

WESTERN AUSTRALIA

LEGISLATIVE COUNCIL

AMENDMENTS AND SCHEDULES

**Supplementary Notice Paper No. 166
Issue No. 2**

TUESDAY, 16 AUGUST 2016

BIODIVERSITY CONSERVATION BILL 2015 [166-2]

When in committee on the *Biodiversity Conservation Bill 2015*:

Clause 3

Hon Adele Farina: To move –

7/3 Page 2, lines 12 to 18 — To delete the lines and insert —

- (a) it is an obligation on any person on whom a function is imposed, or a power conferred under this Act, to perform the function or exercise the power in such a manner as to advance and further the primary object of conserving Western Australia's biodiversity;
- (b) in complying with the duty imposed by subsection (1), a body or office holder must have regard to the Act's primary object, and any strategy designated under Part 1A;
- (c) the primary object of this Act is to be achieved by, amongst other things:
 - (i) preventing human-induced extinctions of species and ecological communities;
 - (ii) ensuring the survival and maintenance of biodiversity at community, species and genetic levels, and its evolutionary potential in the wild;
 - (iii) enhancing and restoring biodiversity through protection and management of habitats and ecosystems, and ensuring ecological integrity and processes;
 - (iv) identification and management of biodiversity that is significant at local, regional and national levels;

- (v) ensuring sustainable use of biological resources, according to the principles of ecologically sustainable development set out in Part 1A;
- (vi) ensuring the fair and equitable sharing amongst stakeholders of benefits arising from bioprospecting involving indigenous biological resources;
- (vii) mitigating key threatening processes and impacts of environmental pests;
- (viii) ensuring that citizens have access to reliable and relevant information, in appropriate forms to facilitate understanding, and opportunities to participate in planning and policy development;
- (ix) promoting co-operative management with all levels of government, community-based organisations, Aboriginal people and landholders;
- (x) furthering biodiversity knowledge and promoting education;
- (xi) periodic evaluation and reporting on the state and condition of WA's biodiversity as designated under Part 1A; and
- (xii) implementation of the strategy set out in Part 1A.

Clause 7

Minister for Planning representing the Minister for Environment: To move –

1/7 Page 18, after line 10 — To insert —

biodiversity conservation conditions means conditions or requirements relating to the conservation or protection of biodiversity or biodiversity components;

Minister for Planning representing the Minister for Environment: To move –

2/7 Page 18, line 23 to page 19, line 2 — To delete the lines and insert —

act if —

- (a) it is —
 - (i) an act that is authorised by a relevant authorisation or is otherwise authorised or required under a written law or State agreement; or
 - (ii) an act that is a likely consequence of an act referred to in subparagraph (i);

and

- (b) all biodiversity conservation conditions that apply to or in relation to it are complied with, whether those conditions are imposed under the relevant authorisation, written law or State agreement referred to in paragraph (a)(i) or imposed in some other way.

New Part 1A**Hon Adele Farina:** To move –

Page 21, after line 17 — To insert —

8/NP1A

Part 1A — Biodiversity Planning and Monitoring**12A. Statewide biodiversity conservation strategy**

- (1) The Minister must —
 - (a) prepare and adopt a statewide biodiversity conservation strategy for Western Australia within two years of the date on which this Act takes effect; and
 - (b) monitor the implementation and effectiveness of the strategy; and
 - (c) review the strategy every five years; and
 - (d) may, when necessary, amend the strategy.
- (2) The Minister must by notice in the *Gazette* publish the biodiversity conservation strategy and each amendment of the strategy.

12B. Contents of the statewide strategy

The strategy in section 12A must —

- (a) provide for an integrated, co-ordinated and uniform approach to further and promote biodiversity conservation encompassing government agencies, regional and local communities, other stakeholders and citizens;
- (b) be consistent with —
 - (i) the Act's objects and how these are to be achieved; and
 - (ii) State environmental policies; and
 - (iii) biodiversity recovery and management plans; and
 - (iv) co-operative arrangements with the Australian Government, local government authorities and regional natural resource management groups; and
 - (v) relevant international agreements;
- (c) identify priority areas for conservation action and investment, including the following —
 - (i) establishing a marine and conservation reserve system;
 - (ii) landscape scale approaches across tenures;
 - (iii) restoration of habitats;
 - (iv) landscape connectivity;
 - (v) threats to biodiversity;
 - (vi) impacts of climate change;
 - (vii) research and monitoring requirements;
 - (viii) education and raising public awareness;
 - (ix) facilitating access to information.

