

NEW SOUTH WALES



***NATURAL RESOURCES
PACKAGE***

~ DISCUSSION PAPER AND EXPOSURE BILLS ~

JUNE 1992

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FOREWORD

The legislation presented in this Paper - the "natural resources package" - gives effect to my Government's commitment to develop an improved framework within which decisions about the balance between conservation and use of natural resources can be made.

As I pointed out earlier this year in the "New South Wales: Facing the World" statement, governments have for too long been content with looking at only small parts of the State's environmental problems. As a result, there has been insufficient co-ordination of natural resource decision-making.

Unfortunately, the climate of uncertainty which this has created has meant that industry has often not had the confidence to make longer term investments in this State's natural resource base. As a consequence, New South Wales has been deprived of job creation opportunities.

At the same time, the failure to take a long-term "whole of resource" approach to our natural resources has contributed to unnecessary damage of the natural environment and raised concerns for environmentalists about the rate of exploitation and the adequacy of conservation measures.

Since coming to office, my Government has argued for the adoption of a wider perspective as the basis for the allocation and management of the State's natural resources. A comprehensive and agreed information base on the economic and environmental status of those resources must be developed if this is to be achieved. The Government will then be in a position to properly assess on behalf of the community claims and counter claims as to what constitutes the most appropriate use of natural resources.

The natural resources package represents an effective and long term strategy for addressing environmental issues, while also ensuring that the State's natural resource development potential is realised.

This paper has been prepared to encourage public consideration of the package. Submissions on the legislative proposals presented are invited and should be forwarded by 2 September to:

Natural Resources Package Discussion Paper
The Cabinet Office
Natural Resources Branch
G.P.O. Box 5341 Sydney 2001



Nick Greiner M.P.
Premier of New South Wales

NATURAL RESOURCES PACKAGE - DISCUSSION PAPER

1. INTRODUCTION

In the 1990 Earth Day statement - "The New Environmentalism" - the Government committed itself to exploring ways of dealing with public land use and natural resource management issues in a manner that more effectively integrates economic and environmental imperatives.

That undertaking was made in response to problems relating to the management of public land and natural resources, including:

- frequent disputes between agencies motivated by inter-agency tensions which impede rational decision making;
- deficiencies in information on the value and status of natural resources;
- the absence of a body capable of assessing competing environmental and economic interests in publicly owned land and its natural resources on a "whole of resource" basis.

The "natural resources package" of Bills gives effect to the Government's undertaking to integrate and co-ordinate all aspects of public land use and natural resource management. The package comprises a series of inter-related policy initiatives designed to ensure that publicly owned land and natural resources in this State are managed and allocated in the interests of ecologically sustainable economic development and the conservation of our natural heritage.

The package comprises the following bills prepared by the Parliamentary Counsel:

- Natural Resources Management Council Bill 1992
- Endangered and Other Threatened Species Conservation Bill 1992
- Environmental Planning and Assessment (Amendment) Bill 1992
- Forest (Resource Security) Bill 1992
- Heritage (Amendment) Bill 1992

Central to the package is the Natural Resources Management Council Bill 1992. This gives effect to the Government's commitment to establish a body capable of taking account of competing interests in public land and natural resources and of performing the following functions:

- the compilation of comprehensive and reliable information about the environmental and economic values of State-owned natural resources;
- the assessment on behalf of the community of claims and counter claims as to what constitutes the most appropriate use of those resources;

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- the resolution of inevitable conflicts as they arise in a fair, open and sensible manner.

In addition, the Natural Resources Management Council will give industry confidence to invest in this State's natural resources by removing uncertainty over access to those resources.

Since the decision was made by this Government to proceed with the establishment of the Natural Resources Management Council, it has become evident that more comprehensive change is required if this State's natural resources are to be managed so as to appropriately balance conservation and development.

The Government has responded to this imperative by developing other measures to complement the establishment of the Council and has combined these in the natural resources package.

The dispute last year over logging in the Chaelundi State forest graphically illustrated what occurs when agencies independently of one another determine how public land should be used.

The underlying inadequacies in public land and natural resource management demonstrated by the Chaelundi case have been exacerbated by the Opposition's Endangered Fauna (Interim Protection) Act 1991. That Act fails to adequately integrate the protection of native species with planning decisions. Rather, it imposes an additional layer of regulation on development, while doing little to further protect native species.

Rather than introducing ill-considered endangered species legislation, this Government has continued with the task it set itself well before the introduction of the Opposition's Act of preparing a balanced and effective strategy for the protection and recovery of endangered native species which ensures that adequate consideration is given to social and economic consequences of any measures for the protection of species. The Government is now in a position to give effect to this strategy through the Endangered and Other Threatened Species Conservation Bill 1992.

The natural resources package also addresses duplication of existing statutory provisions for the protection of the natural environment. For example, during the Chaelundi dispute, interim orders to stop logging were applied for under both the National Parks and Wildlife Act 1974 and the Heritage Act 1977. The Bill to amend the Heritage Act will confine the operation of that Act to cultural heritage. At the same time, additional powers to make interim orders for the protection of the natural environment are included in the Endangered and Other Threatened Species Conservation Bill 1992.

The natural resources package also responds to the lack of public confidence and controversy often generated when government agencies decide to proceed with major development proposals which have a significant environmental impact. This has led to the criticism that government agencies are "judge and jury" in their own cause.

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The Environmental Planning and Assessment (Amendment) Bill 1992 will expand the Minister for Planning's role in relation to activities and projects proposed by government agencies which are likely to significantly affect the environment. The Minister's approval will be required before such activities or projects may proceed.

The systematic review on a regional basis of public land and its natural resources by the Natural Resources Management Council will ensure that more rational decisions regarding their use are made. This will enhance resource security for industry.

However, continuing resource access problems confronting the timber industry reveal that the establishment of the Council will not, in isolation, give the industry the confidence it needs to undertake major and longer term investment in forestry and forest product developments.

The Forest (Resource Security) Bill 1992 will give the timber industry additional resource security by guaranteeing access to timber on public forested land allocated to timber production. Land will be identified as timber production land on the basis of reports by the Natural Resources Management Council. In addition, the Bill will provide for contractual arrangements with industry for compensation if land is withdrawn from timber production.

The Intergovernmental Agreement on the Environment provides a mechanism for identifying the responsibilities of the Commonwealth and State governments in environmental matters. This is achieved through determination and accommodation of Commonwealth and State interests by co-operative setting of outcomes and standards and accreditation of government processes.

In accordance with the Agreement, the Government will seek Commonwealth accreditation for the processes and procedures to be established by the Natural Resources Management Council Bill 1992 and the Endangered and Other Threatened Species Conservation Bill 1992. Once granted, the Commonwealth will be required to accept and rely on the outcome of those processes and procedures.

2. NATURAL RESOURCES MANAGEMENT COUNCIL BILL 1992

2.1 *Principal Functions*

The Natural Resources Management Council will conduct reviews on a regional basis of existing or proposed uses of public land and its natural resources, and provide advice on the resolution of site specific disputes and issues about the use of public land.

In effect, the Council will conduct an environmental audit of the State's publicly-owned land and natural resources.

In addition to this environmental audit, the Council will also be responsible for compiling and evaluating all relevant information held by government agencies about public land and its natural resources, and will undertake its own research, or arrange for research to be done, where relevant and reliable information is not available.

