dove	
Psittaciformes		
<i>Cacatua leadbeateri</i>	Pink Cockatoo	10
<i>Calyptorhynchus lathami</i>	Glossy Black-Cockatoo	
<i>Calyptorhynchus magnificus</i>	Red-tailed Black-Cockatoo	
<i>Glossopsitta porphyrocephala</i>	Purple-crowned Lorikeet	
<i>Lathamus discolor</i>	Swift Parrot	
<i>Neophema pulchella</i>	Turquoise Parrot	15
<i>Neophema splendida</i>	Scarlet-chested Parrot	
<i>Pezoporus wallicus</i>	Ground Parrot	
<i>Polytelis swainsonii</i>	Superb Parrot	
Strigiformes		
<i>Ninox strenua</i>	Powerful Owl	20
<i>Tyto longimembris</i>	Eastern Grass Owl	
<i>Tyto novaehollandiae</i>	Masked Owl	
<i>Tyto tenebricosa</i>	Sooty Owl	
Caprimulgiformes		
<i>Podargus ocellatus</i>	Marbled Frogmouth	25
Coraciiformes		
<i>Halcyon chloris</i>	Collared Kingfisher	
Passeriformes		
<i>Amytornis barbatus</i>	Grey Grasswren	
<i>Amytornis striatus</i>	Striated Grasswren	30

Animals

<i>Atrichornis rufescens</i>	Rufous Scrub-bird	
<i>Certhionyx variegatus</i>	Pied Honeyeater	
<i>Cinclosoma castanotum</i>	Chestnut Quail-thrush	
<i>Coracina lineata</i>	Yellow-eyed Cuckoo-shrike	5
<i>Dasyornis brachypterus</i>	Eastern Bristlebird	
<i>Drymodes brunneopygia</i>	Southern Scrub-robin	
<i>Grantiella picta</i>	Painted Honeyeater	
<i>Lichenostomus cratitius</i>	Purple-gaped Honeyeater	
<i>Lichenostomus fasciocularis</i>	Mangrove Honeyeater	10
<i>Menura alberti</i>	Albert's Lyrebird	
<i>Monarcha leucotis</i>	White-eared Monarch	
<i>Pachycephala inornata</i>	Gilbert's Whistler	
<i>Pachycephala olivacea</i>	Olive Whistler	
<i>Pachycephala pectoralis contempta</i>	Lord Howe Golden Whistler	15
<i>Petroica rodinogaster</i>	Pink Robin	
<i>Pomatostomus halli</i>	Hall's Babbler	
<i>Sericornis brunneus</i>	Redthroat	
<i>Sericornis cautus</i>	Shy Hylacola	
<i>Sericornis fuliginosus</i>	Calamanthus	20
<i>Stipiturus ruficeps</i>	Rufous-crowned Emu-Wren	
<i>Strepera graculina crissalis</i>	Lord Howe Pied Currawong	
<i>Zosterops tephroleura</i>	Lord Howe Silvereye	

Mammals**Burramyidae** 25

<i>Burramys parvus</i>	Mountain Pygmy-possum	
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Dasyuridae

<i>Dasyurus maculatus</i>	Tiger Quoll	
<i>Ningaui yvonneae</i>		
<i>Phascogale tapoatafa</i>	Brush-tailed Phascogale	30
<i>Planigale maculata</i>	Common Planigale	
<i>Sminthopsis leucopus</i>	White-footed Dunnart	
<i>Sminthopsis macroura</i>	Stripe-faced Dunnart	

Threatened Species Conservation Bill 1995 (No 2)

Schedule 2 Vulnerable species

Animals

Emballonuridae

Saccolaimus flaviventris Yellow-bellied Sheathtail-Bat

Macropodidae

<i>Macropus parma</i>	Parma Wallaby	5
<i>Petrogale penicillata</i>	Brush-tailed Rock Wallaby	
<i>Thylogale stigmatica</i>	Red-legged Pademelon	

Molossidae

<i>Mormopterus beccarii</i>	Beccari's Mastiff-bat	
<i>Mormopterus norfolkensis</i>	Eastern Little Mastiff-bat	10

Muridae

<i>Leggadina forresti</i>	Forrest's Mouse	
<i>Mastacomys fuscus</i>	Broad-toothed Rat	
<i>Pseudomys gracilicaudatus</i>	Eastern Chestnut Mouse	
<i>Pseudomys hermannsburgensis</i>	Sandy Inland Mouse	15
<i>Pseudomys pilligaensis</i>	Pilliga Mouse	
<i>Rattus villosissimus</i>	Long-haired Rat	

Petauridae

<i>Petaurus australis</i>	Yellow-bellied Glider	
<i>Petaurus norfolcensis</i>	Squirrel Glider	20

Phascolarctidae

<i>Phascolarctos cinereus</i>	Koala	
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Pteropodidae

<i>Nyctimene robinsoni</i>	Queensland Tube-nosed Bat	
<i>Pteropus alecto</i>	Black Flying-fox	25
<i>Syconycteris australis</i>	Queensland Blossom Bat	

Potoroidae

<i>Aepyprymnus rufescens</i>	Rufous Bettong	
<i>Potorous tridactylus</i>	Long-nosed Potoroo	

Animals

Vespertilionidae

<i>Chalinolobus dwyeri</i>	Large Pied Bat	
<i>Chalinolobus nigrogriseus</i>	Hoary Bat	
<i>Chalinolobus picatus</i>	Little Pied Bat	5
<i>Eptesicus baverstocki</i>		
<i>Eptesicus troughtoni</i>		
<i>Falsistrellus tasmaniensis</i>	Great Pipistrelle	
<i>Kerivoula papuensis</i>	Golden-tipped Bat	
<i>Miniopterus australis</i>	Little Bent-wing Bat	10
<i>Miniopterus schreibersii</i>	Common Bent-wing Bat	
<i>Myotis adversus</i>	Large-footed Mouse-eared Bat	
<i>Nyctophilus bifax</i>	Queensland Long-eared Bat	
<i>Nyctophilus timoriensis</i>	Greater Long-eared Bat	
<i>Scoteanax rueppellii</i>	Greater Broad-nosed Bat	15

Marine Mammals**Cetacea**

<i>Eubalaena australis</i>	Southern Right Whale	
<i>Megaptera novaeangliae</i>	Humpback Whale	
<i>Balaenoptera borealis</i>	Sei Whale	20
<i>Balaenoptera physalus</i>	Fin Whale	
<i>Sousa chinensis</i>	Indo-Pacific Humpback Dolphin	
<i>Stenella longirostris</i>	Spinner Dolphin	
<i>Physeter macrocephalus</i>	Sperm Whale	

Reptiles

25

Boidae

<i>Aspidites ramsayi</i>	Woma	
<i>Liasis stimsoni</i>	Stimson's Python	

Cheloniidae

<i>Caretta caretta</i>	Loggerhead Turtle	30
<i>Chelonia mydas</i>	Green Turtle	

Threatened Species Conservation Bill 1995 (No 2)

Schedule 2 Vulnerable species

Animals

Dermochelyidae

Dermochelys coriacea

Leathery Turtle

Elapidae

Cacophis harriettae

White Crowned Snake

5

Demansia torquata

Collared Whip Snake

Echiopsis curta

Hoplocephalus bitorquatus

Pale-headed Snake

Hoplocephalus stephensi

Stephen's Banded Snake

Simoselaps fasciolatus

Narrow-banded Snake

10

Suta flagellum

Gekkonidae

Christinus guentheri

Underwoodisaurus sphyrurus

Pygopodidae

15

Aprasia inaurita

Aprasia parapulchella

Delma impar

Scincidae

Coeranoscincus reticulatus

20

Cyclodomorphus branchialis

Pseudemoia lichenigera

Tiliqua multifasciata

Centralian Blue-tongued Lizard

Tiliqua occipitalis

Western Blue-tongued Lizard

Varanidae

25

Varanus rosenbergi

Plants

Apocynaceae*Parsonsia dorrigoensis* J.B. Williams ms**Araliaceae***Astrotricha crassifolia* Blakely

5

Asteliaceae*Neorastelia spectabilis* J.B. Williams**Asteraceae***Ammobium craspedioides* Benth.*Brachycome muelleroides* G. Davis

10

Brachycome papillosa G. Davis*Calotis glandulosa* F. Muell.*Euchiton nitidulus* (Hook. f.) A. Anderb.*Olearia cordata* Lander*Ozothamnus tessellatus* (Maiden & R. Baker) Anderberg

15

Picris evae Lack*Rutidosia heterogama* Philipson*Rutidosia leiolepis* F. Muell.*Senecio garlandii* F. Muell. ex Belcher**Brassicaceae**

20

Lepidium aschersonii Thell.**Callitrichaceae***Callitriche cyclocarpa* Hegelm.**Casuarinaceae***Allocasuarina simulans* L. Johnson

25

Chenopodiaceae*Atriplex infrequens* Paul G. Wilson*Maireana cheelii* (R. Anderson) Paul G. Wilson*Sclerolaena napiformis* Paul G. Wilson

Threatened Species Conservation Bill 1995 (No 2)

Schedule 2 Vulnerable species

Plants

Corokiaceae

Corokia whiteana L.S. Smith

Corynocarpaceae

Corynocarpus rupestris subsp. *rupestris* Guymer

5

Cunoniaceae

Acrophyllum australe (Cunn.) Hoogl.

Cupressaceae

Callitris oblonga A. Rich. & Rich.

Cyperaceae

Eleocharis obicis L.A.S. Johnson & O.D. Evans

10

Dilleniaceae

Hibbertia marginata Conn

Epacridaceae

Budawangia gnidioides (Summerh.) Telford

Epacris sparsa R. Br.

Leucopogon exolasius (F. Muell.) F. Muell. ex Benth.

Styphelia perileuca J. Powell

15

Ericaceae

Gaultheria viridicarpa subsp. *merinoensis* J.B. Williams ms

Gaultheria viridicarpa subsp. *viridicarpa* J.B. Williams ms

20

Eriocaulaceae

Eriocaulon australasicum (F. Muell.) Korn.

Euphorbiaceae

Baloghia marmorata C. White

Bertya sp. A Cobar-Coolabah (Cunningham & Milthorpe s.n., 2/8/73)

Fontainea australis Jessup & Guymer

25

Plants

Fabaceae

<i>Acacia baueri</i> subsp. <i>aspera</i> (Maiden & E. Betcher) Pedley	
<i>Acacia bynoeana</i> Benth.	
<i>Acacia carnei</i> Maiden	5
<i>Acacia clunies-rossiae</i> Maiden	
<i>Acacia constablei</i> Tind.	
<i>Acacia courtii</i> Tind. & Herscovitch	
<i>Acacia curranii</i> Maiden	
<i>Acacia flocktoniae</i> Maiden	10
<i>Acacia georgensis</i> Tind.	
<i>Acacia phasmoides</i> J.H. Willis	
<i>Acacia pubescens</i> (Vent.) R. Br.	
<i>Acacia pycnostachya</i> F. Muell.	
<i>Bossiaea oligosperma</i> A. Lee	15
<i>Desmodium acanthocladum</i> F. Muell.	
<i>Dillwynia tenuifolia</i> Sieber ex DC.	
<i>Kennedia retrorsa</i> Hemsley	
<i>Phyllota humifusa</i> Benth.	
<i>Pultenaea aristata</i> Sieber ex DC.	20
<i>Pultenaea baeuerlenii</i> F. Muell.	
<i>Pultenaea campbellii</i> Maiden & E. Betcher	
<i>Pultenaea glabra</i> Benth.	
<i>Pultenaea parrisiae</i> subsp. <i>parrisiae</i> J.D. Briggs & Crisp	
<i>Pultenaea stuartiana</i> Williamson	25
<i>Sophora fraseri</i> Benth.	
<i>Swainsona murrayana</i> Wawra	
<i>Swainsona plagiotropis</i> F. Muell.	
<i>Swainsona pyrophila</i> J. Thompson	

Gentianaceae

30

<i>Gentiana bredboensis</i> L. Adams	
<i>Gentiana wissmannii</i> J. Williams	

Goodeniaceae

<i>Goodenia machbarronii</i> Carolin	
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Threatened Species Conservation Bill 1995 (No 2)

Schedule 2 Vulnerable species

Plants

Haloragaceae

Haloragis exalata subsp. *exalata* F. Muell.

Haloragis exalata subsp. *velutina* Orch.

Lamiaceae

5

Prostanthera cineolifera R. Baker & H.G. Smith

Prostanthera cryptandroides Cunn. ex Benth.

Prostanthera densa A.A. Ham.

Prostanthera discolor R. Baker

Prostanthera staurophylla F. Muell.

10

Prostanthera stricta R. Baker

Prostanthera sp. Strickland State Forest (J.H. Maiden s.n., 07/1915)

Prostanthera sp. Bundjalung National Park (B.J. Conn 3471)

Westringia davidii Conn

Lauraceae

15

Cryptocarya foetida R. Baker

Endiandra hayesii Kosterm.

Meliaceae

Owenia cepiodora F. Muell.