12C. Development of statewide strategy

- (1) The CEO must prepare a draft nature conservation strategy for Western Australia.

- (2) In preparing the draft biodiversity conservation strategy, the CEO must consider the objects of the Act.
- (3) In preparing the draft biodiversity conservation strategy, the CEO must consult with the —
 - (a) Scientific Advisory Committee; and
 - (b) Biodiversity Commission; and
 - (c) Conservation and Parks Commission; and
 - (d) parties affected by the implementation of the strategy.
- (4) The CEO must publish a notice in the *Gazette* and on the department's website inviting comment on the draft strategy.
- (5) Submissions in respect of a statewide biodiversity conservation strategy may be made by any person within 60 days of the publication of the notice referred to in subsection (4).
- (6) In preparing the final draft strategy, the CEO must —
 - (a) consider all submissions received; and
 - (b) obtain and consider final advice from the —
 - (i) Scientific Advisory Committee; and
 - (ii) Biodiversity Commission; and
 - (iii) Conservation and Parks Commission; and
 - (iv) affected government agencies.
- (7) The CEO must submit the draft statewide biodiversity conservation strategy to the Minister for approval within 6 months of the closing of public consultation in subsection (5).
- (8) The draft strategy must be accompanied by a report setting out the issues raised in any submissions given during the public consultation period for the draft strategy.
- (9) The Minister must cause notice of publication in the *Gazette* and on the department's website —
 - (a) final biodiversity conservation strategy; and
 - (b) report on submissions in subsection (8).

12D. Implementation of strategy

The CEO must take reasonable steps to implement a statewide biodiversity conservation strategy that has been approved through provisions of this Act.

12E. Review of statewide biodiversity conservation strategy

- (1) The Biodiversity Commission when undertaking a review must —
 - (a) undertake public consultation for a period no less than 60 days and consider submissions; and
 - (b) obtain and consider advice from the Scientific Advisory Committee, Conservation and Parks Commission and the department administering the Act; and
 - (c) consult with affected government agencies and other stakeholders.

- (2) The Biodiversity Commission must provide the final review with recommendations and a report on submissions received to the Minister for approval.
- (3) The Minister must consider the report and may take any action considered appropriate.
- (4) The Minister must —
 - (a) cause an order and copy of the final report of the review in subsection (1), report on submissions received in subsection (2), and report received from the Biodiversity Commission to be laid before each House of Parliament; and
 - (b) make the final review and report on submissions publicly available within 30 days after tabling in Parliament.

12F. Minor amendments to the statewide conservation strategy

- (1) The Minister —
 - (a) may prepare a new biodiversity conservation strategy, incorporating the minor technical or clerical amendments into the existing strategy; and
 - (b) need not comply with the requirements in this Part.
- (2) If a new nature conservation strategy is prepared in subsection (1), the Minister must cause an order to be laid before each House of Parliament, and make publically available within 30 days of tabling in Parliament.

12G. Bioregional planning

- (1) The Minister may determine a region as a bioregion.
- (2) The Minister may prepare and publish a bioregional plan for the bioregion either —
 - (a) on the Minister's initiative; or
 - (b) at the request of a regional natural resource management group or local government municipality; or
 - (c) at the request of any person.
- (3) In preparing a bioregional plan, the Minister must carry out public consultation on a draft of the plan.
- (4) The Minister may, on behalf of the State, co-operate with another jurisdiction or, an agency of a jurisdiction or any other person in the preparation of a bioregional plan for a bioregion that is not wholly within the State.
- (5) Co-operation in implementation of a bioregional plan may include giving financial or other assistance.
- (6) A bioregional plan may include provisions about all or any of the following —
 - (a) the components of biodiversity, their distribution and conservation status;
 - (b) priorities, strategies and actions to achieve the objectives of the bioregional plan;
 - (c) mechanisms for community involvement in implementing the bioregional plan;
 - (d) measures for monitoring and reviewing the bioregional plan.