The Council's focus will be public land and its natural resources. For the purposes of the Council's inquiries, "public land" is broadly defined in the Natural Resources Management Council Bill and includes, for example, all Crown land, State forests, national parks and the State's coastal waters. "Natural resources" is also broadly defined and includes soil, coal, minerals, petroleum, timber, water and fishery resources.

2.2 *Membership*

The Council will comprise 13 members, including an independent chairperson. In determining the membership an important consideration has been to ensure balance is achieved between conservation and resource use interests.

Included on the Council are the chief executive officers of the major government agency stakeholders in land use, conservation and resource management, namely:

- Department of Planning;
- Department of Conservation and Land Management;
- Forestry Commission;
- National Parks and Wildlife Service;
- Environment Protection Authority;
- Department of State Development;
- any one of the chief executive officers of the Department of Water Resources, NSW Fisheries and the Department of Mineral Resources.

The Federal Government will also be invited to nominate a representative from the Australian Heritage Commission for the Council. This will better ensure that the Commonwealth's interests are catered for in the Council's deliberations and will assist in avoiding duplication of environmental assessment procedures between NSW and the Commonwealth.

In addition, four non-government members will be appointed by the Premier, having expertise in resource economics, natural resource conservation, natural resource extraction and processing, biodiversity conservation, and industry and commerce. It is important to note that these external members will be appointed on the basis of expertise, rather than on their ability to represent sectional interests.

23 *Terms of Reference*

The terms of reference for regional reviews and site specific investigations will be determined by the Premier. However, in order to ensure independence, the Council will not be subject to the control or direction of the Premier or any other Minister in respect of the contents of any of the Council's reports or advice.

A reference to the Council for a regional review may include private land if that land is in the vicinity of public land, or if it has some other connection with public land. This recognises that decisions on public land use cannot realistically be addressed in isolation from consideration of some private land.

However, while acknowledging that the consideration of publicly owned natural resources - for example, minerals and water - extends to both private and public land, the focus of the Council has been directed at those publicly owned natural resources directly associated with public land, in recognition that this is where the major conflicts for the Government occur.

24 *Operation of the Council*

In considering the proposed uses of public land, the Council will need to have regard to:

- the environmental, social and economic implications of the proposed uses;
- the effect of those uses on endangered or other threatened species of animals or plants; and
- the effect of those uses on the utilisation of the natural resources of the public land.

It is not intended that the Council encroach upon, replace or duplicate the core activities of existing government agencies. Rather, the Council will co-ordinate relevant existing agency functions and propose arrangements to improve efficiency and effectiveness in agency management of public land and natural resources.

A small permanent secretariat will be established to service the Council. This will consist of core support and administrative staff, together with project managers for co-ordination of regional reviews and issue or site specific studies.

2.5 *Public Consultation and Implementation of Reports*

The Natural Resources Management Council Bill ensures that the public is consulted by the Council in the preparation of its reports and advice. Each of the Council's draft reports of regional reviews will be made available for public comment and the Council will be required to take into account public submissions in finalising its reports.

Final reports prepared by the Council will be tabled in Parliament. The Government will then consider the Council's recommendations and decide whether these are to be adopted by the Government. Ministers and government agencies will be required to take into account any adopted report that is relevant to the exercise of their functions, and must rely on the information in the report unless there are good reasons not to do so.

3. **ENDANGERED AND OTHER THREATENED SPECIES CONSERVATION BILL 1992**

The object of the Endangered and Other Threatened Species Conservation Bill is to prevent the extinction and promote the recovery of endangered and other threatened species of plants and animals. The Bill also addresses problems generated by the Chaelundi case and the Opposition's Endangered Fauna (Interim Protection) Act 1991.

3.1 *Implications of the Chaelundi Case*

The Chaelundi case involved the interpretation of sections 99 and 98 of the National Parks and Wildlife Act 1974. Those provisions make it an offence to "take or kill" any endangered fauna and other protected fauna respectively. They were interpreted in the Chaelundi case as extending to "habitat destruction or degradation which disturbs an endangered or protected species". The Opposition's Endangered Fauna (Interim Protection) Act amended the National Parks and Wildlife Act to give statutory force to this interpretation.

The Chaelundi case was directly concerned with logging activities in State forests. However its implications go far beyond forestry. Any activities which have the effect of "disturbing" individual protected fauna, even if conducted under the authority of a statute, could amount to a breach of section 98 or 99.

Under the National Parks and Wildlife Act, licences can be issued that authorise the taking or killing of fauna, protecting the holder from criminal liability. However, since the decision in the Chaelundi case, licences are now necessary for any development or activity which disturbs the habitat of native fauna. The use of the licensing system under the National Parks and Wildlife Act for such a broad purpose was never contemplated.

In addition, the Opposition's Endangered Fauna (Interim Protection) Act has made the licensing scheme extremely cumbersome, while providing little benefit for species conservation. In effect, the Opposition's Act has placed proponents of development activities in a position of "double jeopardy" - many activities now require both a licence under the National Parks and Wildlife Act and development consent or assessment under the Environmental Planning and Assessment Act before they can proceed.

One of the aims of the Government's Endangered and Other Threatened Species Conservation Bill is to overcome the duplication created by the Opposition's legislation. It provides a mechanism for integrating decisions about protection of habitat of native species with planning decisions, recognising that planning legislation is the appropriate mechanism for reconciling and balancing conservation with other values, such as economic and social values.

3.2 *Listing of Species*

The determination of whether or not a species is eligible for classification as an endangered or other threatened species should be a purely scientific task. For this reason, the Bill establishes an independent Scientific Committee to make recommendations as to listing.

The Bill specifies the criteria which the Committee is to apply in determining whether to recommend that a species should be listed. The criteria for listing endangered and other threatened species are generally consistent with current or proposed international standards.

It is proposed that eligibility for listing be determined on an Australia-wide basis, rather than a State-wide basis. This avoids the possibility of listing as endangered a species which, although scarce in New South Wales, is abundant elsewhere in Australia.

In addition, the Bill provides that listing be based on the likelihood of extinction within a specified period of time. For example, a species will be eligible for listing as *endangered* if it is likely to become extinct in Australia within 20 years. The Bill does not specify with exactness the degree of probability of extinction. However, the Bill recognises that these criteria may need to be refined by providing that regulations may be made to specify different time frames or the probability of extinction.

3.3 *Recovery Plans*

Once a species has been identified as endangered, the Director of National Parks and Wildlife will need to determine what needs to be done to conserve the species and promote its recovery. This will involve the preparation of "recovery plans". The Director will also have a discretion to prepare recovery plans for other threatened species.

It is contemplated that endangered species will be protected primarily through protecting their habitat. This will be done by means of environmental planning instruments which restrict or prohibit development in designated areas of habitat on both public and private land. Amendments to the Environmental Planning and Assessment Act will clearly empower planning instruments to make provision for protection of native species and their habitat.

Once a recovery plan has been approved by the Government, relevant government agencies will be required to implement it. However, the legislation will not allow a government agency or a Minister to act in breach of a statutory or other legal obligation in implementing plans.

3.4 *Offences*

As mentioned above, there is a need to reform the offences in the National Parks and Wildlife Act in relation to the "taking or killing" of fauna. The amendments to this Act made by the Bill will confine those offences to killing, hunting, shooting, capturing or injuring endangered and other protected fauna. That is, disturbance of habitat will no longer be an offence under the National Parks and Wildlife Act. Moreover the prosecution will have to prove an intention to take or kill protected fauna.