Menispermaceae

20

Tinospora tinosporoides (F. Muell.) Forman

Myrtaceae

Angophora robur L. Johnson & K. Hill

Baeckea sp. Pyramids (W.J. McDonald 357)

Darwinia biflora (Cheel) B. Briggs

25

Eucalyptus alligatrix subsp. *miscella* Brooker, Slee & J.D. Briggs ms

Eucalyptus aquatica (Blakely) L. Johnson & K. Hill

Eucalyptus benthamii Maiden & Cabbage

Eucalyptus caleyi subsp. *ovendenii* L. Johnson & K. Hill

Eucalyptus camfieldii Maiden

30

Eucalyptus cannonii R. Baker

Plants

<i>Eucalyptus glaucina</i> Blakely	
<i>Eucalyptus kartzoffiana</i> L. Johnson & Blaxell	
<i>Eucalyptus langleyi</i> L. Johnson & Blaxell	
<i>Eucalyptus mckieana</i> Blakely	5
<i>Eucalyptus nicholii</i> Maiden & Blakely	
<i>Eucalyptus parramattensis</i> subsp. <i>decadens</i> L. Johnson & Blaxell	
<i>Eucalyptus parvula</i> L. Johnson & K. Hill	
<i>Eucalyptus pulverulenta</i> Sims	
<i>Eucalyptus pumila</i> Cabbage	10
<i>Eucalyptus robertsonii</i> subsp. <i>hemisphaerica</i> L. Johnson & K. Hill	
<i>Eucalyptus rubida</i> subsp. <i>barbigerorum</i> L. Johnson & K. Hill	
<i>Eucalyptus rubida</i> subsp. <i>canobolensis</i> L. Johnson & K. Hill	
<i>Eucalyptus sturgissiana</i> L. Johnson & Blaxell	
<i>Eucalyptus tetrapleura</i> L. Johnson	15
<i>Homoranthus darwinoides</i> (Maiden & E. Betche) Cheel	
<i>Homoranthus lunatus</i> Craven & S.R. Jones	
<i>Homoranthus prolixus</i> Craven & S.R. Jones	
<i>Kunzea cabbagei</i> Maiden & E. Betche	
<i>Leptospermum deanei</i> J. Thompson	20
<i>Leptospermum thompsonii</i> J. Thompson	
<i>Melaleuca groveana</i> Cheel & C. White	
<i>Micromyrtus blakelyi</i> J. Green	
<i>Micromyrtus minutiflora</i> (F. Muell.) Benth.	
<i>Syzygium hodgkinsoniae</i> (F. Muell.) L. Johnson	25
<i>Syzygium moorei</i> (F. Muell.) L. Johnson	
<i>Syzygium paniculatum</i> Gaertner	

Olacaceae

Olax angulata A.S. George

Orchidaceae

Bulbophyllum globuliforme Nicholls

Caladenia concolor Fitzg.

Caladenia tessellata Fitzg.

Cryptostylis hunteriana Nicholls

Threatened Species Conservation Bill 1995 (No 2)

Schedule 2 Vulnerable species

Plants

<i>Diuris aequalis</i> F. Muell. ex Fitzg.	
<i>Diuris praecox</i> D.L. Jones	
<i>Diuris shaeaffiana</i> Fitzg.	
<i>Diuris venosa</i> Rupp	5
<i>Phaius australis</i> F. Muell.	
<i>Prasophyllum fuscum</i> R. Br.	
<i>Prasophyllum morganii</i> Nicholls	
<i>Pterostylis cobarensis</i> M.A. Clem.	
<i>Pterostylis cucullata</i> R. Br.	10
<i>Pterostylis nigricans</i> L. Jones & M.A. Clem.	
<i>Pterostylis pulchella</i> Messmer	
<i>Sarcochilus fitzgeraldii</i> F. Muell.	
<i>Sarcochilus hartmannii</i> F. Muell.	
<i>Sarcochilus weinthalii</i> (F.M. Bailey) Dockrill	15

Poaceae

<i>Amphibromus fluitans</i> Kirk	
<i>Arthraxon hispidus</i> (Thunb.) Makino	
<i>Bothriochloa biloba</i> S.T. Blake	
<i>Dichanthium setosum</i> S.T. Blake	20
<i>Erythranthera pumila</i> (Kirk) Zotov	
<i>Plinthanthesis rodwayi</i> (C.E. Hubb.) S.T. Blake	
<i>Stipa metatoris</i> J. Everett & S.W.L. Jacobs	

Polygonaceae

<i>Persicaria elatior</i> (R. Br.) Sojak	25
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Proteaceae

<i>Floydia praealta</i> (F. Muell.) L. Johnson & B. Briggs	
<i>Grevillea banyabba</i> P. Olde & N. Marriott	
<i>Grevillea evansiana</i> McKee	
<i>Grevillea kennedyana</i> F. Muell.	30
<i>Grevillea quadricauda</i> P. Olde & N. Marriott	
<i>Grevillea rhizomatosa</i> P. Olde & N. Marriott	
<i>Grevillea scortechinii</i> subsp. <i>sarmentosa</i> (Blakely & McKie) McGillivray	

Plants

<i>Grevillea shiressii</i> Blakely	
<i>Hakea fraseri</i> R. Br.	
<i>Hakea trineura</i> F. Muell.	
<i>Hakea</i> sp. Manning River SF—Broken Bago SF (P. Hind 4662)	5
<i>Hicksbeachia pinnatifolia</i> F. Muell.	
<i>Isopogon fletcheri</i> F. Muell.	
<i>Macadamia tetraphylla</i> L. Johnson	
<i>Persoonia acerosa</i> Sieber ex Schultes & Schultes f.	
<i>Persoonia bargoensis</i> P. Weston & L. Johnson	10
<i>Persoonia glaucescens</i> Sieber ex Sprengel	
<i>Persoonia marginata</i> Cunn. ex R. Br.	

Ranunculaceae

<i>Clematis fawcettii</i> F. Muell.	
<i>Ranunculus anemoneus</i> F. Muell.	15

Restionaceae

<i>Restio longipes</i> L.A.S Johnson & O.D. Evans	
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Rhamnaceae

<i>Pomaderris brunnea</i> Wakef.	
<i>Pomaderris gilmourii</i> var. <i>cana</i> N. Walsh	20
<i>Pomaderris pallida</i> Wakef.	
<i>Pomaderris parrisiae</i> N. Walsh	

Rubiaceae

<i>Asperula asthenes</i> Airy Shaw & Turrill	
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Rutaceae

<i>Boronia deanei</i> Maiden & E. Betcher	25
<i>Boronia umbellata</i> P. Weston	
<i>Bosistoa selwynii</i> T. Hartley	
<i>Bosistoa transversa</i> J. Bailey & C. White	
<i>Correa baeuerlenii</i> F. Muell.	30
<i>Eriostemon ericifolius</i> Cunn. ex Benth.	

Threatened Species Conservation Bill 1995 (No 2)

Schedule 2 Vulnerable species

Plants

Phebalium ralstonii (F. Muell.) Benth.

Phebalium rhytidophyllum Albrecht & N. Walsh

Phebalium sympetalum Paul G. Wilson

Zieria citriodora J.A. Armstrong ms

5

Zieria involucrata R. Br. ex Benth.

Zieria murphyi Blakely

Zieria tuberculata J.A. Armstrong unpub

Santalaceae

Thesium australe R. Br.

10

Sapindaceae

Dodonaea procumbens F. Muell.

Sapotaceae

Amorphospermum whitei Aubrev.

Scrophulaceae

15

Euphrasia bella S. T. Blake

Euphrasia bowdeniae W.R. Barker

Solonaceae

Solanum karsense Symon

Sterculiaceae

20

Lasiopetalum longistamineum Maiden & Betche

Rulingia procumbens Maiden & Betche

Surianaceae

Cadellia pentastylis F. Muell.

Symplocaceae

25

Symplocos baeuerlenii R. Baker

Plants

Tremandraceae

Tetratheca glandulosa Smith

Tetratheca juncea Smith

Winteraceae

Tasmania glaucifolia J. Williams

Tasmania purpurascens (Vick.) A.C. Smith

5

Schedule 3 Key threatening processes

(Section 8)

Schedule 4 Amendment of National Parks and Wildlife Act 1974

(Section 147)

[1] Section 5 Definitions

Insert in alphabetical order in section 5 (1):

5

critical habitat has the same meaning as in the
Threatened Species Conservation Act 1995.

ecological community has the same meaning as in the
Threatened Species Conservation Act 1995.

endangered ecological community has the same
meaning as in the *Threatened Species Conservation Act*
1995.

10

endangered population has the same meaning as in the
Threatened Species Conservation Act 1995.

endangered species has the same meaning as in the
Threatened Species Conservation Act 1995.

15

harm an animal (including an animal of a threatened
species, population or ecological community) includes
hunt, shoot, poison, net, snare, spear, pursue, capture,
trap, injure or kill, but does not include harm by
changing the habitat of an animal.

20

population has the same meaning as in the *Threatened*
Species Conservation Act 1995.

species has the same meaning as in the *Threatened*
Species Conservation Act 1995.

25

threatened interstate fauna means protected fauna of a
species named in Schedule 12.

threatened species, populations and ecological
communities and *threatened species, population or*
ecological community have the same meanings as in the
Threatened Species Conservation Act 1995.

30

vulnerable species has the same meaning as in the
Threatened Species Conservation Act 1995.

[2] Section 5 (1)

Omit the definition of *endangered fauna*.

[3] Section 5 (1)

Omit the definition of *marine mammal*. Insert instead:

marine mammal means all animals of the orders of 5
Cetacea, Sirenia and Pinnipedia.

[4] Section 5 (1)

Omit the definition of *pick*. Insert instead:

pick a native plant (including a threatened species, 10
population or ecological community) means gather,
pluck, cut, pull up, destroy, poison, take, dig up, remove
or injure the plant or any part of the plant.

[5] Section 5 (1)

Omit "New South Wales" from the definition of *native plant*.
Insert instead "Australia". 15

[6] Section 5 (1)

Omit the definition of *take*.

[7] Section 5 (3)

Insert "or a licence under the *Threatened Species Conservation Act*
1995" after "under Part 9". 20

[8] Section 6 The Service

Insert ", the *Wilderness Act 1987* or the *Threatened Species*
Conservation Act 1995" after "this Act" in section 6 (b).

[9] Section 8 Miscellaneous powers and functions of Director-General

Omit "taking or killing" from section 8 (2) (c1).
Insert instead "hunting".

[10] Section 8 (7)

5

Omit "animal and plant life".
Insert instead "and the need to conserve animal and plant life, including to conserve threatened species, populations and ecological communities, and their habitats".

[11] Section 10 Officers and employees

10

Omit "and the Wilderness Act 1987" from section 10.
Insert instead ", the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995*".

[12] Section 11 Use of services of personnel of public authorities

Omit "and the Wilderness Act 1987" from section 11 (5).
Insert instead ", the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995*".

15

[13] Section 12 Powers and functions of Service

Insert "(including threatened species, populations and ecological communities, and their habitats)" after "wildlife".

20

[14] Section 19 Powers and functions of ex-officio rangers

Insert ", the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995*" after "this Act" in section 19 (1).

[15] Section 20 Powers and functions of honorary rangers

Insert “, the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995*” after “this Act” in section 20.

[16] Section 21 Delegation

Omit “on him by this Act, the regulations or any other instrument under this Act” from section 21 (1). 5

Insert instead “the Minister or the Director-General, as the case may require, by or under this or any other Act”.

[17] Section 45 Provisions respecting animals in parks and sites

Omit “take or kill” from section 45 (1) (a). Insert instead “harm”. 10

[18] Section 45 (4)

Omit “taking or killing of any animal”.

Insert instead “harming of any animal (other than fauna or an animal of a threatened species)”.

[19] Section 56 Provisions respecting animals in nature reserves 15

Omit “take or kill” from section 56 (1) (a). Insert instead “harm”.

[20] Section 56 (1) (b)

Omit “taking or killing”. Insert instead “harming”.

[21] Section 56 (5)

Omit “taking or killing of an animal that is within those lands, other than fauna”. 20

Insert instead “harming of an animal that is within those lands (other than fauna or an animal of a threatened species)”.

[22] Section 57 Restrictions as to timber, vegetation, plants etc in state game reserves

Insert “(not being a plant of a threatened species)” after “native plant” in section 57 (5).

[23] Section 58A Dedication of state game reserves

5

Omit “taking or killing” wherever occurring from section 58A (3) (d) and (e).

Insert instead “hunting”.

[24] Section 58A (6)

Omit “taken or killed” wherever occurring. Insert instead “hunted”. 10

[25] Section 58H Provisions respecting animals in state game reserves

Omit “take or kill” from section 58H (1) (a). Insert instead “harm”.

[26] Section 58H (1) (b)

Omit “taking or killing”. Insert instead “harming”. 15

[27] Section 58H (5)

Omit “taking or killing of an animal that is within those lands, other than fauna”.

