

Biodiversity Legislation (Priority Reforms) Bill 2014

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Western Australia

LEGISLATIVE COUNCIL

(Introduced by Hon Lynn MacLaren, MLC)

**Biodiversity Legislation (Priority Reforms)
Bill 2014**

A Bill for

An Act to amend the —

- *Wildlife Conservation Act 1950; and*
- *Environmental Protection Act 1986.*

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Biodiversity Legislation (Priority Reforms) Act 2014*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

1 **Part 2 — *Wildlife Conservation Act 1950* amended**

2 **3. Act amended**

3 This Part amends the *Wildlife Conservation Act 1950*.

4 **4. Section 6 amended**

5 (1) In section 6(1) insert in alphabetical order:

6

7 *ecological community* means the extent in nature in the
8 State of an assemblage of fauna or flora, or fauna and
9 flora, that —

- 10 (a) inhabits a particular area in nature; and
11 (b) if the regulations set out any other criteria for
12 the purposes of this definition, meets those
13 criteria;

14 *listed* includes listed on an interim basis;

15 *listed ecological community* means an ecological
16 community listed in the threatened list;

17 *listed fauna* means fauna of a taxon listed in the
18 threatened list;

19 *listed flora* means flora of a taxon listed in the
20 threatened list;

21 *taxon* means any taxonomic category of fauna or flora
22 (for example, a species or a genus), and includes a
23 particular population;

24 *threatened list* means the list established and
25 maintained under Schedule 1 clause 2;

26

27 (2) After section 6(1a) insert:

28

29 (2A) Listed flora is protected flora for the purposes of this
30 Act throughout the whole of the State.

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1 (2B) Until the threatened list is established the items
2 referred to in Schedule 1 clause 3(2) are taken to be
3 listed fauna and listed flora by force of this subsection.
4

5 (3) After section 6(6) insert:
6

7 (7) In determining whether something constitutes the
8 **taking** of fauna or flora for the purposes of this Act it
9 does not matter that it was an incidental consequence
10 of an act performed for another purpose as long as that
11 consequence was or should have been foreseen.

12 (8) In provisions of this Act dealing with penalties for
13 offences a reference to a number of penalty units is a
14 reference to an amount (in dollars) that is that number
15 multiplied by 1 100.
16

17 **5. Section 7A inserted**

18 After section 6 insert:
19

20 **7A. Listing of threatened fauna and flora**

21 Schedule 1 sets out provisions relating to the listing
22 of —

23 (a) taxa of fauna and flora; and

24 (b) ecological communities,

25 as threatened for the purposes of this Act.
26

27 **6. Section 9 amended**

28 (1) In section 9(1) delete “relating to flora”.

29 (2) Delete section 9(2) to (4).

1 **7. Section 14 amended**

2 (1) In section 14(2) after “Subject to” insert:

3

4 subsection (4) and

5

6 (2) In section 14(3) delete “The” and insert:

7

8 Subject to subsection (4) and section 15A, the

9

10 (3) Delete section 14(4) and insert:

11

12 (4) The Minister must not publish any notice under this
13 section in relation to listed fauna.

14

15 **8. Section 15A amended**

16 In section 15A(1) delete “The Minister shall not make any
17 declaration under section 14(2)” and insert:

18

19 The Minister must not publish any notice under section 14

20

21 **9. Section 16 amended**

22 (1) Delete section 16(1) and insert:

23

24 (1) Subject to subsection (3), a person who takes protected
25 fauna otherwise than by —

26

 (a) the authority of a licence under section 15; or

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1 (b) the authority of section 23,
2 commits an offence against this Act.

3 Penalty:

4 (a) in the case of fauna that is listed fauna,
5 100 penalty units;

6 (b) in any other case, 40 penalty units.
7

8 (2) In section 16(1a) delete “In the case of fauna other than fauna in
9 respect of which a declaration under section 14(4) is in
10 operation,” and insert:

11
12 Except in the case of listed fauna,
13

14 (3) Delete section 16(2) and insert:
15

16 (2) Subject to subsection (3), a person who fails to observe
17 a close season declaration or any other restriction
18 placed by a notice under section 14 on —

19 (a) the taking of fauna; or

20 (b) the disposal of fauna; or

21 (c) the taking and disposal of fauna,

22 commits an offence against this Act.