A new offence of damaging critical habitat of an endangered species will be created by the Endangered and Other Threatened Species Conservation Bill 1992.

Unlike the existing general offence of disturbing an animal's habitat, the new offence will not apply until the habitat has been identified in a planning instrument as critical habitat - that is, habitat whose protection is essential for the survival of the species concerned. (It will also be an offence to damage habitat of an endangered species in contravention of an interim protection order - see below.)

3.5 *Interim Orders*

The Bill also empowers the Minister responsible for National Parks to make interim protection orders to prevent damage to critical habitat of an endangered species, pending the taking of action under a recovery plan. An interim protection order may prohibit or regulate an activity which threatens the habitat of the endangered species.

An interim protection order (including any renewal of the order) will not exceed 12 months, and will have to be revoked if no further action to protect the habitat is proposed.

An owner or occupier of the land affected by the order will have the right to appeal to the Land and the Environment Court against its imposition or its terms. The Court will be able to take into account any hardship caused by the order to the owner or occupier.

4. ENVIRONMENTAL PLANNING AND ASSESSMENT (AMENDMENT) BILL 1992

4.1 *Current Operation of Part 5 of the Act*

Part 5 of the Environmental Planning and Assessment Act 1979 (EPA Act) currently imposes a duty on government agencies to consider the environmental impact of any activity which either the agency proposes to carry out itself - or on whose behalf the activity is to be carried out - or whose approval is required for the activity to be carried out.

In considering any activity, a government agency must examine and take into account to the fullest extent possible the likely impact of the activity on the environment. If the activity is likely to significantly affect the environment, the agency must obtain, publicly exhibit and consider an environmental impact statement. Even when the agency itself is the proponent of the activity, it assesses the environmental impact statement.

4.2 *Objects and Scope of the Bill*

The principal purpose of the Environmental Planning and Assessment (Amendment) Bill 1992 is to introduce greater objectivity to the decision making process for activities proposed by State government agencies which are likely to have a significant environmental impact.

The Bill requires the Minister for Planning to decide whether or not an activity can proceed where a State government agency is the proponent of the activity and has obtained an environmental impact statement for the activity because it is likely to significantly affect the environment.

Government agencies will continue to make their own assessment of the environmental impact of an activity to determine whether that impact is likely to be significant.

The amendment made by the Bill will be generally limited to activities that are proposed to be carried out by a State government agency itself or on its behalf.

However, there will be some cases where it is difficult to identify the proponent of the activity concerned. For example, the Forestry Commission does not itself usually carry out logging operations. Rather, logging is carried out by its licensees. Clearly though, the Commission decides which areas will be logged, and thus its role is more than that of an approving authority. The Bill makes it clear that the Forestry Commission is to be regarded as the proponent of forestry operations to be carried out on land under its control. The Minister for Planning will also have a discretion to determine whether a government agency is the proponent of a particular activity where this may not be sufficiently clear and thus whether that agency needs to obtain the Minister's approval before that activity is carried out.

4.3 *Approval of Activities*

The Bill provides that if a government agency decides to proceed with an activity after carrying out its obligations for environmental assessment under Part 5 (including consideration of an environmental impact statement), the agency is to seek the Minister for Planning's approval of the activity. The Director of Planning will then be required to prepare a report in relation to the activity (unless the Minister directs an inquiry to be held under existing provisions of the EPA Act). That report must be prepared within three months, unless the proponent agrees to a longer period.

When considering whether to approve the carrying out of an activity, the Minister is to review the decision of the agency, having regard to the agency's environmental assessment of the activity and its rights and obligations. The Minister will be required to take into account the Director's report (or a report of an inquiry) and any submission from the Minister responsible for the proponent. The Minister's decision must be made within 21 days of the receipt of the Director's report or the report of an inquiry.

5. FOREST (RESOURCE SECURITY) BILL 1992

5.1 *Classification of State Forests*

The Forest (Resource Security) Bill 1992 provides for the classification of public forested land by environmental planning instruments, based on reports of the Natural Resources Management Council. There will be three classifications:

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|---|--------------------------|---|
| - | preserved native forest | all forestry operations prohibited |
| - | restricted use forest | forestry operations permitted but only in accordance with relevant environmental planning and assessment requirements |
| - | timber production forest | all forestry operations permitted |

The Bill contains a special provision to enable land which is the subject of the 1990 State/Commonwealth South East Forest Agreement to be classified without the need for an assessment by the Council. Comprehensive scientific studies of the south east forest have already been carried out and provide an adequate basis for the region's classification for the purposes of the Bill.

It should be noted that local environmental plans and regional environmental plans which classify public forest must be publicly exhibited before they are made.

5.2 *Resource Security*

Resource security will only be given in relation to land classified as timber production forest. The Bill will provide resource security in the following ways:

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- neither development consent under Part 4 of the EPA Act nor environmental assessment under Part 5 of the Act will be required in relation to forestry operations on land classified as timber production forest;
- withdrawal of land from classification as timber production forest will not be permitted without a report of the Natural Resources Management Council on the basis of new information or circumstances;
- the Forestry Commission will be authorised to enter into contractual arrangements for the payment of compensation if the Commission is unable to supply timber because land classified as timber production forest is withdrawn from timber production.

5.3 *Forestry Practices Codes*

As the Bill removes timber production forest from certain planning controls under the EPA Act, additional measures are needed to ensure that the environment is adequately protected. Accordingly, the Minister for Conservation and Land Management will be required to prepare Forestry Practices Codes which regulate the manner in which forestry operations are carried out for the purposes of protecting the environment and promoting ecologically sustainable forest use.

The Forestry Commission will have a duty to ensure that the provisions of the Codes are complied with. In addition, compliance with the relevant Code will be a condition of licences (eg. timber licences) issued by the Commission.

Forestry Practices Codes must be adopted by regulation before they have effect. Before a Code is adopted, however, the Minister must make the proposed Code available to the public and consult relevant interest groups. The usual requirements for advertising new regulations and preparing regulatory impact statements will also apply.

6. HERITAGE (AMENDMENT) BILL 1992

The effect of the Heritage (Amendment) Bill is to exclude from the ambit of the Heritage Act items of environmental heritage which are significant only because they form part of the natural environment.

The amendment is proposed on the basis that there are comprehensive provisions for the protection of the natural environment in other legislation. The National Parks and Wildlife Act 1974, in addition to providing for the reservation and dedication of land which has unique or outstanding scenery or natural phenomena, authorises the making of interim protection orders to protect land of natural significance. Additional powers to protect the habitat of endangered species will be conferred by the Endangered and Other Threatened Species Conservation Bill. Further, the Wilderness Act specifically provides for the permanent protection and proper management of areas of wilderness.

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The Bill also makes it clear that Aboriginal places and relics of cultural significance are outside the scope of the Heritage Act. Again, the National Parks and Wildlife Act gives the Director of National Parks and Wildlife clear responsibility for the protection of Aboriginal relics and places in New South Wales. Aboriginal places and relics may be reserved as historic sites under the National Parks and Wildlife Act. In addition that Act creates offences of damaging or defacing Aboriginal places and relics and of failing to notify the Director of the location of relics. Interim protection orders may also be able to be made to protect places and relics of Aboriginal cultural significance.