- (7) Subject to this Act, the Minister must have regard to a bioregional plan in making any decision under this Act to which the plan is relevant.
- (8) The Minister must review a bioregional plan at least every five years, and assess compliance with the plan and the extent to which its objectives are being met.
- (9) The Minister must publish a bioregional plan and any review in the *Gazette* and make publically available within 30 days of publication.

12H. Biodiversity monitoring, evaluation and reporting on state and condition of biodiversity

- (1) The Biodiversity Commission must undertake a review and prepare a report on the state and condition of WA's biodiversity every five years from the commencement of this Act.
- (2) In undertaking the review in subsection (1), the Biodiversity Commission must establish evaluation framework, mechanisms and a set of indicators to determine —
 - (a) trends in state and condition of biodiversity components, including the following —
 - (i) threatened species and ecological communities;
 - (ii) priority species and ecological communities;
 - (iii) specially protected species;
 - (iv) Ramsar wetlands;
 - (v) nationally listed wetlands;
 - (vi) native vegetation extent and condition;
 - (vii) sandalwood;
 - (b) trends in pressures for biodiversity components listed in paragraph (a);
 - (c) the effectiveness of management intervention for biodiversity components listed in paragraph (a).
- (3) The Biodiversity Commission must provide a review and report with recommendations to the Minister for approval.
- (4) The Minister must consider the report and may take any action considered appropriate.
- (5) The Minister must —
 - (a) cause an order and copy of the final report of the review in subsection (1) and report received from the Biodiversity Commission to be laid before each House of Parliament; and
 - (b) make the final review and report on submissions publically available within 30 days after tabling in Parliament.

New Part 1B**Hon Adele Farina:** To move –

9/NP1B Page 21, after line 17 — To insert —

Part 1B — Biodiversity Commission**12I. Establishment of the Biodiversity Commission**

- (1) There is to be a Biodiversity Commission, comprising 7 members.
- (2) The Minister is to determine by instrument in writing the membership and the terms and conditions of appointment of members of the Biodiversity Commission, and appoint a chair and deputy chair.
- (3) The members of the Biodiversity Commission are to have expertise in one or more of the following areas —
 - (a) biodiversity conservation;
 - (b) biological science;
 - (c) environmental sciences.
- (4) The Minister must ensure that —
 - (a) members possess scientific qualifications that the Minister thinks relevant to the performance of the the Biodiversity Commission’s functions; and
 - (b) members are appointed to represent the Biodiversity Commission; and
 - (c) at least 5 members are not to be public servants; and
 - (d) the Chair and deputy chair are not to be public servants.
- (5) The Biodiversity Commission may establish sub-committees or seek advice on relevant matters in order to perform its functions.

12J. Functions of the Biodiversity Commission

The functions of the Biodiversity Commission are to —

- (a) advise the Minister, at his or her request, on matters relating to the conservation and ecologically sustainable use of biodiversity; and
- (b) undertake periodic reviews of the statewide biodiversity conservation strategy to determine its effectiveness; and
- (c) undertake periodic reviews of the assessment and report on the overall state and condition of biodiversity; and
- (d) undertake periodic reviews of recovery, abatement and management plans; and
- (e) perform such other functions as are conferred on the Biodiversity Commission by this Act or the regulations.

12K. Biodiversity Commission — Annual Report

- (1) The scientific committee described in Part 1C must, each financial year, give the Minister a report (an *annual report*) about the activities of the committee during the year.
- (2) The scientific committee must make the annual report publicly accessible not later than 30 days after the day the scientific committee gives the report to the Minister.

New Part 1C**Hon Adele Farina:** To move –

10/NP1C Page 21, after line 17 — To insert —

Part 1C — Scientific Advisory Committee**12L. Scientific Advisory Committee**

- (1) There is established a body to be called the Scientific Advisory Committee.
- (2) The functions of the Scientific Advisory Committee are to advise the Minister on the following —
 - (a) listing and de-listing of taxa of flora and fauna, ecological communities;
 - (b) listing and de-listing of key threatening processes;
 - (c) criteria and guidelines to be followed in the determination of threatened and priority taxa and ecological communities;
 - (d) criteria and guidelines to be followed in the determination of threatened and priority taxa and ecological communities critical habitat;
 - (e) other matters relating to the conservation of threatened biodiversity.
- (3) Other functions of the Scientific Advisory Committee are —
 - (a) preparation of conservation advice upon listing for each taxa, ecological community and key threatened processes outlining objectives and immediate actions to be undertaken; and
 - (b) undertake reviews of listings at least every five years.