23 Penalty: 40 penalty units.
24

25 **10. Section 16A amended**

26 (1) At the end of section 16A(1) insert:
27

28 Penalty:

29 (a) in the case of fauna that is listed fauna,
30 100 penalty units;

1 (b) in any other case, 40 penalty units.

2

3 (2) At the end of section 16A(2) insert:

4

5 Penalty:

6 (a) in the case of the skin or carcass of listed
7 fauna, 100 penalty units;

8 (b) in any other case, 40 penalty units.

9

10 **11. Section 17 amended**

11 At the end of section 17(2) insert:

12

13 Penalty:

14 (a) in the case of fauna that is listed fauna,
15 100 penalty units;

16 (b) in any other case, 40 penalty units.

17

18 **12. Section 17A amended**

19 In section 17A delete the Penalty and insert:

20

21 Penalty: 10 penalty units, and in the case of a
22 continuing offence a further penalty of not less
23 than one penalty unit or more than 2 penalty units
24 for each day the offence continues after the
25 Minister serves notice of the offence on the
26 offender.

27

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1 **13. Section 20 amended**

2 In section 20(2b) in the Penalty delete “\$2 000.” and insert:

3

4 20 penalty units.

5

6 **14. Section 23B amended**

7 At the end of section 23B(1) insert:

8

9 Penalty: 40 penalty units.

10

11 **15. Section 23D amended**

12 At the end of section 23D(1) insert:

13

14 Penalty: 40 penalty units.

15

16 **16. Section 23F amended**

17 (1) Delete section 23F(1) to (3).

18 (2) In section 23F(4):

19 (a) delete “shall not,” and insert:

20

21 who,

22

23 (b) in paragraph (a) delete “flora; or” and insert:

24

25 flora on Crown land; or

26

27 (c) in paragraphs (b) and (c) delete “rare” and insert:

28

29 listed

30

1 (d) delete “take any rare flora unless —” and insert:
2
3 takes any listed flora commits an offence against this
4 Act unless —
5

6 (3) At the end of section 23F(4) insert:
7

8 Penalty: 100 penalty units.
9

10 (4) Delete section 23F(6).

11 (5) In section 23F(7) and (8) delete “rare” and insert:
12

13 listed
14

15 Note: The heading to amended section 23F is to read:

16 **Listed flora**

17 **17. Sections 24 to 25I inserted**

18 Before section 25 insert:
19

20 **24. Terms used in provisions about listed ecological**
21 **communities**

22 In sections 25A to 25I —

23 **CALM Act** means the *Conservation and Land*
24 *Management Act 1984*;

25 **LEC notice** means a notice under section 25F(1)
26 relating to a listed ecological community;

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- 1 **modify**, in relation to a listed ecological community,
2 means to take action that results in —
- 3 (a) the modification of the ecological community
4 to such an extent that it is unlikely to
5 recover —
- 6 (i) its species composition or structure; or
7 (ii) its species composition and structure;
8 or
9 (b) the destruction of the ecological community.

10 **25A. Minister may authorise modification of listed**
11 **ecological community**

- 12 (1) In this section —
- 13 **public authority** means —
- 14 (a) a department of the Public Service; or
15 (b) a State agency; or
16 (c) a local government or regional local
17 government; or
18 (d) a body, whether incorporated or not, or the
19 holder of an office, post or position, that is
20 established or continued for a public purpose
21 under a written law.
- 22 (2) The Minister may, by instrument, authorise a person
23 (including a public authority) to modify a listed
24 ecological community.
- 25 (3) An authorisation under subsection (2) does not
26 authorise the taking of listed fauna or listed flora.
- 27 (4) An application for authorisation under subsection (2)
28 must be in a form approved by the CEO.