EXPOSURE DRAFT BILLS

- ☆ NATURAL RESOURCES MANAGEMENT COUNCIL
BILL 1992
- ☆ ENDANGERED AND OTHER THREATENED SPECIES
CONSERVATION BILL 1992
- ☆ ENVIRONMENTAL PLANNING AND ASSESSMENT
(AMENDMENT) BILL 1992
- ☆ FOREST (RESOURCE SECURITY) BILL 1992
- ☆ HERITAGE (AMENDMENT) BILL 1992

EXPOSURE DRAFT

**NATURAL RESOURCES MANAGEMENT COUNCIL
BILL 1992**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The following Bills are cognate with this Bill:

- Endangered and Other Threatened Species Conservation Bill 1992
- Environmental Planning and Assessment (Amendment) Bill 1992
- Forest (Resource Security) Bill 1992
- Heritage (Amendment) Bill 1992

The object of this Bill is to establish an independent authority to improve the decision-making process with respect to the use of public land so that:

- (a) the Government may make sound decisions about the balance between conservation and other natural resource use; and
- (b) the allocation of the use of natural resources to industry is secure.

In particular, the object of this Bill is to ensure that:

- (c) comprehensive and reliable information about the natural resources of the public land is compiled and available for the purposes of that decision-making process; and
 - (d) all values of the public land (including conservation and economic values) are assessed; and
 - (e) those assessments are made on a systematic regional basis instead of by different government agencies on a site by site basis; and
 - (f) principles of environmental policy (as agreed between the Commonwealth and the States) are applied in the decision-making process as the basis of ecologically sustainable development.
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Natural Resources Management Council 1992

PART 1—PRELIMINARY

Clause 1 sets out the short title of the proposed Act.

Clause 2 provides that the proposed Act will commence on a day or days to be proclaimed.

Clause 3 sets out the objects of the proposed Act.

Clause 4 contains definitions used in the proposed Act.

Clause 5 defines "public land" for the purposes of the proposed Act. The definition includes all Crown lands, dedicated and reserved lands (including State forests and national parks) and the coastal sea.

Clause 6 provides that references in the proposed Act to the use etc. of public land include references to the use etc. of the natural resources of that land.

PART 2—ESTABLISHMENT OF NATURAL RESOURCES MANAGEMENT COUNCIL OF NEW SOUTH WALES

Clause 7 establishes a Natural Resources Management Council of New South Wales. The Council is to be a body corporate.

Clause 8 provides that the Council is to consist of 13 members, being an independent Chairperson, 7 senior government officers, 4 non-government members and a Commonwealth member.

Clause 9 provides that the Council is not subject to Ministerial control or direction with respect to its reports or advice.

Clause 10 deals with the staffing of the Council. Public servants or other seconded staff may be employed.

Clause 11 empowers the Council to enter into arrangements with other agencies for assistance in the exercise of its functions and to engage consultants.

Clause 12 empowers the Council to delegate its functions to any of its members or to any committee which includes its members.

PART 3—PRINCIPAL FUNCTIONS AND OBLIGATIONS OF COUNCIL

Clause 13 states that the principal function of the Council is the review on a regional basis of the use of public land and the provision of advice on disputes or issues relating to the use of particular public land.

Clause 14 obliges the Council to compile and evaluate information about public land and its natural resources for the purpose of exercising its principal functions.

Clause 15 obliges the Council, for the purpose of exercising its principal functions, to assess all the values of public land, including its conservation and economic significance to the State.

Clause 16 obliges the Council when deciding on proposed uses of public land to apply principles of environmental policy agreed by Commonwealth and State Governments as the basis of ecologically sustainable development.

Natural Resources Management Council 1992

PART 4—REGIONAL REVIEWS OF USE OF PUBLIC LAND

Division 1—Conduct of regional reviews

Clause 17 requires the Council to conduct regional reviews on uses of public land in accordance with a reference from the Premier and to report to the Premier on the result of each review.

Clause 18 authorises the Premier to refer regional reviews to the Council.

Clause 19 enables the Premier to determine the timetable for regional reviews.

Clause 20 enables references of regional reviews to be limited to significant areas of public land or to fishery resources.

Clause 21 enables private land that adjoins or has some other connection with public land (or that is proposed to be acquired for public land) to be included in a regional review.

Clause 22 requires the Council to consult the public before finalising its report of a regional review.

Division 2—Reports of regional reviews

Clause 23 provides for the submission of reports of regional reviews to the Premier and other relevant Ministers and government agencies.

Clause 24 requires the reports to be tabled in Parliament.

Clause 25 provides that the Premier may adopt a report or part of a report as government policy. The Premier may refer a report back to the Council, but may not vary a report.

Clause 26 provides for the implementation of adopted reports by requiring Ministers and agencies to take them into account in the exercise of their functions and to rely on them unless they have good reason not to do so.

Clause 27 lists particular functions to which clause 26 applies, such as Crown land assessment, environmental planning and assessment, wilderness area nominations, timber licences, mineral leases and mineral licences. The clause makes it clear that while the reports of the Council may be relied on for the purposes of environmental impact statements, the obligation to prepare such a statement is not excluded.

PART 5—ADVICE ABOUT PARTICULAR DISPUTES AND ISSUES

Clause 28 provides that the Premier may refer to the Council for advice disputes or issues concerning the use of particular public land. A reference may extend to land that adjoins public land or has some other connection with public land (or that is proposed to be acquired for public land).

Clause 29 enables the Council to give the Premier advice on its own initiative.

Clause 30 deals with the reference of matters to the Council for advice.

Clause 31 applies, at the direction of the Premier, the provisions of Part 4 relating to reports of regional reviews to reports of advice of the Council under this Part.

Natural Resources Management Council 1992

PART 6—MISCELLANEOUS

Clause 32 provides that the Council may require government agencies to provide information and enables any dispute to be settled by the Premier.

Clause 33 provides that the Council may rely on an E.I.S. etc. that is prepared by another agency and that it considers satisfactory.

Clause 34 provides that the proposed Act binds the Crown.

Clause 35 provides that members of the Council and persons acting under its direction are not to be held personally liable for acts done in good faith for the purpose of the proposed Act.

Clause 36 empowers the Governor to make regulations.

Clause 37 makes a consequential amendment of the Public Finance and Audit Act 1983 to apply to the Council the usual procedures for accounts, audit and annual reports of Departments.

Schedule 1 contains the usual provisions relating to members of the Council including terms of office, remuneration and disclosure of pecuniary interests.

Schedule 2 contains the usual provisions relating to the procedure of the Council.

**NATURAL RESOURCES MANAGEMENT COUNCIL
BILL 1992**

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SCHEDULE 1—PROVISIONS RELATING TO MEMBERS OF COUNCIL

SCHEDULE 2—PROVISIONS RELATING TO PROCEDURE OF COUNCIL AT MEETINGS

**NATURAL RESOURCES MANAGEMENT COUNCIL
BILL 1992**

NEW SOUTH WALES



No. , 1992

A BILL FOR

An Act to establish the Natural Resources Management Council of New South Wales; to confer functions on that Council with respect to the decision-making process on the use of public land and its natural resources; and for other purposes.

See also Endangered and Other Threatened Species Conservation Bill 1992; Environmental Planning and Assessment (Amendment) Bill 1992; Forest (Resource Security) Bill 1992; Heritage (Amendment) Bill 1992.