Insert instead “harming of an animal that is within those lands (other than fauna or an animal of a threatened species)”.

20

[28] Section 58I Restrictions as to timber, vegetation, plants etc in state games reserves

Insert “(not being a plant of a threatened species)” after “native plant” in section 58I (5).

Threatened Species Conservation Bill 1995 (No 2)

Schedule 4 Amendment of National Parks and Wildlife Act 1974

[29] Section 58Q Provisions respecting animals in karst conservation reserves

Omit "take or kill" from section 58Q (1) (a). Insert instead "harm".

[30] Section 58Q (1) (b)

Omit "taking or killing". Insert instead "harming".

5

[31] Section 58Q (5)

Omit "taking or killing of an animal that is within those lands, other than fauna".

Insert instead "harming of an animal that is within those lands (other than fauna or an animal of a threatened species)".

10

[32] Section 58R Restrictions as to timber, vegetation, plants etc in karst conservation reserves

Insert "(not being a plant of a threatened species)" after "native plant" in section 58R (5).

[33] Section 67 Wildlife districts

15

Omit "taken or killed" wherever occurring in section 67 (2).
Insert instead "harmed".

[34] Section 69 Wildlife management areas

Omit "taking or killing as" in section 69 (2) (a).

[35] Section 69 (2) (b)

20

Omit "the taking or killing of". Insert instead "hunting".

[36] Section 69 (3)

Omit "taken or killed" wherever occurring.
Insert instead "hunted".

[37] Section 69C Purpose and content of agreements

Omit "or" where secondly occurring in section 69C (1) (e1). 5

[38] Section 69C (1) (e2)

Insert after section 69C (1) (e1):

(e2) for the purpose of the conservation of critical
habitat or the conservation of threatened species,
populations or ecological communities, or their 10
habitats, or

[39] Section 69C (1) (f)

Omit "or (e)". Insert instead ", (e), (e1) or (e2)".

**[40] Section 70 Fauna in wildlife districts, wildlife refuges, wildlife
management areas, conservation areas and certain wilderness 15
areas**

Omit "take or kill" from section 70 (1) (a). Insert instead "harm".

[41] Section 70 (1) (b)

Omit "taking or killing". Insert instead "harming".

[42] Section 70 (3) 20

Omit "or a trapper's licence under section 123".
Insert instead ", a trapper's licence under section 123 or a licence
under Part 6 of the *Threatened Species Conservation Act 1995*".

Threatened Species Conservation Bill 1995 (No 2)

Schedule 4 Amendment of National Parks and Wildlife Act 1974

[43] Section 70 (5) and (6)

Omit "taking or killing" wherever occurring.
Insert instead "harming".

[44] Section 70 (6AA)

Omit "taking or killing". Insert instead "harming".

5

[45] Section 70 (6A)

Omit "A person".
Insert instead "Subject to subsection (6B), a person".

[46] Section 70 (6B)

Insert after subsection (6A):

10

(6B) Subsection (6A) does not extend to the damaging of critical habitat or the harming of threatened species, populations or ecological communities.

[47] Section 71 Native plants in wildlife refuges, wildlife management areas, conservation areas and certain wilderness areas

15

Insert ", a licence under Part 6 of the *Threatened Species Conservation Act 1995*" after "Part 9" in section 71 (2) (a).

[48] Section 71 (3)

Insert "(not being a plant of a threatened species)" after "native plant".

20

[49] Section 71 (3A)

Omit "A person".
Insert "Subject to subsection (3B), a person".

[50] Section 71 (3B)

Insert after subsection (3A):

- (3B) Subsection (3A) does not extend to the damaging of critical habitat or the harming of threatened species, populations or ecological communities.

5

[51] Section 72 Plans of management

Insert "(including the conservation of critical habitat and threatened species, populations and ecological communities, and their habitats)" after "wildlife" in section 72 (4) (a).

[52] Part 6A

10

Omit the heading. Insert instead:

Part 6A Stop work orders and interim protection orders

Division 1 Stop work orders

91AA Director-General may make stop work order

15

- (1) If the Director-General is of the opinion that any action is being, or is about to be, carried out that is likely to significantly affect protected fauna or native plants or their environment, the Director-General may order that the action is to cease and that no action, other than such action as may be specified in the order, is to be carried out with respect to that environment within a period of 40 days after the date of the order.

20

- (2) An order takes effect on and from the date on which:

- (a) a copy of the order is affixed in a conspicuous place in the environment or place the subject of the order, or

25

- (b) the person performing or about to perform the action is notified that the order has been made,

whichever is the sooner.

30

- (3) This section does not apply in relation to anything authorised to be done by or under:

- (a) a licence granted under this Act or the *Threatened Species Conservation Act 1975*, or
 - (b) the *Bush Fires Act 1949* or the *State Emergency and Rescue Management Act 1989* that is reasonably necessary in order to avoid a threat to life or property. 5
 - (4) This section does not apply in relation to anything that is essential for the carrying out of:
 - (a) development in accordance with a development consent within the meaning of the *Environmental Planning and Assessment Act 1979*, or 10
 - (b) an activity whether by a determining authority or pursuant to an approval of a determining authority, within the meaning of Part 5 of that Act if the determining authority has complied with that Part. 15
 - (5) In this Division, a reference to action being, or about to be, carried out includes a reference to action that should be, but is not being, carried out and an order under this Division may be modified accordingly.
- 91BB Prior notification of making of stop work order not required** 20
- The Director-General is not required, before making an order under this Division, to notify any person who may be affected by the order.
- 91CC Appeal to Minister** 25
- (1) A person against whom an order is made under this Division may appeal to the Minister against the making of the order.
 - (2) After hearing an appeal, the Minister may:
 - (a) confirm the order, or 30
 - (b) modify or rescind the order, but only if this is consistent with the principles of ecologically sustainable development (as described in section 6 (2) of the *Protection of the Environment Administration Act 1991*). 35
- 91DD Extension of stop work order**
- The Director-General may extend an order under this Division for such further period or periods of 40 days as the Director-General thinks fit.

91EE Consultation about modification of proposed detrimental action

- (1) After making an order under this Division, the Director-General must immediately consult with the person proposing to perform the action to determine whether any modification of the action may be sufficient to protect the environment of any protected fauna or native plants. 5
- (2) If, in the opinion of the Director-General, satisfactory arrangements cannot be made to protect the environment that is the subject of an order under this Division, the Director-General must recommend the making of an interim protection order under Division 2. 10
- (3) The Director-General must not recommend the making of an interim protection order in relation to anything that is authorised to be done by or under an authority referred to in section 91AA (3) or that is essential for a purpose referred to in section 91AA (4). 15

91FF Order prevails over other instruments

- (1) If an order under this Division is in force in relation to an environment, an approval, notice or order (whether made or issued before or after the order pursuant to this Division) under any other Act that requires or permits the environment to be significantly affected is inoperative to the extent of the inconsistency with the order. 20
- (2) This section has effect whether the approval, notice, order or other instrument concerned was made before or after the making of the order under this Division. 25

Division 2 Interim protection orders 30**[53] Section 91A Interim protection of areas having significant values**

Insert "or the *Threatened Species Conservation Act 1995*" after "this Act" in section 91A (b).

Threatened Species Conservation Bill 1995 (No 2)

Schedule 4 Amendment of National Parks and Wildlife Act 1974

[54] Section 91A (b)

Omit "fauna or native plants".

Insert instead "fauna, native plants, threatened species, populations or ecological communities or critical habitat of endangered species, populations or ecological communities".

5

[55] Section 91A (c)

Insert at the end of paragraph (b):

, or

(c) that is critical habitat or the habitat of a threatened species, population or ecological community.

10

[56] Section 91B Interim protection orders

Omit "fauna and plants".

Insert instead "fauna, plants, threatened species, populations and ecological communities and critical habitat of endangered species, populations and ecological communities".

15

[57] Section 91D Duration of interim protection order

Omit "12 months" from section 91C. Insert instead "2 years".

[58] Section 91D (3)

Omit the subsection.

[59] Sections 92A-92E

20

Omit the sections.

[60] Section 93 Amendment of Schedule 11 (unprotected fauna)

Omit ", but only on the recommendation of the Scientific Committee referred to in section 92A".

[61] Section 94 Amendment of Schedule 12 (threatened interstate fauna)

Omit “, but only on the recommendation of the Scientific Committee referred to in section 92A”.

[62] Section 96 Locally unprotected fauna

5

Insert after section 96 (3):

- (4) An order under subsection (1) does not apply to, and must not be expressed to apply to, any threatened species, population or ecological community.

[63] Section 98 Harming protected fauna, other than threatened species, populations or ecological communities

10

Omit “endangered fauna” from subsection (1).

Insert instead “threatened interstate fauna, threatened species, populations or ecological communities,”.

[64] Section 98 (2) (a) and (a1)

15

Omit “take or kill” wherever occurring. Insert instead “harm”.

[65] Section 98 (2) (b)

Insert “substance,” after “any” where firstly occurring.

[66] Section 98 (2) (b)

Omit “taking or killing”. Insert instead “harming”.

20

[67] Section 98 (2)

Omit “20 penalty units”. Insert instead “30 penalty units”.

Threatened Species Conservation Bill 1995 (No 2)

Schedule 4 Amendment of National Parks and Wildlife Act 1974

[68] Section 98 (3) (a)

Insert "or a licence under Part 6 of the *Threatened Species Conservation Act 1995*" before "; or".

[69] Section 98 (4)

Omit the subsection.

5

[70] Section 99 Harming threatened interstate fauna

Omit section 99 (1) (a). Insert instead:

(a) harm any threatened interstate fauna, or

[71] Section 99 (1) (b)

Insert "substance," after "any" where firstly occurring.

10

[72] Section 99 (1) (b)

Omit "taking or killing". Insert instead "harming".

[73] Section 99 (1) (c), (1A), (5) and (6)

Omit the provisions.

[74] Section 99 (1)

15

Omit the penalty provisions. Insert instead:

Penalty: 1,000 penalty units or imprisonment for 1 year
or both.

[75] Section 100 Further provisions respecting harming protected fauna (including threatened interstate fauna)

20

Omit "or 99 (1)". Insert instead ", 99 (1), 112G or 118A".

[76] Section 100 (2)

Insert at the end of the section:

- (2) The regulations may make provision for or with respect to exempting, subject to conditions and restrictions (if any) prescribed by the regulations, any person or class or description of persons from the provisions of section 98 (2).

5

[77] Section 101 Buying, selling or possessing protected fauna

Omit the penalty provision. Insert instead:

Penalty:

10

- (a) in respect of any protected fauna other than threatened interstate fauna—100 penalty units or imprisonment for 6 months or both,
- (b) in respect of any threatened interstate fauna—1,000 penalty units or imprisonment for 1 year or both.

15

[78] Section 103 Harming fauna for sale

Omit “take or kill” from section 103 (1). Insert instead “harm”.

[79] Section 103 (3)

Omit “taking or killing”. Insert instead “harming”.

20

[80] Section 103 (4)

Omit “endangered fauna”.

Insert instead “threatened interstate fauna or threatened species, populations or ecological communities”.

[81] Section 110 Use of certain substances for harming fauna

Omit "taking or killing" wherever occurring in section 110 (1) and (2).

Insert instead "harming".

[82] Section 111 Method of shooting fauna

5

Omit "taking or killing". Insert instead "harming".

[83] Section 112 Harming snakes

Omit "taking or killing". Insert instead "harming".

[84] Section 112F Restriction on issue of licences to take marine mammals for exhibition etc

10

Omit "take, kill". Insert instead "harm".

[85] Section 112G

Insert after section 112F:

112G Approaching marine mammal

- (1) A person must not approach a marine mammal any closer than such distance as may be prescribed by the regulations or interfere with a marine mammal. 15

Penalty: 1,000 penalty units or imprisonment for 2 years or both.

- (2) If: 20

(a) a person is convicted by the Land and Environment Court of an offence arising under this section, and

(b) the Court is satisfied that the person committed the offence in the course of commercial operations relating to the killing of marine mammals, 25

the maximum penalty that the Court may impose in respect of the offence is 2,000 penalty units.