- 1 **25B. Conditions of authorisation**
- 2 (1) In this section —
- 3 *land of conservation value* means land on which there
- 4 is an occurrence of the relevant community;
- 5 *relevant community* means the listed ecological
- 6 community to which the authorisation relates.
- 7 (2) An authorisation under section 25A may be given
- 8 subject to any conditions that the Minister considers
- 9 appropriate.
- 10 (3) Without limiting subsection (2), the conditions
- 11 imposed on an authorisation may include conditions
- 12 that the Minister considers necessary or convenient for
- 13 the purpose of mitigating or offsetting the impact that
- 14 activity carried out under the authorisation is likely to
- 15 have on the total known occurrences of the relevant
- 16 community in the State.
- 17 (4) The following list sets out things that the holder of an
- 18 authorisation can be required to do under conditions
- 19 referred to in subsection (3) —
- 20 (a) make a monetary contribution towards the
- 21 purchase of land of conservation value;
- 22 (b) transfer, lease or otherwise dispose of land of
- 23 conservation value to a specified person
- 24 (including the CEO);
- 25 (c) exchange land of conservation value for other
- 26 land;
- 27 (d) enter into an agreement with the CEO under the
- 28 CALM Act section 8A in respect of land of
- 29 conservation value;
- 30 (e) take specified measures on land of conservation
- 31 value for the purpose of conserving and
- 32 protecting the relevant community;

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- 1 (f) provide equipment, facilities, resources or
2 services to assist in the conservation and
3 protection of the relevant community;
- 4 (g) conduct or fund surveys, studies or research in
5 relation to the relevant community;
- 6 (h) prepare and implement, or fund the preparation
7 and implementation of, plans or schemes for
8 the conservation or protection of the relevant
9 community;
- 10 (i) do anything else that is prescribed for the
11 purposes of this subsection.

- 12 (5) If a condition imposed on an authorisation requires the
13 transfer, lease or other disposal of land of conservation
14 value to the CEO, it is a function of the CEO to
15 acquire, hold, manage and otherwise deal with that
16 land for the purpose of conserving and protecting the
17 relevant community.

18 **25C. Modifying a listed ecological community**

- 19 (1) A person must not modify a listed ecological
20 community unless the person is authorised under
21 section 25A to modify it.
22 Penalty: 100 penalty units.
- 23 (2) It is a defence to a charge of an offence under
24 subsection (1) to prove that —
- 25 (a) the modification of the listed ecological
26 community —
- 27 (i) occurred in the course of a lawful
28 activity the sole or dominant purpose of
29 which was not to modify an ecological
30 community; and
- 31 (ii) could not reasonably have been
32 avoided;
- 33 and

- 1 (b) the person charged did not know, and could not
2 reasonably have known, that the listed
3 ecological community was present.

4 **25D. Duty of owner or occupier to report occurrence of**
5 **listed ecological community**

- 6 (1) This section applies to an owner or occupier of land
7 if—
8 (a) the owner or occupier has been given an LEC
9 notice in respect of the land; or
10 (b) a notification under section 25G(2) relating to
11 an LEC notice is registered in respect of the
12 land.
13 (2) An owner or occupier of land to whom this section
14 applies who finds the listed ecological community to
15 which the LEC notice relates on a part of the land (the
16 *other location*) other than the part of the land specified
17 in the LEC notice must report its presence at the other
18 location to the CEO.
19 Penalty: 40 penalty units.
20 (3) It is a defence to a charge of an offence under
21 subsection (2) to prove that the person charged had
22 reasonable grounds to believe that the CEO, or another
23 officer of the department of the Public Service
24 principally assisting in the administration of the CALM
25 Act, was already aware of the presence of the listed
26 ecological community at the other location.