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The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Natural Resources Management
5 Council Act 1992.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Object of Act

10 3. (1) The object of this Act is to establish an independent authority to improve the decision-making process with respect to the use of public land so that:

- (a) the Government may make sound decisions about the balance between conservation and other natural resource use; and
 - 15 (b) the allocation of the use of natural resources to industry is secure.
- (2) In particular, the object of this Act is to ensure that:
- (a) comprehensive and reliable information about the natural resources of public land is compiled and available for the purposes of that decision-making process; and
 - 20 (b) all values of public land (including conservation and economic values) are assessed; and
 - (c) those assessments are made on a systematic regional basis instead of by different government agencies on a site by site basis; and
 - 25 (d) principles of environmental policy (as agreed between the Commonwealth and the States) are applied in that decision-making process as the basis of ecologically sustainable development.

Definitions

4. (1) In this Act:

- “Chairperson” means the Chairperson of the Council;
- 30 “Council” means the Natural Resources Management Council of New South Wales established by this Act;

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- “government agency”** means any public or local authority, and includes:
- (a) a government department, State owned corporation and council of a local government area; and
 - (b) the head of a government agency; 5
- “natural resources”** includes:
- (a) soil resources; and
 - (b) coal, mineral or petroleum resources; and
 - (c) timber resources; and
 - (d) water resources; and 10
 - (e) fishery resources;
- “public land”** is defined in section 5;
- “regional review”** means a regional review by the Council under Part 4.
- (2) In this Act: 15
- (a) a reference to a function includes a reference to a power, authority and duty; and
 - (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.
- Definition of “public land”** 20
5. (1) In this Act:
- “public land”** means:
- (a) Crown land within the meaning of the Crown Lands Act 1989 or any other land of the Crown or of a government agency; or
 - (b) land granted, dedicated or reserved for a public purpose, including land dedicated or reserved under the Crown Lands Act 1989 or the National Parks and Wildlife Act 1974; 25
 - (c) land within a State forest, flora reserve or timber reserve within the meaning of the Forestry Act 1916; and
 - (d) the coastal waters of the State or any lake or other body of water of which the bed is public land; and 30
 - (e) any other land declared by the regulations to be public land, but does not include any land declared by the regulations not to be public land.
- (2) In this Act, a reference to public land also includes a reference to any other land containing any timber resources of the Crown or a government agency. 35

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(3) For the purposes of this section, land of the Crown or a government agency includes land of the Crown in right of the Commonwealth and land of a government agency of the Commonwealth.

5 **References to use etc. of public land includes use etc. of natural resources of the land**

6. (1) For the purposes of this Act, a reference to the use of or other matter concerning public land includes a reference to the use of or other matter concerning the natural resources of the land.

10 (2) If the public land is a river or other body of water used for water supply, any such reference does not extend to a matter concerning the supply of the water to land that is not public land.

**PART 2—ESTABLISHMENT OF NATURAL RESOURCES
MANAGEMENT COUNCIL**

Establishment of Council

15 7. (1) There is established by this Act a Natural Resources Management Council of New South Wales.

(2) The Council is a body corporate.

Members and procedure of Council

8. (1) The Council consists of 13 members, being:

- 20 (a) the Chairperson of the Council; and
 (b) 7 government ex-officio members; and
 (c) 4 non-government appointed members; and
 (d) 1 Commonwealth member.

25 (2) The Chairperson is to be appointed by the Governor on the recommendation of the Premier. The Chairperson is not to be a member or officer of a government agency.

(3) The government ex-officio members are to be:

- 30 (a) the Director of Planning; and
 (b) the Director-General of the Department of Conservation and Land Management; and
 (c) the Director-General of the Environment Protection Authority; and
 (d) the Director of National Parks and Wildlife; and

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- (e) the nominee for the time being of the Minister for Natural Resources (being the Director of the Department of Water Resources, the Director of NSW Fisheries or the Director-General of the Department of Mineral Resources); and
- (f) the Commissioner constituting the Forestry Commission; and 5
- (g) the Director-General of the Department of State Development.
- (4) The non-government appointed members are to be appointed by the Governor on the recommendation of the Premier. Those members are not to be members or officers of government agencies and are each to have expertise in one or more of the following areas (and between them are to have expertise in all of those areas): 10
- resource economics
 - natural resource conservation
 - natural resource extraction and processing
 - biodiversity conservation (and in particular expertise in endangered species) 15
 - industry and commerce
- (5) The Commonwealth member is to be a commissioner of the Australian Heritage Commission appointed by the Governor on the nomination of the Commonwealth Minister responsible for that Commission. 20
- (6) Schedule 1 has effect with respect to the members of the Council.
- (7) Schedule 2 has effect with respect to the procedure of the Council.
- Council not subject to Ministerial control as to contents of reports or advice** 25
9. The Council is not subject to the control or direction of the Premier in respect of the contents of any report or advice of the Council, but in other respects is subject to the control and direction of the Premier.
- Staff of Council**
10. (1) Such staff as may be necessary to enable the Council to exercise its functions may be employed under Part 2 of the Public Sector Management Act 1988. 30
- (2) The Council may arrange for the use of the services of any staff or facilities of a government agency.

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Arrangements with other agencies, consultants etc.

11. (1) The Council may enter into arrangements with government authorities or other bodies with relevant expertise (including authorities or other bodies of the Commonwealth or other States) for assistance to the Council in connection with the exercise of the functions of the Council.

(2) The Council may engage consultants to assist it in the exercise of its functions.

Delegation of Council's functions

12. The Council may delegate its functions, other than this power of delegation, to any member of the Council or to any committee of persons (whether of members only or members and other persons).

PART 3—PRINCIPAL FUNCTIONS AND OBLIGATIONS OF COUNCIL

Principal functions

13. (1) The principal functions of the Council are:

- (a) the review on a regional basis of the existing or proposed use of public land; and
- (b) the provision of advice on the resolution of disputes about, or advice on issues concerning, the use of particular public land.

(2) The Council also has such other functions as are conferred or imposed by or under this or any other Act.

Obligation of Council to compile and evaluate information

14. (1) The Council is to compile and evaluate all relevant information held by government agencies about public land and its natural resources for the purpose of enabling the Council to exercise its principal functions.

(2) The Council may conduct its own research, or arrange for research to be conducted, if relevant and reliable information is not available from government agencies or other sources.

Obligation of Council to assess all values of public land

15. (1) The Council is, when exercising its principal functions, required to assess all the values of public land.

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(2) The values of public land are its conservation and economic significance for the State, and also its historic, scientific, cultural, social, archaeological and aesthetic significance for the State.

(3) When considering proposed uses of public land, the Council is to have regard to those assessed values and any other matters the Council considers relevant, including: 5

(a) the environmental, social and economic implications of the proposed uses; and

(b) the effect of those uses on endangered or other threatened species of animals or plants; and 10

(c) the effect of those uses on the utilisation of the natural resources of the public land; and

(d) any other thing specified by the Premier when referring the matter concerned to the Council.

Obligation of Council to apply agreed principles of environmental policy as basis of ecologically sustainable development 15

16. For the purposes of any decision on the proposed use of public land, the Council is to apply the principles of environmental policy referred to in the 1992 Intergovernmental Agreement on the Environment as the basis of ecologically sustainable development. 20

[NOTE: The text of the relevant part of the Agreement is set out in the Note at the end of this Act.]

PART 4—REGIONAL REVIEWS OF USE OF PUBLIC LAND

Division 1—Conduct of regional reviews

Council to conduct regional reviews and report to Premier 25

17. The Council is to review on a regional basis in accordance with a reference under this Part the existing or proposed use of public land and report to the Premier on the result of each regional review.