-
- (3) A person must not be convicted of an offence under this section if the person proves that the act constituting the offence was done under and in accordance with or by virtue of the authority conferred by a general licence under section 120 or a licence under Part 6 of the *Threatened Species Conservation Act 1995*. 5
- (4) If the provisions of any other Act or instrument made under any other Act authorise or require anything to be done that would constitute an offence under this section:
- (a) the provisions of this section prevail, except if the other Act is the *Bush Fires Act 1949* or the *State Emergency and Rescue Management Act 1989*, and 10
- (b) a person must not to be convicted of an offence against the other Act or instrument because of the person's failure to comply with the other Act or instrument if compliance with the other Act or instrument would constitute an offence under this section. 15
- (5) A reference in section 112F, 120, 129 or 171 to harming any fauna includes, so far as is applicable in relation to a marine mammal, approaching or interfering with the marine mammal as referred to in subsection (1). 20
- (6) In this section, *interfere with* includes harass, chase, herd, tag, mark and brand. 25

[86] Part 8A

Insert after Part 8:

Part 8A Threatened species, populations and ecological communities, and their habitats, and critical habitat 30

118A Harming or picking threatened species, populations or ecological communities

- (1) A person must not:
- (a) harm any threatened species, population or ecological community, being an animal, or 35

Threatened Species Conservation Bill 1995 (No 2)

Schedule 4 Amendment of National Parks and Wildlife Act 1974

-
- (b) use any substance, animal, firearm, explosive, net, trap, hunting device or instrument or means whatever for the purpose of harming any such species, population or ecological community, being an animal. 5
 - Penalty:
 - (a) in respect of any endangered species, population or ecological community—2,000 penalty units or imprisonment for 2 years or both,
 - (b) in respect of any vulnerable species—500 penalty units or imprisonment for 1 year or both. 10
 - (2) A person must not pick any threatened species, population or ecological community, being a plant.
 - Penalty:
 - (a) in respect of any endangered species, population or ecological community—2,000 penalty units or imprisonment for 2 years or both, 15
 - (b) in respect of any vulnerable species—500 penalty units or imprisonment for 1 year or both.
 - (3) It is a defence to a prosecution for an offence against this section if the accused proves that the act constituting the alleged offence: 20
 - (a) was authorised to be done, and was done in accordance with, a general licence under section 120 or a licence granted under Part 6 of the *Threatened Species Conservation Act 1995*, or 25
 - (b) was essential for the carrying out of:
 - (i) development in accordance with a development consent within the meaning of the *Environmental Planning and Assessment Act 1979*, or 30
 - (ii) an activity, whether by a determining authority or pursuant to an approval of a determining authority within the meaning of Part 5 of that Act if the determining authority has complied with that Part, or 35
-

-
- (c) was authorised to be done by or under the *Bush Fires Act 1949* or the *State Emergency and Rescue Management Act 1989* and was reasonably necessary in order to avoid a threat to life or property. 5
- (4) If the provisions of any other Act or law or of any instrument made under any other Act or law authorise or require anything to be done that would constitute an offence under this section:
- (a) this section prevails (except in relation to a matter referred to in subsection (3) (b) or (c)), and 10
- (b) a person is not to be convicted of an offence against the other Act, law or instrument because of the person's failure to comply with the other Act, law or instrument if compliance with the other Act, law or instrument would constitute an offence under this section. 15

118B Buying, selling or possessing threatened species or endangered population

- (1) A person must not buy, sell or have in possession or control any threatened species or endangered population. 20
Penalty:
- (a) in respect of any endangered species or endangered population—2,000 penalty units or imprisonment for 2 years or both, 25
- (b) in respect of any vulnerable species—500 penalty units or imprisonment for 1 year or both.
- (2) The Governor may, by order published in the Gazette, exempt from subsection (1) threatened species named in the order, subject to such conditions and restrictions relating to the buying, selling or having in possession of any such threatened species as may be prescribed in the order. 30
- (3) A person must not to be convicted of an offence against this section of having in the person's possession or control a plant of any threatened species if the plant is naturally occurring on land that the person owns or of which the person is the lessee or lawful owner. 35

Threatened Species Conservation Bill 1995 (No 2)

Schedule 4 Amendment of National Parks and Wildlife Act 1974

- (4) It is a defence to a prosecution for an offence against this section if the accused proves that the act constituting the alleged offence was authorised to be done, and was done in accordance with, a general licence under section 120 or a licence granted under Part 6 of the *Threatened Species Conservation Act 1995*. 5
- (5) A person must not be convicted of an offence under this section in respect of the possession of any threatened species if the person satisfies the court that:
- (a) the species, being an animal, is the progeny of any animal lawfully in the possession of the person pursuant to a licence granted under this Act or under Part 6 of the *Threatened Species Conservation Act 1995* and that progeny is less than 6 months old, or 10 15
- (b) the species, being an animal:
- (i) was incapable of fending for itself in its natural habitat, and
- (ii) the person notified the Director-General, in the manner and within the time prescribed by the regulations, that the animal came into the person's possession, and 20
- (iii) the person complied with any direction given to the person about the animal by the Director-General, or 25
- (c) the species, being a plant, was propagated from a plant lawfully in the possession of a person pursuant to a licence granted under this Act or under Part 6 of the *Threatened Species Conservation Act 1995* and that propagation took place not later than 6 months previously. 30
- (6) A reference in this section to a person's having threatened species in the person's possession includes a reference to the person having threatened species in a vehicle, building, lodging, apartment, field or other place whether belonging to or occupied by the person, and whether the species is then had or placed for the person's own use or the use of another person. 35

118C Damage critical habitat

- (1) A person must not, by an act or an omission, do anything that causes damage to any critical habitat.
Maximum penalty: 2,000 penalty units or imprisonment for 2 years or both. 5
- (2) If a map of the critical habitat was published in the Gazette before the act constituting the offence was done or omitted to be done, it is not necessary for the prosecution to prove that the person knew that the habitat was declared as critical habitat or that the person knew that it was habitat of an endangered species, population or ecological community. 10
- (3) If a map of the critical habitat was not published in the Gazette before the act constituting the offence was done or omitted to be done, the prosecution must prove that the person knew that the habitat was declared as critical habitat or that the person knew, or ought to have known, that it was critical habitat. 15
- (4) It is a defence to a prosecution for an offence against this section in relation to an area of critical habitat that the Director-General has declined to publicly notify under section 141 of the *Threatened Species Conservation Act 1995* that the accused did not know and could not reasonably be expected to have known that the area was critical habitat. 20
25
- (5) It is a defence to a prosecution for an offence against this section if the accused proves that the act constituting the offence:
- (a) was authorised to be done, and was done in accordance with, a licence granted under this Act or under Part 6 of the *Threatened Species Conservation Act 1995*, or 30
 - (b) was essential for the carrying out of:
 - (i) development in accordance with a development consent within the meaning of the *Environmental Planning and Assessment Act 1979*, or 35

Threatened Species Conservation Bill 1995 (No 2)

Schedule 4 Amendment of National Parks and Wildlife Act 1974

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- (ii) an activity, whether by a determining authority or pursuant to an approval of a determining authority within the meaning of Part 5 of that Act if the determining authority has complied with the Part, or 5
- (c) was authorised to be done by or under the *Bush Fires Act 1949* or the *State Emergency and Rescue Management Act 1989* and was reasonably necessary in order to avoid a threat to life or property. 10
- (6) If the provisions of any other Act or law or of any instrument made under any other Act or law authorise or require anything to be done that would constitute an offence under this section:
- (a) this section prevails (except in relation to a matter referred to in subsection (5) (b) or (c), and 15
- (b) a person is not to be convicted of an offence against the other Act, law or instrument because of the person's failure to comply with the other Act, law or instrument if compliance with the other Act, law or instrument would constitute an offence under this section. 20
- 118D Damage habitat of threatened species, population or ecological community**
- (1) A person must not, by an act or an omission, do anything that causes damage to any habitat (other than a critical habitat) of a threatened species, population or ecological community if the person knows that the land concerned is habitat of that kind. 25
- Penalty: 1,000 penalty units or imprisonment for 1 year or both. 30
- (2) It is a defence to a prosecution for an offence against this section if the accused proves that the act constituting the offence:
- (a) was authorised to be done, and was done in accordance with, a licence granted under this Act or under Part 6 of the *Threatened Species Conservation Act 1995*, or 35

-
- (b) was essential for the carrying out of:
- (i) development in accordance with a development consent within the meaning of the *Environmental Planning and Assessment Act 1979*, or 5
 - (ii) an activity, whether by a determining authority or pursuant to an approval of a determining authority within the meaning of Part 5 of that Act if the determining authority has complied with the Part, or 10
- (c) was authorised to be done by or under the *Bush Fires Act 1949* or the *State Emergency and Rescue Management Act 1989* and was reasonably necessary in order to avoid a threat to life or property. 15
- (3) If the provisions of any other Act or law or of any instrument made under any other Act or law authorise or require anything to be done that would constitute an offence under this section:
- (a) this section prevails (except in relation to a matter referred to in subsection (2) (b) or (c)), and 20
 - (b) a person is not to be convicted of an offence against the other Act, law or instrument because of the person's failure to comply with the other Act, law or instrument if compliance with the other Act, law or instrument would constitute an offence under this section. 25

118E Court may order offender to restore critical habitat or habitat of threatened species, populations or ecological communities 30

- (1) If a court convicts a person of an offence under this Part involving damage to any critical habitat or habitat of a threatened species, population or ecological community, the court may, in addition to or in substitution for any pecuniary penalty for the offence, direct the person to take any action to mitigate the damage or to restore that critical habitat or habitat of a threatened species, population or ecological community. 35

Threatened Species Conservation Bill 1995 (No 2)

Schedule 4 Amendment of National Parks and Wildlife Act 1974

- (2) The court may specify the actions to be taken to mitigate the damage or restore the habitat and may order the person to maintain the habitat until the actions ordered to be done to mitigate the damage or restore the habitat have been fully performed. 5
- (3) The court may order the person to provide security for the performance of any obligation imposed under this section.
- (4) For the purposes of this section, a *conviction* includes the making of an order under section 556A of the *Crimes Act 1900*. 10

[87] Section 120 General licence

Omit "take or kill" from section 120 (1) (a). Insert instead "harm".

[88] Section 120 (1) (c) and (4) (a)

Omit "taken or killed" wherever occurring. 15
Insert instead "harmed".

[89] Section 120 (1) (e)

Omit the paragraph. Insert instead:

- (e) to harm any protected fauna (other than a threatened species, population or ecological community) in the course of carrying out specified development or specified activities. 20

[90] Section 120 (2)

Omit "taking or killing". Insert instead "harming".

[91] Section 120 (2A)

Omit "taking or killing". Insert instead "harming". 25

[92] Section 120 (2A)

Omit "take or kill". Insert instead "harm".

[93] Section 121 Occupier's licence

Omit "take or kill" wherever occurring from section 121 (1).
Insert instead "harm".

5

[94] Section 121 (1) and (2)

Omit "taken or killed" wherever occurring.
Insert instead "harmed".

[95] Section 121 (3)

Omit "endangered fauna".
Insert instead "threatened species, populations or ecological communities".

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[96] Section 121 (3)

Omit "taken or killed". Insert instead "harmed".

[97] Section 121 (3)

Omit "take or kill". Insert instead "harm".

15

[98] Section 122 Game licence

Omit "take or kill" wherever occurring.

[99] Section 122 (2) (a)

Omit "endangered fauna".
Insert instead "threatened species, population or ecological community".

20

[100] Section 122 (2) (d)

Omit "take or kill". Insert instead "harm".

[101] Section 123 Trapper's licence

Omit "take or kill" from section 123 (1). Insert instead "harm".

[102] Section 123 (2)

5

Omit "taking or killing". Insert instead "harming".

[103] Section 123 (3)

Insert after subsection (2):

- (3) A trapper's licence must not be issued with respect to threatened species, populations or ecological communities. 10

[104] Section 129 Certain licences authorising shooting etc in national parks etc

Omit "take or kill" wherever occurring. Insert instead "harm".

[105] Section 129

15

Omit "taking or killing" wherever occurring.
Insert instead "harming".

[106] Section 130 Certain licences and certificates deemed to authorise possession

Omit "take or kill" from section 130. Insert instead "harm". 20

[107] Section 131 Licence to pick native plants

Omit "for scientific or commercial purposes".

[108] Section 132 Licence to grow native plants for sale

Insert “or plants of a threatened species” after “protected native plants” in section 132.

[109] Section 133 Conditions and restrictions attaching to licences and certificates and variation of licences and certificates

5

Insert “under this Act or Part 6 of the *Threatened Species Conservation Act 1995*” after “certificate” where secondly occurring in section 133 (4).

[110] Section 138 Payments into the Fund

Insert “, the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995*” after “this Act” in section 138 (1) (a) and (g).

10

[111] Section 138 (1) (b) (iii)

Insert “, the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995* or the regulations made under those Acts” after “the regulations”.

15

[112] Section 139 Payments out of the Fund

Insert “, the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995*” after “this Act” in section 139 (2) (a), (c) and (d).

20

[113] Section 143 Charges and fees

Insert “, the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995* or the regulations under those Acts” after “the regulations” in section 143.

Threatened Species Conservation Bill 1995 (No 2)

Schedule 4 Amendment of National Parks and Wildlife Act 1974

[114] Section 144A Overdue community service contributions, charges, fees etc

Insert “, the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995*” after “this Act” in section 144A (1) (c).

[115] Section 145 Acquisition of land for reservation or other purposes 5

Insert “, of conserving threatened species, populations or ecological communities, or their habitats” after “Part 4” in section 145.

[116] Section 146 Acquisition or occupation of lands for certain purposes 10

Insert “or acquired” after “dedicated” in section 146 (1) (a).

[117] Section 146 (2)

Insert “, the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995*” after “this Act”.

[118] Section 148 Power of Minister to accept gifts, devises or bequests 15

Omit “or the *Wilderness Act 1987*” in section 148 (1).
Insert instead “, the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995*”.