27 **25E. Duty of certain other people to report occurrence of**
28 **listed ecological community**

- 29 (1) This section applies to a person who is engaged in
30 carrying out any work or study for the purposes of—
31 (a) obtaining field survey evidence referred to in
32 Schedule 1; or

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- 1 (b) the making of an assessment under the
2 *Environmental Protection Act 1986* Part IV; or
- 3 (c) complying with a requirement under the
4 *Environmental Protection Act 1986*
5 section 51E(1)(d) in relation to an application
6 for a clearing permit.
- 7 (2) A person to whom this section applies who, in the
8 course of carrying out any work or study referred to in
9 subsection (1), finds a listed ecological community on
10 land to which the work or study relates must report its
11 presence to the CEO.
12 Penalty: 20 penalty units.
- 13 (3) It is a defence to a charge of an offence under
14 subsection (2) to prove that the person charged did not
15 know, and could not reasonably have known, that the
16 ecological community found was a listed ecological
17 community.
- 18 **25F. Notice to owner and occupier as to presence of listed**
19 **ecological community**
- 20 (1) Where it appears to the Minister that there is
21 reasonable evidence that a listed ecological community
22 is present on land, the Minister may give each owner
23 and each occupier of the land a written notice that —
- 24 (a) specifies the listed ecological community; and
25 (b) contains information to assist the owner or
26 occupier in the identification of the listed
27 ecological community; and
28 (c) specifies the part of the land on which the listed
29 ecological community is believed to be present;
30 and
31 (d) specifies the assistance that may be available to
32 the owner or occupier for the protection of the
33 listed ecological community; and

- 1 (e) informs the owner or occupier about the effect
2 of section 25H.
- 3 (2) An LEC notice remains in force until it is cancelled
4 under subsection (3).
- 5 (3) The Minister may at any time by written notice given
6 to each owner and each occupier of the land amend or
7 cancel an LEC notice.

8 **25G. Lodgment of notification documents with Registrar**

- 9 (1) In this section —
- 10 *notification document* means —
- 11 (a) a notification lodged under subsection (2); or
- 12 (b) an amendment notification lodged under
13 subsection (3); or
- 14 (c) a removal of notification lodged under
15 subsection (4);
- 16 *notified instrument* means an LEC notice in respect of
17 which a notification under subsection (2) is registered;
- 18 *register*, in relation to a notification document,
19 means —
- 20 (a) if the document relates to land that is under the
21 operation of the *Transfer of Land Act 1893*, to
22 endorse the particulars of the document on the
23 certificate of title for that land; or
- 24 (b) otherwise, to enter the particulars of the
25 document in the appropriate record under the
26 *Registration of Deeds Act 1856*;
- 27 *Registrar* means —
- 28 (a) in relation to land that is under the operation of
29 the *Transfer of Land Act 1893*, the Registrar of
30 Titles under that Act; or

s. 17

- 1 (b) otherwise, the Registrar of Deeds and Transfers
2 under the *Registration of Deeds Act 1856*.
- 3 (2) The CEO may lodge a notification in respect of an
4 LEC notice with the Registrar.
- 5 (3) If a notified instrument is amended, the CEO may
6 lodge an amendment notification with the Registrar.
- 7 (4) If a notified instrument ceases to be in force, the CEO
8 must lodge a removal of notification with the Registrar.
- 9 (5) A notification document must be in a form approved by
10 the Registrar.
- 11 (6) If the land (the ***notification land***) to which a
12 notification document relates comprises part of the land
13 the subject of a certificate of title, the notification
14 document must be accompanied by a plan in a form
15 approved by the Registrar showing the notification
16 land.
- 17 (7) The Registrar may, on the lodgment of a notification
18 document and the payment of any relevant fee, register
19 the document.
- 20 (8) The Registrar may —
- 21 (a) approve the form of notification documents and
22 plans for the purposes of this section; and
- 23 (b) require the CEO to give to the Registrar the
24 information specified in a notification
25 document and any further information required
26 by the Registrar for the purpose of registering
27 the notification document.