12M. Membership

- (1) The Scientific Advisory Committee is to consist of 7 members to be appointed by the Minister of whom not more than 4 are to be State Service officers or State Service employees and of whom one is to be appointed as chairperson.
- (2) All members of the Scientific Advisory Committee are to have special knowledge and experience in the sciences of biodiversity or ecology.
- (3) The members of the Scientific Advisory Committee must collectively have expertise in the following categories and each member must have expertise in one or more of the following categories —
 - (a) vertebrate fauna;
 - (b) invertebrate fauna;
 - (c) vascular flora;
 - (d) non-vascular flora;
 - (e) taxonomy;
 - (f) marine ecology;
 - (g) freshwater ecology;
 - (h) terrestrial ecology;
 - (i) population ecology.

- (4) For the purposes of giving advice to the Minister and in performing its functions under this Act, the Scientific Advisory Committee may consult with members of the broader scientific community as it considers appropriate, and convene sub-committees of expertise.

Clause 37

Hon Lynn MacLaren:

20/37 Page 32, lines 17 to 32 — To oppose the clause

New Clause 37

Hon Lynn MacLaren: To move –

21/NC37 Page 32, line 17 — To insert —

37. Minister to obtain scientific advice on listing decision

Before making a listing decision the Minister must obtain and have regard to advice from one or more persons considered by the Minister to have scientific expertise relevant to the matter to which the decision relates.

Clause 40

Hon Adele Farina: To move –

11/40 Page 34, line 6 — To delete “instrument” and insert —

order

Hon Adele Farina: To move –

12/40 Page 34, line 10 — To delete “instrument” and insert —

order

Hon Adele Farina: To move –

13/40 Page 34, after line 11 — To insert —

- (4) Section 258 applies to an order made under subsection (1) and (3).

Clause 42

Hon Adele Farina: To move –

14/42 Page 36, after line 17 — To insert —

- (2A) Before the Minister seeks approval from the Governor, the Minister must publish a notice in the *Gazette* and on the department’s website seeking comment on the proposed taking or disturbance and provide reasons for such action.

- (2B) Submissions in respect of the proposed taking or disturbance may be made by any person that is not less than 60 days after the day on which the notice referred to in (3) is published in the *Gazette*.
- (2C) When preparing a final proposal to the Governor, the Minister must —
- (a) obtain and consider advice from the Scientific Advisory Committee and any other relevant advisory body deemed appropriate; and
 - (b) make public, advice in paragraph (a) available via the Department’s website.
- (2D) The Minister must not seek approval under subsection (1) unless the Minister has had regard to —
- (a) any submissions made under subsection (2B); and
 - (b) Australia’s obligations under international agreements relevant to the threatened species or threatened ecological community to which the proposal relates; and
 - (c) the extent to which any environmental protection policy affects the conservation, protection and management of the threatened species or threatened ecological community to which the proposal relates; and
 - (d) the extent to which any recovery plan or interim recovery plan affects the conservation, protection and management of the threatened species or threatened ecological community to which the proposal relates; and
 - (e) the need to avoid any adverse ecological or social impacts.
- (2E) Before making a final proposal to the Governor, the Minister must cause an order under section 40 to be tabled in both Houses of Parliament.

Hon Lynn MacLaren:

22/42 Page 36, lines 8 to 24 — To oppose the clause.

New Clause 42

Hon Lynn MacLaren: To move –

23/NC42 Page 36, line 8 — To insert —

42. Parliament’s approval required for certain proposals

- (1) In this section *proposal* means —
 - (a) a proposal to give an authorisation under section 40; or
 - (b) a proposal to amend an authorisation given under that section.
- (2) This section applies to a proposal if, in the opinion of the Minister, the authorisation or amendment the subject of the proposal could be expected to result in the threatened species to which the proposal relates becoming eligible for listing as an extinct species in the near future.
- (3) Despite subsection (2), this section does not apply to a proposal if the purpose of the taking or disturbance to which the proposal relates is to establish a breeding colony or a population in cultivation so that the threatened species can be reintroduced into the wild at a later time.
- (4) The Minister must not give the authorisation or make the amendment the subject of a proposal to which this section applies unless the proposal —
 - (a) has been laid before each House of Parliament; and

- (b) has been approved by a resolution passed by both Houses of Parliament.