[119] Section 149 Disposal of lands, gifts etc 20

Insert “or the *Threatened Species Conservation Act 1995*” after “this Act” in section 149 (1) (b).

[120] Section 164 Powers of entry and seizure

Insert “or is being” after “has been” wherever occurring in section 164 (1) (a).

25

[121] Section 164 (1) (b1)

Insert after paragraph (b):

- (b1) may, at all times, on production of the prescribed evidence of authority, enter any premises for the purposes of: 5
- (i) identifying and mapping critical habitat, and
 - (ii) inspecting any lands that are the subject of an application for a licence under Part 6 of the *Threatened Species Conservation Act 1995*, and 10
 - (iii) inspecting any lands that are the subject of proposed development or an activity (within the meaning of the *Environmental Planning and Assessment Act 1979*) and in respect of the grant of development consent or approval to which the Minister or the Director-General has been consulted or is (or is acting as) a concurrence authority in accordance with that Act, and 15
 - (iv) inspecting any lands for the purpose of investigating the presence or condition of threatened species, populations or ecological communities, and their habitats, for the purposes of the *Threatened Species Conservation Act 1995* or this Act. 20 25

[122] Section 169 Impersonating, assaulting, resisting or obstructing an officer etc

Insert "or the *Threatened Species Act 1995* or the regulations under that Act" after "that Act" wherever occurring in section 169 (2) and (3). 30

[123] Section 171 Authority to harm or pick

Omit "take or kill" from section 171 (1) (a). Insert instead "harm".

[124] Section 171 (4)

Omit "taking and killing". Insert instead "harming".

[125] Section 176 Proceedings for offences

Omit section 176 (1AA) and (1BB). Insert instead:

(1AA) Proceedings for an offence under section 98, 99, 101, 112G or Part 8A may be taken:

- (a) before the Land and Environment Court in its summary jurisdiction, or 5
- (b) before a Local Court constituted by a Magistrate sitting alone.

[126] Section 176 (1A)

Omit "50 penalty units". Insert instead "100 penalty units". 10

[127] Section 176A Restraint etc of breaches of Act

Insert at the end of the section:

- (4) Proceedings under this section may not be brought in connection with development, or an activity, carried out by, for or on behalf of the Olympic Co-ordination Authority in accordance with the *Olympic Co-ordination Authority Act 1995*. 15

[128] Section 179 Authority to take proceedings

Insert "or the *Threatened Species Conservation Act 1995* or the regulations under that Act" after "the regulations" in section 179 (1). 20

[129] Section 181 Evidentiary provisions etc

Insert after section 181 (2):

- (2A) An allegation, in an information in respect of an offence against this Act or the regulations, that an animal or plant is a member of a species, population or ecological community specified in that information is sufficient proof of the matter so alleged unless the defendant proves to the contrary. 25

[130] Section 181 (9)

Insert after subsection (8):

- (9) A copy of any declaration or map of critical habitat published in the Gazette, being a copy purporting to be certified by the Director-General or an officer of the Service authorised by the Director-General, as being a true copy of the declaration or map so published, is admissible in any legal proceedings and is evidence of the matter or matters contained in the declaration or map. 5

[131] Schedule 3 Savings, transitional and other provisions 10

Insert before clause 1:

Part 1 General

1 Regulations

- (1) The Governor may make regulations containing provisions of a saving or transitional nature consequent on the enactment of the following Acts: 15

Threatened Species Conservation Act 1995

- (2) A provision referred to in subsection (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or at a later date. 20

- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or 25

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Special provisions

5

[132] Schedule 3, clause 1A

Re-number clause 1 as 1A.

[133] Schedule 8B

Omit the Schedule.

[134] Schedule 12 Threatened interstate fauna

10

Omit the Part headings and other matter from the Schedule.
Insert instead (Sec. 94).

[135] Schedule 13 Protected native plants

Insert "except *Boronia repanda*, *Boronia deanei* and *Boronia umbellata*" after "Boronia, all native species" in the list headed "SEED PLANTS".

15

[136] Schedule 13

Insert "except *Bulbophyllum globuliforme*" after "Bulbophyllum, all native species" in the list headed "SEED PLANTS".

[137] Schedule 13

20

Insert "except *Eriostemon ericofolius*" after "Eriostemon, all native species" in the list headed "SEED PLANTS".

[138] Schedule 13

Omit from the list headed "SEED PLANTS":

Grevillea caleyi Caley's Grevillea.

Microstrobos fitzgeraldii

Phaius tancarvilliae Orchid. 5

Wollemia nobilis (proposed name) Wollemi Pine

[139] Schedule 13

Insert "except *Sarcochilus fitzgeraldii*, *Sarcochilus hartmannii* and *Sarcochilus weinthalii*" after "Sarcochilus, all native species" in the list headed "SEED PLANTS".

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**Schedule 5 Amendment of Environmental
Planning and Assessment Act 1979**

(Section 148)

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1): 5

critical habitat has the same meaning as in the
Threatened Species Conservation Act 1995,

ecological community has the same meaning as in the
Threatened Species Conservation Act 1995,

endangered ecological community means an endangered
ecological community within the meaning of the 10
Threatened Species Conservation Act 1995,

endangered population means an endangered population
within the meaning of the *Threatened Species*
Conservation Act 1995, 15

endangered species means an endangered species within
the meaning of the *Threatened Species Conservation Act*
1995,

habitat has the same meaning as in the *Threatened*
Species Conservation Act 1995, 20

population has the same meaning as in the *Threatened*
Species Conservation Act 1995,

recovery plan has the same meaning as in the
Threatened Species Conservation Act 1995,

species has the same meaning as in the *Threatened*
Species Conservation Act 1995, 25

species impact statement has the same meaning as in the
Threatened Species Conservation Act 1995,

threat abatement plan has the same meaning as in the
Threatened Species Conservation Act 1995, 30

threatened species, populations and ecological communities and *threatened species, population or ecological community* have the same meaning as in the *Threatened Species Conservation Act 1995*,

threatening process has the same meaning as in the *Threatened Species Conservation Act 1995*,

vulnerable species has the same meaning as in the *Threatened Species Conservation Act 1995*,

[2] Section 4 (1)

Omit the definition of *endangered fauna*.

[3] Section 4 (1), definition of "region"

Insert “, except as provided by subsection (6A)” after “a region”.

[4] Section 4 (6A)

Insert after section 4 (6):

(6A) However, for the purposes of sections 5A, 77C and 112D, a region is a bioregion defined in a national system of bioregionalisation, being a system that is determined (by the Director-General of National Parks and Wildlife by order published in the Gazette) to be appropriate for those purposes. If the bioregion occurs partly within and partly outside New South Wales, the region consists only of so much of the bioregions as occurs within New South Wales.

[5] Section 4A

Omit the section.

[6] Section 5 Objects

Insert “, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats” after “environment” in section 5 (a) (vi).

[7] Section 5A

Insert after section 5:

5A Significant effect on threatened species, populations or ecological communities, or their habitats

For the purposes of this Act and, in particular, in the administration of sections 77, 90 and 112, the following factors must be taken into account in deciding whether there is likely to be a significant effect on threatened species, populations or ecological communities, or their habitats:

- (a) in the case of a threatened species, whether the life cycle of the species is likely to be disrupted such that a viable local population of the species is likely to be placed at risk of extinction,
- (b) in the case of an endangered population, whether the life cycle of the species that constitutes the endangered population is likely to be disrupted such that the viability of the population is likely to be significantly compromised,
- (c) in relation to the regional distribution of the habitat of a threatened species, population or ecological community, whether a significant area of known habitat is to be modified or removed,
- (d) whether an area of known habitat is likely to become isolated from currently interconnecting or proximate areas of habitat for a threatened species, population or ecological community,
- (e) whether critical habitat will be affected,
- (f) whether a threatened species, population or ecological community, or their habitats, are adequately represented in conservation reserves (or other similar protected areas) in the region,
- (g) whether the development or activity proposed is of a class of development or activity that is recognised as a threatening process,

- (h) whether any threatened species, population or ecological community is at the limit of its known distribution.

[8] Section 26 Contents of environmental planning instruments

Insert after section 26 (e):

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- (e1) protecting and conserving native animals and plants, including threatened species populations and ecological communities, and their habitats,

[9] Section 26 (2) and (3)

Insert at the end of section 26:

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- (2) If land declared to be critical habitat is land to which an environmental planning instrument described in subsection (3) applies, the instrument must be amended as soon as practicable after the declaration to identify the land that is critical habitat.

15

- (3) The environmental planning instruments described in this subsection are regional environmental plans and local environmental plans that:

- (a) are principal instruments, as distinct from amending instruments (that is, principal instruments contain provisions apart from citation, commencement, a statement of their relationship with other instruments, a description, by reference or otherwise, of the land to which they apply and savings and transitional provisions), and

20

25

- (b) make provision for the development of land that is identified by a map or a description, and

- (c) are prepared or made before or after the commencement of Part 3 of the *Threatened Species Conservation Act 1995*.

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[10] Section 34A

Insert after section 34:

34A Consultation with Director-General of National Parks and Wildlife about preparation of studies or instruments

- | | | |
|-----|---|----|
| (1) | The Director must consult with the Director-General of National Parks and Wildlife before preparing: | 5 |
| | (a) a draft State environmental planning policy, or | |
| | (b) an environmental study or a draft regional environmental plan, | |
| | if, in the opinion of the Director, critical habitat or threatened species, populations or ecological communities, or their habitats, will or may be affected by the draft policy, environmental study or draft plan. | 10 |
| (2) | A council must consult with the Director-General of National Parks and Wildlife before preparing: | 15 |
| | (a) an environmental study, or | |
| | (b) a draft local environmental plan, | |
| | if, in the opinion of the council, critical habitat or threatened species, populations or ecological communities, or their habitats, will or may be affected by the environmental study or draft plan. | 20 |
| (3) | For the purpose of the consultation, the Director or council must provide the following information to the Director-General of National Parks and Wildlife: | |
| | (a) the reasons for deciding to prepare the draft environmental planning instrument or the environmental study, | 25 |
| | (b) the proposed aims, objectives, policies and strategies whereby the draft instrument is designed to achieve any of the objects of this Act, | 30 |
| | (c) a description of the land to which the draft instrument or the study is intended to apply, | |
| | (d) the types of matters to be dealt with in the draft instrument or the study. | |

-
- (4) For the purposes of the consultation, the Director or council may provide any other information that, in the Director's or council's opinion, would assist in understanding the draft environmental planning instrument or the environmental study. 5
- (5) The Director-General of National Parks and Wildlife may comment to the Director or council on the preparation of the draft environmental planning instrument or the environmental study within 40 days after the information required to be provided under subsection (3) is provided. 10
- (6) The consultation required by this section is completed when the Director or council has considered any comments so made.
- [11] Section 76A** 15
- Insert after section 76:
- 76A Consent authorities to have regard to register of critical habitat**
- Each consent authority must have regard to the register of critical habitat kept by the Director-General of National Parks and Wildlife under the *Threatened Species Conservation Act 1995* when exercising its functions under this Act. 20
- [12] Section 77 Making of development applications**
- Omit section 77 (3) (d1). Insert instead: 25
- (d1) if the application is in respect of development on land that is, or is a part of, critical habitat or is likely to significantly affect threatened species, populations or ecological communities, or their habitats, be accompanied by a species impact statement prepared in accordance with Division 2 of Part 6 of the *Threatened Species Conservation Act 1995*, 30

[13] Section 77 (4A)

Omit the subsection.

[14] Sections 77A–77D

Insert after section 77:

- 77A Concurrence of or consultation with Director-General of National Parks and Wildlife in certain cases** 5
- (1) If development consent is required for development on land that is, or is a part of, critical habitat, development consent must not be granted without the concurrence of the Director-General of National Parks and Wildlife. 10
- (2) If development consent is required for development and that development is likely to significantly affect a threatened species, population or ecological community, or its habitat, consent must not be granted:
- (a) in the case of an endangered species, population or ecological community, or its habitat—without the concurrence of the Director-General of National Parks and Wildlife, or 15
- (b) in the case of a vulnerable species, or its habitat—without consulting with the Director-General of National Parks and Wildlife. 20
- (3) Despite subsections (1) and (2), if the Minister administering the *Threatened Species Conservation Act 1995* considers that it is appropriate, that Minister may:
- (a) elect to act in the place of the Director-General of National Parks and Wildlife for the purposes of those subsections, or 25
- (b) review and amend any recommendations that the Director-General proposes to make, or any advice that the Director-General proposes to offer, for the purposes of those subsections. 30

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- (4) Sections 78 (subsection (2) excepted), 79 (subsection (4) excepted), 80, 81 and 82 apply (with such modifications as may be necessary) to and in respect of the granting of concurrence under this section in the same way as they apply to and in respect of the granting of concurrence required by an environmental planning instrument. 5
- (5) Despite subsections (1) and (2), if a Minister is the consent authority, development consent must not be granted unless the Minister has consulted with the Minister administering the *Threatened Species Conservation Act 1995*. 10
- (6) If, in so consulting, the Minister administering the *Threatened Species Conservation Act 1995* provides the Minister who is the consent authority with any recommendations made by the Director-General of National Parks and Wildlife concerning determination of such a development application and that Minister does not accept any one or more of the recommendations, that Minister must include in the determination the recommendations not accepted and that Minister's reasons for not accepting them. 15
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77B Determination by Minister without concurrence of or consultation with Director-General of National Parks and Wildlife

- (1) Despite section 77A, if the Minister is of the opinion that it is expedient in the public interest to do so, having regard to matters that in the opinion of the Minister are of significance for State or regional environmental planning, the Minister may determine a development application in accordance with section 101 and without the concurrence of, or consultation with, the Director-General of National Parks and Wildlife (or the concurrence of, or consultation with, the Minister administering the *Threatened Species Conservation Act 1995* if that Minister acts under section 77A). 25
30
35
- (2) However, in making such a determination, the Minister is to consult with the Minister administering the *Threatened Species Conservation Act 1995* if the

development the subject of the development application is on land that is, or is a part of, critical habitat or is likely to significantly affect an endangered species, population or ecological community, or its habitat.