- 1 **25H. Visitors to be notified**
- 2 (1) This section applies to an owner or occupier of land
- 3 if —
- 4 (a) the owner or occupier has been given an LEC
- 5 notice in respect of the land; or
- 6 (b) a notification under section 25G(2) relating to
- 7 an LEC notice is registered in respect of the
- 8 land,
- 9 unless the Minister has, by written notice, exempted
- 10 the owner or occupier from the application of this
- 11 section.
- 12 (2) An owner or occupier of land whom this section
- 13 applies who —
- 14 (a) permits, either generally or in a particular case,
- 15 another person to have access to the part of the
- 16 land that is specified under section 25F(1)(c);
- 17 or
- 18 (b) knows that another person will have such
- 19 access,
- 20 must, if subsection (3) applies, take such steps as are
- 21 reasonably available to the owner or occupier to inform
- 22 the other person of the presence of the listed ecological
- 23 community mentioned in the LEC notice.
- 24 Penalty: 40 penalty units.
- 25 (3) The duty in subsection (2) arises if the owner or
- 26 occupier knows or ought reasonably to know that the
- 27 activities of the person having access to the land are
- 28 likely to result in the modification of the listed
- 29 ecological community mentioned in the LEC notice in
- 30 contravention of section 25C(1).

s. 18

- 1 **25I. Compensation for owners or occupiers of private**
2 **land**
- 3 (1) In this section —
- 4 *adverse decision* means —
- 5 (a) a refusal to give an authorisation under
6 section 25A to modify a listed ecological
7 community; or
- 8 (b) the giving of an authorisation under
9 section 25A on a condition that is not
10 acceptable to the owner or occupier.
- 11 (2) An owner or occupier of private land —
- 12 (a) who applies for an authorisation under
13 section 25A in respect of a listed ecological
14 community on the land; and
- 15 (b) whose estate or interest in the land is
16 injuriously affected by an adverse decision
17 made in relation to that application,
- 18 is entitled to make a claim for compensation.
- 19 (3) Section 23F(7) applies, with any necessary
20 modifications, in relation to a claim for compensation
21 under this section.
22
- 23 **18. Section 26 amended**
- 24 (1) In section 26(1):
- 25 (a) delete “\$4 000” and insert:
- 26 40 penalty units
- 27 40 penalty units
28
- 29 (b) delete “\$2 000” and insert:
- 30 20 penalty units
31 20 penalty units
32

1 (2) After section 26(3) insert:

2

3 (4) If an offence against this Act is committed by an
4 individual and the offender is liable to a fine of
5 100 penalty units, the offender may be sentenced to
6 imprisonment for a term of not more than 2 years in
7 addition to or instead of a fine.

8

9 Note: The heading to amended section 26 is to read:

10 **Offences and penalties**

11 **19. Section 27CA inserted**

12 After section 27B insert:

13

14 **27CA. Offences: orders as to prevention, restoration,**
15 **remediation, recovery of costs**

16 The *Environmental Protection Act 1986* Part VIA
17 Division 4 (other than sections 99V and 99W) applies
18 to an offence against this Act as if the offence were an
19 offence against that Act.

20

21 **20. Section 28 amended**

22 In section 28(1)(h) delete “\$2 000,” and insert:

23

24 20 penalty units,

25

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1 **21. Schedule 1 inserted**

2 After section 28 insert:

3

4 **Schedule 1 — Listing of threatened fauna and flora**

5

[s. 7A]

6 **1. Terms used**

7 In this Schedule —

8 *commencement day* means the day of the coming into
9 operation of the *Biodiversity Legislation (Priority Reforms)*
10 *Act 2014* section 5;

11 *field survey evidence* means evidence that —

- 12 (a) is based wholly or primarily on actual on-site
13 biological survey work; and
14 (b) if the regulations set out any other criteria for the
15 purposes of this definition, meets those criteria;

16 *listing criteria* means the criteria set out in clause 4;

17 *previous declaration* means —

- 18 (a) in relation to fauna, a declaration under
19 section 14(4) as enacted before the commencement
20 day; and
21 (b) in relation to flora, a declaration under
22 section 23F(2) as enacted before the
23 commencement day.

24 **2. List of threatened taxa and threatened ecological**
25 **communities**

26 The Minister is to establish and maintain a list of threatened
27 taxa and threatened ecological communities.

28 **3. Establishment of threatened list**

- 29 (1) On or as soon as practicable after the commencement day
30 the Minister must establish the threatened list by instrument
31 published in the *Government Gazette*.

1 (2) The threatened list as first established must contain any
2 fauna or flora in respect of which a previous declaration was
3 in operation immediately before the commencement day.