Reference of regional reviews to Council by Premier

18. (1) The Premier is, from time to time, to refer to the Council regional reviews in respect of such regions as the Premier determines. 30

(2) The Premier may, because of public submissions or for any other reason, amend any such reference at any time.

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(3) The Premier is to make any such reference (and any amendment of the reference) public.

Timetable for regional reviews

5 19. (1) The Premier is to determine the priority to be accorded to each regional review and make references to the Council accordingly.

(2) The Premier is to specify in each reference the period (not exceeding 2 years) within which the report on the regional review is to be submitted to the Premier.

Reference to Council may be limited

10 20. (1) The Premier may, in the reference of a regional review to the Council, identify the significant areas of public land in the region and require the Council to deal primarily with those public lands.

15 (2) The Premier may, in the reference of a regional review to the Council, limit the reference to fishery resources in the case of a body of water.

Inclusion of certain private land in reference to Council

21. A reference to the Council of a regional review in respect of any public land may include other land that is not public land if:

- 20 (a) the other land is in the vicinity of the public land or there is some other connection with the public land; or
- (b) the other land is proposed to be acquired for use as public land.

Public consultation by Council

25 22. (1) The Council is to make a draft report of a regional review available to the public at least 60 days before submitting the report to the Premier.

(2) If the Premier so requires, the Council is also to make the draft report available to any specified government agency or other person at such times as the Premier specifies.

30 (3) The Council is to take into account any submissions made on the draft report before it is finalised.

(4) The regulations may make provision for or with respect to the making of reports available to the public.

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Division 2—Reports of regional reviews

Reports to be given to Premier and referred to other responsible Ministers and agencies

23. (1) The Council is to submit its report on a regional review to the Premier in accordance with its reference on the matter. 5

(2) Unless the Premier otherwise directs, the Council is to submit with its report a copy of any submissions received by the Council on the draft report.

(3) The Premier may forward a copy of the report to any Ministers whom, and government agencies which, the Premier considers have an interest in the report. 10

Reports of regional reviews to be tabled in Parliament

24. (1) After the Premier receives a report of a regional review of the Council, the Premier must cause a copy of the report to be laid before each House of Parliament within 21 sitting days of that House after the day on which the Premier receives the report. 15

(2) However, if the Council recommends that the tabling of the report, or part of the report, be delayed for a specified period, subsection (1) applies to the report, or that part of the report, as if the report were received by the Premier at the end of that period. 20

Adoption of reports by Premier

25. (1) After a report of a regional review has been duly tabled in Parliament, the Premier may adopt the report as government policy.

(2) The Premier may decline to adopt the report or may decline to adopt a part of the report. 25

(3) The Premier may refer back to the Council any report or part of a report that the Premier has declined to adopt for a further report in accordance with this Act.

(4) The Premier may adopt a report or a part of a report that the Premier has previously declined to adopt. 30

(5) An adopted report ceases to be adopted for the purposes of this Act if the Premier so directs.

Implementation of adopted reports of regional reviews

26. (1) This section applies to a report of a regional review that has been adopted by the Premier for the purposes of this Act. 35

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(2) Ministers and government agencies are to take into account any adopted report that is relevant to the exercise of their statutory and other functions.

5 (3) Ministers and government agencies are, to the extent that it is relevant to the exercise of their statutory and other functions, to rely on information about public land and on the assessment of the values of the land provided in an adopted report unless satisfied that there are good reasons not to do so.

10 (4) A contravention of this section does not invalidate the exercise of any function by a Minister or government agency.

Particular statutory functions to which adopted reports apply

27. (1) Without limiting section 26, the functions to which that section applies include the following statutory functions:

- 15 (a) a land assessment required to be undertaken under the Crown Lands Act 1989 by the Minister administering that Act;
- (b) the preparation by a council or the Director of Planning of an environmental planning instrument under the Environmental Planning and Assessment Act 1979;
- 20 (c) the granting of consent to development by a consent authority under Part 4 of the Environmental Planning and Assessment Act 1979;
- (d) any environmental assessment or other thing done by a determining authority or the Director of Planning for the purposes of Part 5 of the Environmental Planning and Assessment Act 1979, or the giving of an approval under Division 4 of that part by the Minister administering that Act for the carrying out of an activity;
- 25 (e) the making of a recommendation by the Director of National Parks and Wildlife on a nomination of a wilderness area under the Wilderness Act 1987 and the decision of the Minister administering that Act on the nomination;
- 30 (f) the issue of licences under the Forestry Act 1916 to take timber or forest materials or products from State forests or timber reserves by the Forestry Commission;
- 35 (g) the issue of a lease or licence under the Coal Mining Act 1973, Mining Act 1973 or the Petroleum (Onshore) Act 1991 to prospect for or to take coal, minerals or petroleum;
- (h) the grant of an authority under the Soil Conservation Act 1938 for the clearing of protected land;
- 40 (i) the exercise of functions under the Fisheries and Oyster Farms Act 1935 relating to the taking of fish for sale.

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(2) In particular, section 26 applies so as to enable a Minister or government agency to rely on information and assessments provided in an adopted report for any relevant purposes of an environmental impact statement or other environmental assessment under the Environmental Planning and Assessment Act 1979. For that purpose, such a statement may incorporate all or any part of an adopted report. 5

(3) However, section 26 does not authorise a Minister or government agency to dispense with any requirement to prepare such a statement or to carry out such an assessment.

PART 5—ADVICE ABOUT PARTICULAR DISPUTES AND ISSUES 10

Reference of matters to Council for advice

28. (1) The Premier may refer the following matters to the Council for advice:

- (a) the resolution of a dispute about the use of particular public land; 15
- (b) an issue concerning particular public land.

(2) Without limiting subsection (1), the Premier may refer to the Council for advice any dispute about, or issue concerning, a particular natural resource of public land, such as timber resources or fishery resources. 20

(3) A reference under this section may extend to:

- (a) any land in the vicinity of public land or which has some other connection with public land; or
- (b) any land which is proposed to be acquired for use as public land.

Advice by Council on own initiative 25

29. (1) The Council may also advise the Premier on any matter it considers relevant that arises from a regional review or other matter referred to the Council by the Premier.

(2) Any such report may be part of the report to the Premier on the reference concerned or may be a separate report. 30

Provisions relating to reference to Council for advice

30. (1) In referring a matter to the Council for advice, the Premier may do any or all of the following:

- (a) specify a period within which the advice is to be submitted to the Premier; 35

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- (b) require the Council to make a draft report of its advice available to the public, or to any specified persons or bodies, before giving its advice;
- 5 (c) require the Council to consider specified matters when dealing with the matter,

and the Council must act accordingly.

(2) The Premier may withdraw or amend a reference at any time.

Reporting on, tabling and adoption of advice

10 31. (1) The Premier may, when referring a matter to the Council for advice or at any time thereafter, direct in writing that Division 2 of Part 4 (Reports of regional reviews) applies to the advice.

(2) If the Premier gives such a direction, Division 2 of Part 4 applies to the Council's report of its advice in the same way as it applies to a report of a regional review.

15

PART 6—MISCELLANEOUS

Council may obtain information and documents from government agencies

20 32. (1) The Council may, for the purpose of a regional review or advice it is required to make or give under this Act, request a government agency to provide the Council with any relevant information held by the agency.

(2) If a dispute arises about any such request, the Council may refer the dispute to the Premier administering this Act and the Minister responsible for the government agency concerned for resolution.