- (3) If, in so consulting, the Minister administering the *Threatened Species Conservation Act 1995* provides the Minister with any recommendations made by the Director-General of National Parks and Wildlife concerning the determination of the development application and the Minister does not accept any one or more of the recommendations, the Minister must include in the determination the recommendations not accepted and the Minister's reasons for not accepting them.

77C Matters to be considered by Director-General of National Parks and Wildlife as concurrence authority

In deciding whether or not concurrence should be granted under section 77A, the Director-General of National Parks and Wildlife (or the Minister administering the *Threatened Species Conservation Act 1995*, if that Minister acts under that section) must take the following matters into consideration:

- (a) any species impact statement that accompanied the development application,
- (b) any assessment report prepared by the consent authority,
- (c) any submissions or objections received concerning the development application,
- (d) any relevant recovery plan or threat abatement plan,
- (e) whether the development proposed is likely to reduce the long-term viability of the species, population or ecological community in the region,
- (f) whether the development is likely to accelerate the extinction of the species, population or ecological community or place it at risk of extinction,

-
- (g) the principles of ecologically sustainable development (as described by section 6 (2) of the *Protection of the Environment Administration Act 1991*),
 - (h) the likely social and economic consequences of granting or of not granting concurrence. 5

77D Matters to be considered by Director-General of National Parks and Wildlife when consulted

For the purposes of consultation under section 77A, the Director-General of National Parks and Wildlife (or the Minister administering the *Threatened Species Conservation Act 1995*, if that Minister acts under that section) must take the following matters into consideration: 10

- (a) any species impact statement that accompanied the development application, 15
- (b) any assessment report prepared by the consent authority,
- (c) any submissions or objections received concerning the development application, 20
- (d) whether the development is likely to irretrievably reduce the long-term viability of the species in the region,
- (e) whether the development is likely to place the species at risk of becoming endangered as described in section 10 of the *Threatened Species Conservation Act 1995*, 25
- (f) the principles of ecologically sustainable development (as described by section 6 (2) of the *Protection of the Environment Administration Act 1991*), 30
- (g) the likely social and economic consequences if development consent is granted or refused.

Threatened Species Conservation Bill 1995 (No 2)

Schedule 5 Amendment of Environmental Planning and Assessment Act 1979

[15] Section 78 Seeking concurrence of Minister or public authority

Insert "or section 77A" after "instrument" wherever occurring in section 78 (1).

[16] Section 79 Granting or refusal of concurrence by Minister or public authority

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Insert "(other than the Minister and the public authority referred to in section 77A)" after "section 78" in section 79 (2).

[17] Section 81 Circumstances in which concurrence may be assumed

Insert "or section 77A" after "instrument" wherever occurring in section 81. 10

[18] Section 83 Avoidance of consents

Insert "or section 77A" after "instrument" in section 83.

[19] Section 90 (1) Matters for consideration

Omit section 90 (1) (c2). Insert instead: 15

(c2) the effect of that development on critical habitat,

(c3) whether there is likely to be a significant effect on threatened species, populations or ecological communities, or their habitats,

(c4) any relevant recovery plan or threat abatement plan, 20

(c5) the effect of that development on any other protected fauna or protected native plants within the meaning of the *National Parks and Wildlife Act 1974*, 25

[20] Section 110C

Insert after section 110B:

110C Determining authorities to have regard to register of critical habitat

Each determining authority must, for the purpose of exercising functions under this Part, have regard to the register of critical habitat kept by the Director-General of National Parks and Wildlife under the *Threatened Species Conservation Act 1995*. 5

[21] Section 111 Duty to consider environmental impact 10

Insert at the end of section 111 (2) (b):

, and

- (c) any joint management agreement entered into under the *Threatened Species Conservation Act 1995*. 15

[22] Section 111 (4)

Insert after section 111 (3):

- (4) Without limiting subsection (1), a determining authority must consider the effect of an activity on:
- (a) critical habitat, and 20
 - (b) in the case of threatened species, populations and ecological communities, and their habitats, whether there is likely to be a significant effect on those species, populations or ecological communities, or those habitats, and 25
 - (c) any other protected fauna or protected native plants within the meaning of the *National Parks and Wildlife Act 1974*.

[23] Section 112 Decision of determining authority in relation to certain activities

Insert “(including critical habitat) or threatened species, populations or ecological communities, or their habitats,” after “environment” in section 112 (1).

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[24] Section 112 (1B)

Omit section 112 (1B)–(1D). Insert instead:

(1B) Without limiting subsection (1), a determining authority must not carry out an activity, or grant an approval in relation to an activity, being an activity that is in respect of land that is, or is a part of, critical habitat or is likely to significantly affect threatened species, populations or ecological communities, or their habitats, unless a species impact statement, or an environmental impact statement that includes a species impact statement, has been prepared (in each case) in accordance with Division 2 of Part 6 the *Threatened Species Conservation Act 1995*.

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[25] Section 112 (4)

Insert “(including critical habitat) or threatened species, populations or ecological communities, or their habitats” after “environment” wherever occurring.

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[26] Sections 112A–112E

Insert after section 112:

112A Determining authorities to have regard to recovery plans and threat abatement plans

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A determining authority, in considering a species impact statement, must have regard to the terms of any recovery plan or threat abatement plan relating to the land referred to in the species impact statement for the purposes of assessing any effect on a threatened species, population or ecological community, or its habitat.

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**112B Consultation with Minister for the Environment if
Minister is determining authority**

- (1) A Minister who is a determining authority must not carry out, or grant an approval to carry out, an activity in respect of land that is, or is a part of, critical habitat or is likely to significantly affect threatened species, populations or ecological communities, or their habitats, unless that Minister has consulted with the Minister administering the *Threatened Species Conservation Act 1995*.

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- (2) If, in so consulting, the Minister administering the *Threatened Species Conservation Act 1995* provides the Minister who is the determining authority with any recommendations made by the Director-General of National Parks and Wildlife concerning the determination of the activity and that Minister does not accept any one or more of the recommendations, that Minister must include in the determination the recommendations not accepted and that Minister's reasons for not accepting them.

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**112C Concurrence of or consultation with Director-General of
National Parks and Wildlife if Minister is not determining
authority**

- (1) A determining authority (not being a Minister) must not carry out, or grant an approval to carry out, an activity in respect of land that is, or is a part of, critical habitat without the concurrence of the Director-General of National Parks and Wildlife.

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- (2) A determining authority (not being a Minister) must not carry out, or grant an approval to carry out, an activity that is likely to significantly affect a threatened species, population or ecological community, or its habitat:

 - (a) in the case of an endangered species, population or ecological community, or its habitat—without the concurrence of the Director-General of National Parks and Wildlife, or

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Threatened Species Conservation Bill 1995 (No 2)

Schedule 5 Amendment of Environmental Planning and Assessment Act 1979

- (b) in the case of a vulnerable species, or its habitat—without consultation with the Director-General of National Parks and Wildlife.
- (3) Despite subsections (1) and (2), if the Minister administering the *Threatened Species Conservation Act 1995* considers that it is appropriate, that Minister may:
 - (a) elect to act in the place of the Director-General of National Parks and Wildlife for the purposes of those subsections, or
 - (b) review and amend any decision that the Director-General proposes to make, or any recommendations that the Director-General proposes to offer, for the purposes of those subsections.
- (4) Sections 78 (subsection (2) excepted), 79 (subsection (4) excepted), 80, 81 and 82 apply (with such modifications as may be necessary) to and in respect of the granting of concurrence under this section in the same way as they apply to and in respect of the granting of concurrence required by an environmental planning instrument.

112D Matters to be considered by Director-General of National Parks and Wildlife as concurrence authority

In deciding whether or not concurrence should be granted under section 112C, the Director-General of National Parks and Wildlife (or the Minister administering the *Threatened Species Conservation Act 1995*, if that Minister acts under that section) must take the following matters into consideration:

- (a) any species impact statement prepared in relation to the activity,
- (b) any assessment report prepared by or on behalf of the proponent,
- (c) any representations made under section 113 concerning the species impact statement,

-
- (d) any relevant recovery plan or threat abatement plan,
 - (e) whether the activity is likely to reduce the long-term viability of the species, population or ecological community in the region, 5
 - (f) whether the activity is likely to accelerate the extinction of the species or ecological community or place it at risk of extinction,
 - (g) the principles of ecologically sustainable development (as described by section 6 (2) of the *Protection of the Environment Administration Act 1991*), 10
 - (h) the likely social and economic consequences of granting or of not granting concurrence.

112E Matters to be considered by Minister or Director-General of National Parks and Wildlife when consulted 15

The Minister administering the *Threatened Species Conservation Act 1995* (for the purposes of consultation under section 112B) or the Director-General of National Parks and Wildlife (for the purposes of consultation under section 112C) (or the Minister administering the *Threatened Species Conservation Act 1995*, if that Minister acts under that section) must take the following matters into consideration: 20

- (a) any species impact statement prepared in relation to the activity, 25
- (b) any assessment report prepared by or on behalf of the proponent,
- (c) any representations made under section 113 concerning the species impact statement, 30
- (d) whether the activity is likely to reduce the long-term viability of the species in the region,
- (e) whether the activity is likely to place the species at risk of becoming endangered as described in section 10 of the *Threatened Species Conservation Act 1995*, 35

Threatened Species Conservation Bill 1995 (No 2)

Schedule 5 Amendment of Environmental Planning and Assessment Act 1979

- (f) the principles of ecologically sustainable development (as described by section 6 (2) of the *Protection of the Environment Administration Act 1991*),
- (g) the likely social and economic consequences if the activity is not carried out. 5

[27] Section 113 Publicity and examination of environmental, fauna and species impact statements

Insert after section 113 (7):

- (8) In this section, *environmental impact statement* includes a fauna impact statement and a species impact statement. 10

[28] Section 115B Provisions relating to Minister's approval

Insert at the end of section 115B (1) "The proponent must also have complied with section 112B or 112C, or both, as the case requires".

[29] Section 123 Restraint etc of breaches of this Act 15

Insert at the end of the section:

- (4) Proceedings under this section may not be brought in connection with development, or an activity, carried out by, for or on behalf of the Olympic Co-ordination Authority in accordance with the *Olympic Co-ordination Authority Act 1995*. 20

[30] Schedule 6 Savings, transitional and other provisions

Insert at the end of the list of Acts in clause 1 (1):

Threatened Species Conservation Act 1995

Schedule 6 Amendment of other Acts and regulations

(Section 149)

- 6.1 Commonwealth Powers (Poultry Processing) Act 1993
No 100** 5
- Section 3 Reference of matters relating to poultry processing**
- Omit "taken or killed" from the definition of *poultry* in section 3 (2).
Insert instead "harmed".
- 6.2 Dividing Fences Act 1991 No 72**
- Section 14 Orders as to fencing work** 10
- Insert after section 14 (1):
- (1A) Despite subsection (1), no order may be made for the carrying out of fencing work on critical habitat within the meaning of the *Threatened Species Conservation Act 1995* without the consent of the Director-General of National Parks and Wildlife. 15
- 6.3 Environmental Planning and Assessment Regulation 1994**
- Omit "or endangered" wherever occurring from clauses 65 (c) (i) and (ii) and 82 (2) (f). 20
- 6.4 Impounding Act 1993 No 31**
- Section 41 Special power to destroy animals**
- Insert "a threatened species (as defined in the *Threatened Species Conservation Act 1995*)," after "that is" in section 41 (3).

6.5 Land and Environment Court Act 1979 No 204

[1] Section 17 Class 1—environmental planning and protection appeals

Omit “section 92C of the *National Parks and Wildlife Act 1974*” from paragraph (ea).

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Insert instead “section 106 of the *Threatened Species Conservation Act 1995*”.