4 **4. The listing criteria**

5 The criteria for the inclusion of a taxon or ecological
6 community in the threatened list are that the taxon or
7 ecological community —

- 8 (a) is likely to become extinct; or
9 (b) is rare; or
10 (c) is otherwise in need of special protection.

11 **5. Matters for consideration in making listing decisions**

12 (1) In this clause —
13 *listing decision* means —

- 14 (a) a decision by the Minister under clause 7, 8(6)
15 or (8) or 9; or
16 (b) a decision by the CEO under clause 8(4);

17 *precautionary principle* means the principle set out in
18 item 1 of the Table to the *Environmental Protection*
19 *Act 1986* section 4A as applied in accordance with that item.

20 (2) In making a listing decision the Minister or the CEO —

- 21 (a) must have regard to the precautionary principle and
22 relevant and detailed field survey evidence; and
23 (b) may obtain, and have regard to, advice from any
24 person or body considered by the Minister or the
25 CEO to have relevant expertise.

26 **6. How alterations to the threatened list are made**

27 Alterations to the threatened list under clause 7, 8, 9 or 10
28 are to be made by instrument published by the Minister in
29 the *Government Gazette*.

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- 1 **7. Additions to threatened list by Minister**
- 2 The Minister may, at any time, decide to add a taxon or
3 ecological community to the threatened list if the Minister
4 considers that it meets the listing criteria.
- 5 **8. Additions to threatened list through nomination process**
- 6 (1) Any person (the *nominator*) may nominate a taxon or
7 ecological community (the *nominated item*) for addition to
8 the threatened list if the nominator considers that the
9 nominated item meets the listing criteria.
- 10 (2) A nomination must be made by written notice sent to the
11 CEO.
- 12 (3) As soon as practicable after receiving a nomination, the
13 CEO must —
- 14 (a) publish notice in the *Government Gazette* that the
15 nomination has been received for consideration; or
- 16 (b) reject the nomination because it does not comply
17 with prescribed requirements as to the subject
18 matter of nominations, or the manner in which
19 nominations are to be made, or both.
- 20 (4) As soon as practicable, and not later than 12 months, after
21 publishing a notice under subclause (3)(a) the CEO must
22 consider the nomination and decide whether to recommend
23 to the Minister that the nominated item be added to the
24 threatened list or that it not be added to the threatened list.
- 25 (5) The CEO may decide to recommend to the Minister that the
26 nominated item not be added to the threatened list if, and
27 only if, the CEO is satisfied, on the balance of probabilities,
28 that the item does not meet the listing criteria.
- 29 (6) Not later than 3 months after receiving a recommendation
30 under subclause (4) the Minister must consider the
31 recommendation and decide whether or not to add the
32 nominated item to the threatened list.
- 33 (7) If the CEO recommended that the nominated item be added
34 to the threatened list, the Minister may decide not to add the

- 1 item to the threatened list if, and only if, the Minister is
2 satisfied —
- 3 (a) on the balance of probabilities; and
- 4 (b) on the basis of field survey evidence that was not
5 available to, or not considered by, the CEO,
- 6 that the item does not meet the listing criteria.
- 7 (8) If at the expiration of 12 months after the publication of a
8 notice under subclause (3)(a) the Minister has not received a
9 recommendation under subclause (4), the Minister must, not
10 later than 15 months after the publication of the notice,
11 consider the nomination and decide whether or not to add
12 the nominated item to the threatened list.
- 13 (9) The Minister may decide not to add the item to the
14 threatened list if, and only if, the Minister is satisfied, on the
15 balance of probabilities, that the item does not meet the
16 listing criteria.
- 17 (10) The CEO must advise the nominator by written notice of
18 any of the following —
- 19 (a) the publication of a notice under subclause (3)(a);
- 20 (b) the rejection of a nomination under
21 subclause (3)(b);
- 22 (c) a recommendation by the CEO under subclause (4);
- 23 (d) a decision by the Minister under subclause (6)
24 or (8).