25 **Council may rely on E.I.S. etc. prepared by other agencies**

33. The Council may, for the purpose of a regional review or advice it is required to make or give under this Act, rely on any environmental impact statement or other environmental study that:

- 30 (a) has been prepared by or on behalf of a government agency or other body; or
- (b) the Council considers to be satisfactory for that purpose.

Act binds Crown

35 34. This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

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Personal liability of members of Council etc.

35. A matter or thing done by the Council, a member of the Council or any person acting under the direction of the Council does not, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject the member or a person so acting personally to any action, liability, claim or demand. 5

Regulations

36. 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. 10

Amendment of Public Finance and Audit Act 1983 No. 152

37. The Public Finance and Audit Act 1983 is amended by inserting in Schedule 3 (Departments) in alphabetical order the words "Natural Resources Management Council." 15

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**SCHEDULE 1—PROVISIONS RELATING TO MEMBERS OF
COUNCIL**

(Sec. 8 (6))

Definitions

5 1. In this Schedule:

“appointed member” means the Chairperson, a non-government appointed member of the Council or the Commonwealth member of the Council;

“Chairperson” means the Chairperson of the Council;

10 “ex-officio member” means a government ex-officio member of the Council;

“member” means any member of the Council, including the Chairperson.

Deputies

15 2. (1) The Premier may, from time to time, appoint a person to be the deputy of a member, and the Premier may revoke any such appointment.

(2) A person appointed as the deputy of a member (other than an ex-officio member or the Commonwealth member) must have the same qualifications as those required for appointment as the member.

20 (3) A person appointed as the deputy of an ex-officio member must be a member or officer of the same government agency to which the member belongs.

(4) A person appointed as the deputy of the Commonwealth member must be a person nominated by that member.

25 (5) 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 taken to be a member.

30 (6) A person (other than the deputy of an ex-officio member) while acting in the place of an appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Premier may from time to time determine in respect of the person.

(7) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.

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**SCHEDULE 1—PROVISIONS RELATING TO MEMBERS OF
COUNCIL—*continued***

Terms of office of appointed members

3. Subject to this Schedule, an appointed member holds office for such period (not exceeding 2 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment. 5

Remuneration of appointed members

4. An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Premier may from time to time determine in respect of the member. 10

Vacancy in office of appointed member

5. (1) The office of an appointed member becomes vacant if the member:

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or 15
- (c) resigns the office by instrument in writing addressed to the Premier; or
- (d) is removed from office by the Governor under this clause or under Part 8 of the Public Sector Management Act 1988; or
- (e) is absent from 4 consecutive meetings of 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 Council or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Council for having been absent from those meetings; or 20
- (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 25
- (g) becomes a mentally incapacitated person; or 30
- (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. 35

(2) The Governor may remove an appointed member from office at any time.

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**SCHEDULE 1—PROVISIONS RELATING TO MEMBERS OF
COUNCIL—*continued***

Disclosure of pecuniary interests

6. (1) If:

- 5 (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 Council; and
- 10 (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 Council.

15 (2) A disclosure by a member at a meeting of the Council 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
- 20 (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 subclause (1).

25 (3) Particulars of any disclosure made under this clause must be recorded by 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 (if any) determined by the Council.

30 (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Premier or the Council otherwise determines:

- (a) be present during any deliberation of the Council with respect to the matter; or
- (b) take part in any decision of the Council with respect to the matter.

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**SCHEDULE 1—PROVISIONS RELATING TO MEMBERS OF
COUNCIL—*continued***

- (5) For the purposes of the making of a determination by the Council under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not: 5
- (a) be present during any deliberation of the Council for the purpose of making the determination; or
 - (b) take part in the making by the Council of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Council. 10

Filling of vacancy in office of appointed member

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

Effect of certain other Acts

8. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of an appointed member. 15
- (2) 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, 20

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.

**SCHEDULE 2—PROVISIONS RELATING TO PROCEDURE
OF COUNCIL AT MEETINGS** 25

(Sec. 8 (7))

Definition

1. In this Schedule:

“member” means a member of the Council, including the Chairperson of the Council. 30

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**SCHEDULE 2—PROVISIONS RELATING TO PROCEDURE OF
COUNCIL AT MEETINGS—*continued***

General procedure

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

Quorum

3. The quorum for a meeting of the Council is 7 members.

Presiding member

- 10 4. (1) The Chairperson of the Council or, in the absence of the
Chairperson, another member elected to chair the meeting is to preside at
a meeting of the Council.

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

Voting

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

Transaction of business outside meetings or by telephone etc.

- 20 6. (1) The Council may, if it thinks fit, transact any of its business by
the circulation of papers among all the members of the Council 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 Council.

- (2) The Council may, if it thinks fit, transact any of its business at a
25 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:
30 (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 they have
at an ordinary meeting of the Council.

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**SCHEDULE 2—PROVISIONS RELATING TO PROCEDURE OF
COUNCIL AT MEETINGS—*continued***

(4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of 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. 5

First meeting

7. The Premier may call the first meeting of the Council in such manner as the Premier thinks fit. 10

NOTE

See section 16. Text of 1992 Intergovernmental Agreement on the Environment relating to principles of environmental policy

SECTION 3—PRINCIPLES OF ENVIRONMENTAL POLICY

- 3.1 The parties agree that the development and implementation of environmental policy and programs by all levels of Government should be guided by the following considerations and principles. 15
- 3.2 The parties consider that the adoption of sound environmental practices and procedures, as a basis for ecologically sustainable development, will benefit both the Australian people and environment, and the international community and environment. This requires the effective integration of economic and environmental considerations in decision-making processes, in order to improve community well-being and to benefit future generations. 20
- 3.3 The parties consider that strong, growing and diversified economies (committed to the principles of ecologically sustainable development) can enhance the capacity for environmental protection. In order to achieve sustainable economic development, there is a need for a country's international competitiveness to be maintained and enhanced in an environmentally sound manner. 25 30

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NOTE—*continued*

SECTION 3—PRINCIPLES OF ENVIRONMENTAL POLICY—
continued

- 5 3.4 Accordingly, the parties agree that environmental considerations will be integrated into Government decision-making processes at all levels by, among other things:
- (i) ensuring that environmental issues associated with a proposed project, program or policy will be taken into consideration in the decision-making process;
 - 10 (ii) ensuring that there is a proper examination of matters which significantly affect the environment; and
 - (iii) ensuring that measures adopted should be cost-effective and not be disproportionate to the significance of the environmental problems being addressed.
- 15 3.5 The parties further agree that, in order to promote the above approach, the principles set out below should inform policy making and program implementation.
- 3.5.1 precautionary principle—
- 20 Where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
In the application of the precautionary principle, public and private decisions should be guided by:
- 25 (i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment; and
 - (ii) an assessment of the risk-weighted consequences of various options.
- 3.5.2 intergenerational equity—
- 30 the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.
- 3.5.3 conservation of biological diversity and ecological integrity—
- 35 conservation of biological diversity and ecological integrity should be a fundamental consideration.