[2] Section 20 Class 4—environmental planning and protection and development contract civil enforcement

Insert after subsection (1) (cj):

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(ck) proceedings under section 142 of the *Threatened Species Conservation Act 1995*,

[3] Section 20 (3)

Insert in alphabetical order of Acts:

Threatened Species Conservation Act 1995,

15

6.6 Local Government Act 1993 No 30

Section 428, Note

Insert after subsection (2) (c):

Note. Section 71 (2) of the *Threatened Species Conservation Act 1995* requires a council that is identified in a recovery plan (within the meaning of that Act) as responsible for the implementation of measures included in the plan to report on action taken by it to implement those measures in its annual report as to the state of the environment of its area.

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Section 88 (2) of that Act imposes the same requirement in relation to threat abatement plans (within the meaning of that Act).

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6.7 Meat Industry Act 1978 No 54

Section 41 Offences as to sale of meat and 41A Offences as to storage of meat

Omit "taken and" wherever occurring.

6.8 National Parks and Wildlife (Administration) Regulation 1995 5

Schedule 2 Penalty notice offences

Omit "take/kill" wherever occurring. Insert instead "harm".

6.9 National Parks and Wildlife (Fauna Protection) Regulation 1994 10

[1] Clause 8 (2) and (3)

Omit "taken or killed" wherever occurring.
Insert instead "harmed".

[2] Clause 9

Omit "take or kill" wherever occurring. Insert instead "harm". 15

[3] Clause 12 (2)

Omit "taken or killed". Insert instead "harmed".

[4] Clause 16 (2)

Omit "section 99 (1) (c)". Insert instead "section 112G".

[5] Clause 19 (1) 20

Omit "taking or killing". Insert instead "harming".

**6.10 National Parks and Wildlife (Land Management)
Regulation 1995**

[1] Clause 26 (2)

Insert "any threatened species, population or ecological community,
or its habitat, (within the meaning of the *Threatened Species* 5
Conservation Act 1995) or any" after "the land or" in clause 26 (2)
(f).

[2] Clauses 37 (1) and 40

Omit "taking or killing" wherever occurring.
Insert instead "harming". 10

[3] Clause 37 (3)

Omit "endangered fauna".
Insert instead "threatened species, populations and ecological
communities within the meaning of the *Threatened Species*
Conservation Act 1995". 15

6.11 Non-Indigenous Animals Act 1987 No 166

Section 4 Application of Act

Insert at the end of section 4 (2):

Threatened Species Conservation Act 1995.

6.12 Rural Lands Protection Act 1989 No 197 20

[1] Section 3 Definitions

Insert after section 3 (2):

(2A) An order may not be made under subsection (2) (b) in
respect of a species of insects that is a threatened species
within the meaning of the *Threatened Species* 25
Conservation Act 1995 without the concurrence of the
Director-General of National Parks and Wildlife.

[2] Section 138C Applications for control orders by boards and section 138D Control orders

Insert "threatened species within the meaning of the *Threatened Species Conservation Act 1995* or" after "other than" wherever occurring in sections 138C (3) (c) and 138D (3) (c).

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6.13 Soil Conservation Act 1938 No 10

[1] Section 21B Protected land

Omit section 21B (6) (b). Insert instead:

- (b) critical habitat, or land containing threatened species, populations or ecological communities, or their habitats, within the meaning of the *Threatened Species Conservation Act 1995*,

10

[2] Section 21D Authority to destroy timber on protected land

Omit section 21D (3A) (c). Insert instead:

- (c) an adverse effect on critical habitat, or threatened species, populations or ecological communities, or their habitats, within the meaning of the *Threatened Species Conservation Act 1995*,

15

6.14 Timber Industry (Interim Protection) Act 1992 No 1

[1] Section 3 Objects of this Act

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Insert ", section 114 of the *Threatened Species Conservation Act 1995* or section 91AA of the *National Parks and Wildlife Act 1974*" after "(as inserted by the *Endangered Fauna (Interim Protection) Act 1991*)" in section 3 (g).

Threatened Species Conservation Bill 1995 (No 2)

Schedule 6 Amendment of other Acts and regulations

[2] Section 11 Stop work orders

Insert at the end of the section:

- (2) In addition, during the period when the application of Part 5 of the EPA Act is suspended in respect of land specified in Schedule 4, an order under section 114 of the *Threatened Species Conservation Act 1995* or section 91AA of the *National Parks and Wildlife Act 1974* made on or after the commencement of those sections has no effect in respect of that land. 5

[3] Section 12 Logging operations on private land 10

Insert after section 12 (4) (b):

, and

- (c) an order under section 114 of the *Threatened Species Conservation Act 1995* or section 91AA of the *National Parks and Wildlife Act 1974* made on or after the commencement of those sections has no effect in respect of that land. 15

[4] Section 12 (7)

Insert "(or species impact statements under the *Threatened Species Conservation Act 1995*)" after "fauna impact statements". 20

[5] Section 13

Omit the section.

Schedule 7 Savings, transitional and other provisions

(Section 151)

Part 1 Savings and transitional regulations

1 Regulations

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- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or 10 15
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done before the date of its publication.

Part 2 Amendments consequent on Threatened Species Conservation Act 1995

20

2 Dissolution of Scientific Committee

- (1) The Scientific Committee established under section 92A of the *National Parks and Wildlife Act 1974*, as inserted by the *Endangered Fauna (Interim Protection) Act 1991*, is dissolved.
- (2) A person who, immediately before the dissolution of the Scientific Committee referred to in this clause, held office as a member of that Scientific Committee:
 - (a) ceases to hold that office, and
 - (b) is eligible (if otherwise qualified) to be appointed as a member of the Scientific Committee established under this Act. 25 30

Schedule 7 Savings, transitional and other provisions

- (3) A person who so ceases to hold office as a member of the Scientific Committee is not entitled to any remuneration or compensation because of the loss of that office.
- 3 Extension of certain licences under section 120 of the National Parks and Wildlife Act 1974** 5
- (1) This clause applies to a licence to which section 4 of the *Endangered Fauna (Interim Protection) Amendment Act 1992* applied immediately before the repeal or expiry of that section.
- (2) A licence to which this clause applies continues in force, despite any expiry date specified in the licence, as if no such date had been so specified. 10
- (3) A licence to which this clause applies may be varied under section 133 of the *National Parks and Wildlife Act 1974*.
- 4 Certain licences taken to be licences under Part 6**
- (1) A licence to which clause 3 refers is taken to be a licence under Part 6 of this Act and is as efficacious, in relation to the action that it authorises, as a licence granted under that Part. 15
- (2) In particular, a licence to which clause 3 refers is, in relation to the action that it authorises, taken to authorise the harming or picking of threatened species, populations or ecological communities, or the damaging of their habitats (including habitats that are critical habitats). 20
- 5 Savings in respect of planning matters**
- (1) The amendments made by this Act to the *Environmental Planning and Assessment Act 1979* do not affect: 25
- (a) any development consent granted before the commencement of this clause or any development carried out in accordance with such a consent, or
- (b) any activity to which Part 5 of that Act applies (or any approval for the carrying out of any such activity) if the provisions of that Part were complied with for that activity before the commencement of this clause. 30

-
- (2) If an application for development consent has not been finally determined on the commencement of this clause, the amendments made by this Act to the *Environmental Planning and Assessment Act 1979* do not apply to the determination of the application or to any development carried out in accordance with a development consent granted on the determination of the application. However, the Minister for Planning may, by notice served on the consent authority, direct that all or any specified amendments apply to the determination of the application. 5
- (3) If, in respect of any activity to which Part 5 of that Act applies (or any approval for carrying out any such activity): 10
- (a) an environmental impact statement was duly obtained before the commencement of this clause, but the provisions of that Part had not been fully complied with before that commencement, or 15
- (b) the Director-General of the Department of Planning had duly notified the person preparing an environmental impact statement before the commencement of this clause of requirements with respect to the form and contents of the statement, but the statement had not been obtained before that commencement, 20
- the statement (so long as it is obtained in accordance with the provisions of that Act as in force immediately before that commencement) is taken to have been obtained in accordance with that Act, as amended by this Act. 25
- (4) Subclause (3) does not apply to an activity that has not been carried out before the commencement of this clause if the Minister for Planning (by notice served on the person obtaining the statement concerned) so directs.

Threatened Species Conservation Bill 1995 (No 2)

Schedule 7 Savings, transitional and other provisions

6 Savings in respect of stop work orders

A stop work order made under section 92E of the National Parks and Wildlife Act 1974 is, if it has any force or effect immediately before the repeal of that section, taken to be a stop work order under Part 6A of that Act, as inserted by this Act.

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C-110
Greens

LEGISLATIVE COUNCIL

Threatened Species Conservation Bill 1995 (No 2)

Third Print

Amendments to be moved in Committee

No. 1 Page 131, Schedule 4 [85] (proposed section 112G), lines 10-13. Omit all words on those lines, insert instead:

- (a) the provisions of this section prevail, except if:
 - (i) the other Act is the *Bush Fires Act 1949* and the act concerned is done in accordance with a bush fire management plan approved under section 41A of that Act, or
 - (ii) the other Act is the *State Emergency and Rescue Management Act 1989*, and

No. 2 Page 133, Schedule 4 [86] (proposed section 118A), lines 1-5. Omit all words on those lines, insert instead:

- (c) was:
 - (i) done in accordance with a bush fire management plan approved under section 41A of the *Bush Fires Act 1949*, or
 - (ii) authorised to be done by or under the *State Emergency and Rescue Management Act 1989*,and was reasonably necessary in order to avoid a threat to life or property.

No. 3 Page 136, Schedule 4 [86] (proposed section 118C), lines 6-10. Omit all words on those lines, insert instead:

- (c) was:
 - (i) done in accordance with a bush fire management plan approved under section 41A of the *Bush Fires Act 1949*, or
 - (ii) authorised to be done by or under the *State Emergency and Rescue Management Act 1989*,and was reasonably necessary in order to avoid a threat to life or property.

No. 4 Page 137, Schedule 4 [86] (proposed section 118D), lines 11-15. Omit all words on those lines, insert instead:

- (c) was:
 - (i) done in accordance with a bush fire management plan approved under section 41A of the *Bush Fires Act 1949*, or
 - (ii) authorised to be done by or under the *State Emergency and Rescue Management Act 1989*,and was reasonably necessary in order to avoid a threat to life or property.
-

Final

THREATENED SPECIES CONSERVATION BILL 1995 (No.2)

Australia has the worst record of mammal extinction rates in the world and almost a quarter of the nation's 22,000 plant species are now classed as threatened.

There are 234 species of fauna listed as under threat in this State. Some are found nowhere else in the world, others occur elsewhere in Australia but must contend with a host of threats, including habitat loss and fragmentation; habitat degradation and the introduction of exotic species.

The conservation status of plants in NSW is equally alarming. When the national list of Rare or Threatened Australian Plants (ROTAP) was last revised in 1988, there were 537 plants on the NSW list. Now, only seven years later, there are 770 plants listed by ROTAP as under threat in NSW.

The situation in NSW is critical. We do not have comprehensive threatened species legislation in NSW despite the long list of species lost or pushed to the brink of extinction.

It is obvious from the figures mentioned that the system for protecting threatened species in NSW has shortcomings. To improve the outlook however it is first necessary to understand what are the technical shortcomings of the existing legislation.

The operative legislation (the National Parks and Wildlife Act 1974) was amended by the Endangered Fauna (Interim Protection) Act 1991 by the Government when in Opposition to provide a degree of relief to threatened fauna and has certainly mitigated what might have been an even worse situation. However the protection available is restricted to endangered fauna and there is no effective protection for threatened plants, invertebrates or ecological communities.

Most importantly, there is no systematic process for the protection of critical habitat for threatened species.

Since the destruction or fragmentation of habitat is the main cause of species extinction and biodiversity loss, it is absolutely vital to conserve habitat and to fully protect critical habitat that is known to be essential for species survival.

The existing legislation also fails to recognise the importance of recovery planning and the control of threatening processes.

The Coalition Government introduced a Bill in 1993 (Endangered and other Threatened Species Conservation Bill) with the supposed intention of promoting the recovery of endangered species of flora and fauna and balancing the competing demands for land use and biodiversity conservation.

In reality that Bill would have completely abandoned the licensing system introduced by the Endangered Fauna (Interim Protection) Act. It was to be replaced by amendments to the Environmental Planning and Assessment Act to provide that the

effects of activities or developments on threatened species were taken into account in some nebulous way in the planning process.

In addition, the Coalition Bill would have effectively done away with offences for the disturbance of habitat outside of critical habitat.

The Bill was never enacted and did not deserve to be enacted.

Other proposals have also been advanced for protection of threatened species. While well-intentioned, these proposals tend to extremes and would dissipate the conservation effort across countless low risk issues at the expense of focussing on critical concerns for biodiversity conservation.

These alternative proposals also fail to grapple with the unavoidable fact that socio-economic concerns must be taken into account in decision-making. At the level of process, they do not integrate species conservation into the planning system and rely, instead, on a separate licensing system that is divorced from the environmental assessment and development control process.