25 **9. Deletions from threatened list**

- 26 (1) The Minister may decide to delete an item from the
27 threatened list if, and only if, the Minister is satisfied —
- 28 (a) on the balance of probabilities; and
- 29 (b) on the basis of field survey evidence that was not
30 available, or not considered, when the item was
31 included in the threatened list,
- 32 that the item does not meet the listing criteria.

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1 (2) For the purposes of subclause (1)(b), an item referred to in
2 clause 3(2) is taken to have been included in the threatened
3 list when the relevant previous declaration was made.

4 **10. Corrections to threatened list**

5 The Minister may, at any time, amend the threatened list by
6 correcting an inaccuracy or updating the name of a taxon or
7 ecological community.
8

1 **Part 3 — *Environmental Protection Act 1986* amended**

2 **22. Act amended**

3 This Part amends the *Environmental Protection Act 1986*.

4 **23. Section 51QA inserted**

5 After section 51P insert:

6

7 **51QA. State Administrative Tribunal may review decisions**
8 **about clearing permits in certain cases**

9 (1) In this section —

10 *decision* has the meaning given in section 51O(1);

11 *proceeding* means a proceeding in the State
12 Administrative Tribunal.

13 (2) Any person may apply to the State Administrative
14 Tribunal for the review of a decision if the person is
15 dissatisfied with the decision on the grounds —

16 (a) that the CEO considered that the decision was
17 not seriously at variance with the clearing
18 principles; or

19 (b) that the CEO considered that the decision was
20 seriously at variance with the clearing
21 principles but formed the opinion that there was
22 a good reason for making it.

23 (3) For the purposes of subsection (2)(a), the CEO is taken
24 to have considered that a decision was not seriously at
25 variance with the clearing principles unless the
26 particulars relating to the decision as published under
27 section 51Q include a reason as referred to in
28 section 51O(3).

29 (4) An application to the State Administrative Tribunal for
30 the review of a decision must be made within the

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- 1 period of 21 days after the particulars relating to the
2 decision are published under section 51Q.
- 3 (5) The *State Administrative Tribunal Act 2004* section 20
4 does not apply to a decision.
- 5 (6) The applicant for, or holder of, the permit about which
6 a decision was made is a party to a proceeding for the
7 review of the decision.
- 8 (7) In a proceeding for the review of a decision the State
9 Administrative Tribunal may receive or hear
10 submissions from a person who is not a party to the
11 proceeding if the Tribunal is of the opinion that the
12 person has a sufficient interest in the matter.
- 13 (8) After the commencement of a proceeding for the
14 review of a decision —
- 15 (a) no clearing is to take place under the permit
16 about which the decision was made; and
- 17 (b) no other action is to be taken to implement the
18 decision.
19

20 **24. Schedule 5 amended**

- 21 (1) In Schedule 5 before clause 1(a) insert:
22
- 23 (aa) it comprises the whole or a part of, or includes, an
24 area that is likely to be important as a climate
25 change refuge; or
26
- 27 (2) In Schedule 5 clause 1(c) delete “rare” and insert:
28
- 29 listed
30

- 1 (3) In Schedule 5 before clause 1(e) insert:
2
- 3 (ea) it comprises the whole or a part of, or is necessary
4 for the maintenance of, an ecological community in
5 respect of which there is reason to believe that its
6 extent is less than 30 per cent of its extent
7 before 1750; or
- 8 (eb) it comprises the whole or a part of, or includes, an
9 area that is significant for ecological connectivity;
10 or
11
- 12 (4) In Schedule 5 clause 2 delete the definitions of:
13 *rare flora*
14 *threatened ecological community*
- 15 (5) In Schedule 5 clause 2 insert in alphabetical order:
16
- 17 *listed flora* has the meaning given in the *Wildlife*
18 *Conservation Act 1950* section 6(1);
19 *threatened ecological community* means an ecological
20 community —
- 21 (a) in the list established and maintained under the
22 *Wildlife Conservation Act 1950* Schedule 1
23 clause 2; or
- 24 (b) listed, designated or declared under a law of the
25 Commonwealth as threatened, endangered or
26 vulnerable;
27
- 28
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