Clause 45

Hon Adele Farina: To move –

15/45 Page 38, line 3 — To delete “instrument” and insert —

order

Hon Adele Farina: To move –

16/45 Page 38, line 8 — To delete “instrument” and insert —

order

Hon Adele Farina: To move –

17/45 Page 38, after line 9 — To insert —

- (4) Section 258 applies to an order made under subsection (1) and (3).

Clause 47

Hon Adele Farina: To move –

18/47 Page 40, after line 8 — To insert —

- (1A) Before the Minister seeks approval from the Governor, the Minister must publish a notice in the *Gazette* and on the department’s website seeking submissions on the proposed modification and provide reasons for such action.
- (1B) Submissions in respect of the proposed modification may be made by any person that is not less than 60 days after the day on which the notice referred to in subsection (1A) is published in the *Gazette*.
- (1C) When preparing a final proposal to the Governor, the Minister must —
- (a) obtain and consider advice from the Scientific Advisory Committee and any other relevant advisory body deemed appropriate; and
 - (b) make public the advice referred to in paragraph (a) available via the Department’s website.
- (1D) The Minister must not seek approval under subsection (1) unless the Minister has had regard to each of the following—
- (a) any submissions made under subsection (1B);
 - (b) any advice obtained under subsection (1C);
 - (c) Australia’s obligations under international agreements relevant to the threatened species or threatened ecological community to which the proposal relates;

- (d) the extent to which any environmental protection policy affects the conservation, protection and management of the threatened species or threatened ecological community to which the proposal relates;
 - (e) the extent to which any recovery plan or interim recovery plans affects the conservation, protection and management of the threatened species or threatened ecological community to which the proposal relates; and
 - (f) the need to avoid any adverse ecological and social impacts.
- (1E) Before making a final proposal to the Governor, the Minister must cause an order under section 45 to be tabled in both Houses of Parliament.

Hon Lynn MacLaren:

24/47 Page 40, lines 3 to 15 — To oppose the clause.

New Clause 47

Hon Lynn MacLaren: To move –

25/NC47 Page 40, line 3 — To insert —

47. Parliament’s approval required for certain proposals

- (1) In this section *proposal* means —
 - (a) a proposal to give an authorisation under section 45; or
 - (b) a proposal to amend an authorisation given under that section.
- (2) This section applies to a proposal if, in the opinion of the Minister, the authorisation or amendment the subject of the proposal could be expected to result in the threatened ecological community to which the proposal relates becoming eligible for listing as a collapsed ecological community in the near future.
- (3) The Minister must not give the authorisation or make the amendment the subject of a proposal to which this section applies unless the proposal —
 - (a) has been laid before each House of Parliament; and
 - (b) has been approved by a resolution passed by both Houses of Parliament.

Clause 151

Minister for Planning representing the Minister for Environment: To move –

3/151 Page 95, line 26 — To delete “fauna;” and insert —

fauna (other than fish or pearl oyster);

Minister for Planning representing the Minister for Environment: To move –

4/151 Page 96, line 3 — To delete “fauna;” and insert —

fauna (other than fish or pearl oyster);

Clause 153

Minister for Planning representing the Minister for Environment: To move –
5/153 Page 98, line 15 — To delete “fauna;” and insert —

fauna (other than fish or pearl oyster);

Minister for Planning representing the Minister for Environment: To move –
6/153 Page 98, line 24 — To delete “fauna;” and insert —

fauna (other than fish or pearl oyster);

Clause 259

Hon Adele Farina: To move –
19/259 Page 163, line 1, the Table after the 1st row — To insert —

s. 40(1) and (3)	s. 45(1) and (3)
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Clause 314

Hon Lynn MacLaren: To move –
26/314 Page 198, line 4 — To insert —

(d) after paragraph (j) insert:

(k) it includes critical habitat.

Hon Lynn MacLaren: To move –
27/314 Page 198, after line 11 — To insert —

Critical habitat has the same meaning as it has in the *Biodiversity Conservation Act 2016*;