The Government has persistently tried to consult extensively in the development of new comprehensive threatened species legislation. Seemingly, others do not want to see fulsome consultation.

Three months ago the Government sought to extend the Endangered Fauna (Interim Protection) Act 1991 until May next year. That proposal was made in order to allow

an adequate period for public consultation in finalising new and comprehensive legislation to protect threatened species. The Opposition however decided on that occasion to agree only to an extension of the interim Act to the end of 1995.

It is a matter of regret that the Opposition has no interest in furthering community involvement and in consequence has not been prepared to cooperate in the extension of the interim laws. Despite the time constraints foisted upon it by the Opposition, the Government has had considerable negotiations with key stakeholders and has prepared an impressive piece of legislation. I emphasise again that the Government would have preferred a more inclusive process. It is plain that conservation of endangered species needs not only government commitment but also requires community support.

The Bill is effective and well balanced in its provisions. I will outline in a moment the major features of the Bill. Before doing so I feel it is important to emphasise at this stage what we actually mean by the term "**Threatened Species.**" Under the Bill, the term is used in a general sense and is taken to include two categories of risk:

(1) **Endangered Species:** namely, a species that is likely to become extinct in nature unless the factors threatening its survival or development cease;

(2) **Vulnerable Species:** a species that is likely to move into the endangered category in the near future if the causal factors continue to operate;

A third category (presumed extinct) is also recognised. If a species presumed

will automatically be deemed endangered

Recognising the shortcomings of the legislative alternatives, the Government has developed comprehensive legislation which affords maximum protection for threatened species, uses the planning system when it is most appropriate to do so, but retains separate licensing where actions are likely to have a significant impact on threatened species but do not require approval under the EP&A Act.

It is true to say that, in integrating threatened species conservation so fully into the planning system NSW is leading the way

The legislation will provide a streamlined assessment process; tougher penalties for offences and comprehensive coverage for species at risk. For the first time in NSW threatened plants, invertebrates and critical habitat will receive recognition and effective protection.

The legislation will cover all native plants and animals (including invertebrates and non-vascular plants) and ecological communities which are classified as threatened.

It will not cover fish or marine plants however, the Government is committed to amending the Fisheries Management Act 1994 to incorporate the relevant principles of the Threatened Species Legislation.

Threatened species, ecological communities and threatening processes will be identified and regularly reviewed by a 10-member scientific committee comprising representatives from NSW tertiary institutions, the CSIRO, the Ecological Society of

Australia, the Entomological Society of Australia, the Australian Museum, the Royal Botanic Gardens and 3 other Government representatives, and an appropriately qualified agricultural scientist.

The Minister will receive the Committee's final determinations on categorising species etc and, subject to any review considered necessary by the Minister will proceed to make formal listings.

Essentially, the legislation will provide for:

(1) **The declaration and protection of critical habitat.** Critical habitat is defined as the area or areas known to be essential for the survival of endangered species.

(2) **The preparation of recovery plans.** Recovery plans will outline the process for the recovery of individual species, with the ultimate aim of ensuring the long term survival of the species.

(3) **The preparation of threat abatement plans to control key threatening processes.** Plans will address key threatening processes affecting more than one listed species/community or operating at a State-wide or bioregional level.

(4) **Licensing of actions which do not require consent or approval under the Environmental Planning and Assessment Act but are likely to have a significant impact on threatened species.** Licence applications will be assessed by the Director-General of National Parks and Wildlife. Before a licence can issue,

a species impact statement, prepared in accordance with NPWS guidelines and any special requirements stipulated by the Director-General, will need to be prepared. However, where the Director-General forms the view that the impact of the proposed action is trivial or negligible, the need for a Species Impact Statement may be waived.

Significantly, all routine agricultural practices will be exempt from licensing. Only those actions which are listed in the Regulations after mandatory consultation between the Director-General of National Parks and Wildlife and the Director-General of Agriculture will require licensing.

Another reduction in the impact on the rural community will be the capacity for all actions undertaken in accordance with a Property Management Plan approved by the Director-General of National Parks and Wildlife for the purposes of this Act to be also exempt from licensing.

(5) An obligation to obtain the concurrence of the Director-General, National Parks and Wildlife for actions requiring consent or approval under parts IV or V of the EP&A Act that will have a significant impact on endangered species.

However, where a matter is determined by the Minister for Urban Affairs and Planning or another Minister, concurrence will be replaced by mandatory consultation with the Minister for the Environment before a decision is made by the relevant Minister. This provides a mechanism for the resolution of conflicting public interest requirements in the most appropriate way, but ensures that endangered species interests are fully considered.

As an additional safeguard there will be a requirement that where the determining Minister does not adopt any recommendations made by the Director-General, the reasons for this must be provided.

(6) The imposition of severe penalties for offences.

I would point out that the Bill prohibits the destruction or adverse modification of any area that has been declared as critical habitat.

Critical habitat will be declared at the discretion of the Minister for the Environment with the advice of the Director-General, National Parks and Wildlife. The declaration process will provide for public involvement and will also have regard to socio-economic consequences and existing rights and interests.

To maximise certainty for development proponents, it will be possible to identify the existence of critical habitat early in the planning process, ideally during the preparation of local environmental studies or plans or regional environmental plans.

In most cases, the Director-General of National Parks and Wildlife will have a concurrence role for actions in declared areas of critical habitat. It is important to note, however, that critical habitat means just that. It is not all habitat. Where an area is in fact critical to the survival of an endangered species, development proposals with adverse impact already encounter considerable hurdles to approval.

A process to formally recognise that an area is critical habitat is in everyone's interests.

The legislation also requires the Minister for the Environment to consult with other Ministers when declarations of critical habitat are being considered. As with other aspects of the legislative package, consultation is considered to be absolutely fundamental in ensuring guaranteed protection for critical habitat.

As far as existing rights and interests are concerned, the Minister for the Environment will be required to consider the likely impact on landholders' existing uses in declaring land to be critical habitat. The option of negotiating conservation agreements as provided for in the National Parks and Wildlife Act will be pursued in appropriate circumstances.

The Director-General of National Parks and Wildlife will be responsible for preparing recovery plans for all **endangered** species. Ideally, plans will also be prepared for all threatened species. However the resource implications of this process mean that the Director-General must have the discretion to make a decision on plan preparation for vulnerable species where appropriate.

Plans will usually provide information on species status; habitat requirements and principal threats; recovery objectives; recovery criteria; actions needed and estimated cost of recovery.

Priority will normally be given to species which are endangered nationally.

The relevant agencies will be consulted in the development of plans and approval of the Minister for each affected agency must be obtained before any action relating to their administration is included in a recovery plan.

The Bill states explicitly that the Director-General must take socio-economic factors into account in the recovery planning process, as must the Minister in deciding whether to approve a draft plan.

Threatening processes are defined in the Bill as those processes which have or may have the capability to threaten the survival or evolutionary development of any plant or animal species or ecological community.

Key Threatening processes will be proposed for listing by the Scientific Committee and may be the subject of threat abatement plans, prepared on a priority basis by the Director-General of National Parks and Wildlife.

While a definitive list of processes has yet to be developed, examples could include habitat loss and fragmentation as a result of land clearing; competition, predation and land degradation by feral animals.

Like recovery plans, threat abatement plans will consider socio-economic consequences at both the draft and approval stages. The plans will not be strictly binding on authorities but every effort must be taken to implement measures in an approved threat abatement plan. The Minister for the Environment must be

informed of any decision by an agency which is inconsistent with the requirements of a plan; and disputes will be referred to the Premier for resolution if they cannot be settled between Ministers.

As mentioned earlier, the Legislation minimises the need for separate licensing and integrates the conservation of threatened species into the development control processes of the Environmental Planning and Assessment Act.

The Threatened Species Conservation Bill adopts the following approach:

In areas of declared critical habitat, an action requiring development consent under part IV of the EP&A Act or activity approval under part V, will, in most cases, require a species impact statement.

If the statement indicates that endangered species are involved, the following factors apply:

(i) Where a matter is determined by the Minister for Urban Affairs and Planning or another Minister, it will be necessary to consult with the Minister for the Environment before a decision is made. Where the Director-General's advice is not pursued, the reasons must be provided.

(ii) Otherwise, all relevant matters needing consent or approval under parts IV or V of the Environmental Planning and Assessment Act will require the concurrence of the Director-General, National Parks and Wildlife.

Actions which require development consent or approval and are likely to have a significant impact on endangered species **but do not occur within critical habitat** will also need a species impact statement and will trigger the concurrence provisions I have just mentioned.

However, concurrence provisions will not apply where a significant impact only affects vulnerable species. In those cases, consent/determining authorities will be required to consult with the Director-General.

Actions which do not require consent or approval under the EP&A Act but are likely to have a significant impact on **threatened** species will be subject to the issue of a licence by the Director-General, National Parks and Wildlife.

The likelihood of significant impact on threatened species will be determined using a test which is prescribed in the Bill.

This formulation will ensure a high degree of predictability and rigour in the determining the critical concept of "significant impact."

The Legislation will enable the Director-General to enter into voluntary conservation agreements and joint management agreements with public authorities to protect threatened species and communities.

There will also be provision for the imposition of stop work orders and the making of interim protection orders to provide immediate protection in emergencies. These measures may not be imposed where the activity being carried out is one authorised by a valid consent or approval under the Environmental Planning and Assessment Act or by a license under the National Parks and Wildlife Act, this Act, Bushfires Act or State Emergency and Rescue Management Act.

The maximum penalties for **damage to declared critical habitat** or for **harming endangered animals or picking endangered plants** without consent/approval or a licence will be \$200,000 or 2 years imprisonment or both. This is much tougher than the present system, where penalties are limited to taking or killing endangered fauna (\$100,000 or 2 years imprisonment or both) or vulnerable and rare fauna (\$20,000 or one years imprisonment or both).

In addition to the more serious offence of damaging declared critical habitat, there will be a separate offence of damaging habitat.

The Bill preserves existing third party appeal rights. However, Olympics development and associated infrastructure will be exempt from third party rights claims as a matter of necessity.

The Government made 26 amendments to the Threatened Species Conservation Bill.

Seventeen of these are corrections of cross-referencing or other minor errors in the Bill as tabled.

The remaining amendments were more significant and reflect the product of the Government's commitment to consultation.

One provided a definition in this Bill of "region" to mean a bioregion, to distinguish it from "region" as defined in the Environmental Planning and Assessment Act and to give it a relevant biological meaning. This definition is repeated in various places in the Bill.

Another ensured that where maps of critical habitat are prepared they are served on landholders of land on which critical habitat is located. The requirement for serving maps on public authorities who manage or exercise other relevant functions over land on which critical habitat is located has been refined.

Of most importance was an amendment arising as a result of consultation with farmers on this Bill. It ensures that routine farm management is not caught up in red tape. This amendment will exempt from licensing all routine farming practices and their ancillary activities.

This principle will be given effect to in the legislation by listing in the Regulations only those actions which may require licensing on the basis of an informed assessment of their potentially significant impact on threatened species or their habitat. Any additions to or omissions from the Regulations may only be made after the Director-General of National Parks and Wildlife has consulted with the Director-General of Agriculture. The list of actions in the Regulations will be developed as a matter of urgency immediately following the passage of this legislation through

Parliament. Key stakeholders such as the NSW Farmers' Association will also be consulted.

In addition, the Director-General of National Parks and Wildlife may approve a Property Management Plan prepared by any landholder. Such approval will exempt all activities carried out in accordance with the Plan from licensing whether or not the activity is listed in the Regulations.

Consequently, the undertaking of routine farming practices or actions carried out under a Property Management Plan approved by the Director-General of National Parks and Wildlife for the purposes of this Act will not be liable to any prosecution in respect of all new offences created by this Bill.

There is now a provision which enables the Director-General of National Parks and Wildlife to dispense with the requirement for the preparation of a Species Impact Statement where the Director-General is satisfied that the impact of the activity concerned will be trivial or negligible. This is a mechanism to exempt the proponents of activities with very minor impacts from the requirements of unnecessary bureaucracy.

Finally there is an amendment ensuring that when the Minister for the Environment or the Director-General of National Parks and Wildlife are consulted for the purposes of the Environmental Planning and Assessment Act that the likely social and economic consequences of any activity not being carried out is a separate head of consideration.

The legislation will be subject to a review in two years time with the outcome to be tabled in Parliament. Whatever the reasons for our dismal record in saving the diversity of native plants and animals in NSW I hope that we can at last move forward by accepting the opportunities which the Bill will provide for constructive and efficient conservation practice.

I commend the bill to the House.

LEGISLATIVE COUNCIL

Threatened Species Conservation Bill 1995 (No. 2)

Third Print

Amendments to be moved in Committee

⁶¹
No. 1 Page ~~60~~, (proposed section 114), lines 14-16. Omit all the words on those lines, insert instead:

- (b) a bush fire management plan approved under section 41A of the *Bush Fires Act, 1949*, or authorised to be done by or under the *State Emergency and Rescue Management Act 1989* and that is reasonably necessary in order to avoid a threat to life or property.