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NOTE—*continued*

SECTION 3—PRINCIPLES OF ENVIRONMENTAL POLICY—
continued

- 3.5.4 improved valuation, pricing and incentive mechanisms—
- environmental factors should be included in the valuation of assets and services 5
 - polluter pays i.e. those who generate pollution and waste should bear the cost of containment, avoidance, or abatement
 - the users of goods and services should pay prices based on the full life cycle costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any wastes 10
 - environmental goals, having been established, should be pursued in the most cost-effective way, by establishing incentive structures, including market mechanisms, which enable those best placed to maximise benefits and/or minimise costs to develop their own solutions and responses to environmental problems. 15
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EXPOSURE DRAFT

**ENDANGERED AND OTHER THREATENED SPECIES
CONSERVATION BILL 1992**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

This Bill is cognate with the Natural Resources Management Council Bill 1992. The objects of this Bill are:

- (a) to maintain the genetic diversity of animals and plants and their potential for evolutionary development in the wild; and
- (b) to prevent the extinction and promote the recovery of endangered and other threatened species of animals and plants; and
- (c) to protect the critical habitat of endangered species through the public process of environmental planning and assessment; and
- (d) to ensure that the impact of any development on endangered and other threatened species of animals and plants is properly assessed.

The Bill repeals the Endangered Fauna (Interim Protection) Act 1991 and also amends the National Parks and Wildlife Act 1974, the Environmental Planning and Assessment Act 1979 and certain other Acts.

The principal features of the Bill are as follows:

- (a) the listing by an independent Scientific Committee of endangered species of animals and plants and of other threatened species (such as vulnerable and rare species);
- (b) the specification of criteria to determine eligibility for listing;
- (c) the preparation of recovery plans by the Director of National Parks and Wildlife to prevent the extinction and promote the recovery of endangered and vulnerable species of animals and plants;
- (d) the implementation of recovery plans, once they are approved by the Minister, by all Ministers and Government agencies concerned;

Endangered and Other Threatened Species Conservation 1992

- (e) the designation of critical habitat of endangered species in environmental planning instruments and the creation of an offence of damaging that designated habitat (maximum penalty \$100,000 or 2 years imprisonment, or both);
- (f) the making by the Minister, on the recommendation of the Director of National Parks and Wildlife, of interim protection orders to protect habitat from damage pending action under the proposed Act;
- (g) amendments to the National Parks and Wildlife Act 1974 to make it clear that offences relating to the taking or killing of native fauna apply only where there is an intention to take or kill the fauna (and to increase penalties for those offences);
- (h) amendments to the Environmental Planning and Assessment Act 1979 to require environmental assessments during the planning process of the effects of developments on native animals and plants and, in particular, on endangered or other threatened species and their habitat.

PART 1—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 sets out the objects of the proposed Act.

Clause 4 defines terms used in the proposed Act. In particular, references to animals and plants cover all forms of animal and plant life native to Australia and established before European settlement.

Clause 5 repeals the Endangered Fauna (Interim Protection) Act 1991 and the amendments that were made by that Act. The National Parks and Wildlife Act 1974, the Environmental Planning and Assessment Act 1979 and the Land and Environment Court Act 1979 are restored as if the amendments had not been made. The Bill contains other amendments to replace those enacted by the Endangered Fauna (Interim Protection) Act 1991. That Act provides for the repeal of significant amendments on 1 December 1992 or when provision is made by an Act to replace the proposed amendments.

PART 2—LISTING OF ENDANGERED AND OTHER THREATENED SPECIES

Division 1—Endangered species

Clause 6 declares that Schedule 1 lists endangered species for the purposes of the proposed Act. Species will be listed after the commencement of the proposed Act on the recommendation of the Scientific Committee established under the proposed Act.

Clause 7 provides that Schedule 1 may be amended by the Governor by proclamation, but only on the recommendation of the Scientific Committee.

Clause 8 describes the species eligible for listing as endangered species, namely, species likely to become extinct in Australia within 20 years. Different periods, or specified probabilities of extinction, may be prescribed by the regulations for different species.

Endangered and Other Threatened Species Conservation 1992

Division 2—Other threatened species

Clause 9 declares that Schedule 2 lists other threatened species for the purposes of the proposed Act. Species will be listed, after endangered species have been listed, on the recommendation of the Scientific Committee.

Clause 10 provides that Schedule 2 may be amended by the Governor by proclamation, but only on the recommendation of the Scientific Committee.

Clause 11 describes the species eligible for listing as other threatened species, namely:

- Vulnerable species—being species likely to become extinct in Australia within 100 years. Different periods or specified probabilities of extinction may be prescribed by the regulations for different species.
- Rare species—being species located in restricted geographical areas or thinly scattered.
- Indeterminate species—being species which are either endangered, vulnerable or rare but the appropriate category is not known.
- Insufficiently known species—being species which are only suspected of being endangered, vulnerable or rare.

Division 3—General provisions relating to listing

Clause 12 deals with time and procedure for the making of recommendations by the Scientific Committee. The clause requires the Committee to keep listings under review.

Clause 13 enables regulations to be made which set out principles to be applied in determining the appropriate listing of species. The Scientific Committee may apply its own guidelines for the purposes of determining the matter in accordance with the proposed Act and any such principles.

Clause 14 deals with the discretion of the Scientific Committee in making recommendations about listing. In particular, the clause enables the Committee to act on information available to it about current causal factors and future trends and to act without the need for certainty.

Clause 15 requires the Scientific Committee to seek and consider public submissions on any proposed recommendation for the listing of endangered or other threatened species.

Clause 16 prevents the listing of organisms that cause human disease or of species which are endangered or otherwise threatened in other parts of Australia but have not been established in the wild in New South Wales since European settlement.

PART 3—RECOVERY PLANS

Clause 17 requires the Director of National Parks and Wildlife to prepare recovery plans to prevent the extinction and promote the recovery of endangered species. Recovery plans for other threatened species which are vulnerable may also be prepared.

Endangered and Other Threatened Species Conservation 1992

Clause 18 sets out the principal and other aims of recovery plans, namely, restoring the species to viability in the wild and, in addition, the adoption of practical measures that conserve the species with the minimum adverse social and economic consequences and that conserve biological diversity.

Clause 19 deals with priorities in the preparation of recovery plans and the timetable for their implementation.

Clause 20 provides for the Director to identify the habitat of the species and the factors which threaten the survival of the species.

Clause 21 requires the Director, when preparing a recovery plan, to take into account relevant economic and social matters, and to encourage community co-operation.

Clause 22 lists the types of measures that may be included in a recovery plan, including conservation agreements with the landholder, dedication or reservation of the land under the National Parks and Wildlife Act 1974, the acquisition of the land under that Act, controls under environmental planning instruments, captive breeding programs or research.

Clause 23 provides for proposed timetables for the implementation of recovery plans.

Clause 24 requires the Director to consult when preparing a plan with affected government agencies and (in respect of public land) the proposed Natural Resources Management Council and (in respect of species of fish) the Director of N.S.W. Fisheries.

Clause 25 provides that the Minister must approve a recovery plan before it is implemented. The Premier's concurrence is required before a plan is approved.

Clause 26 makes special provision for the approval of the Minister for Planning for proposed controls under environmental planning instruments and for the making of those instruments.

Clause 27 requires the Director to publish approved recovery plans.

Clause 28 requires Ministers and government agencies to implement a recovery plan once it is approved.

Clause 29 requires the Director to keep recovery plans under review.

Clause 30 requires the Director, in respect of species that are not subject to recovery plans, to investigate the status of species that may be endangered, vulnerable or rare, and to monitor and take any practicable measures to conserve rare species.

PART 4—DAMAGE TO CRITICAL HABITAT OF ENDANGERED SPECIES

Clause 31 provides that critical habitat of endangered species for the purposes of the Part are places or parts of places designated as such in a State, regional or local environmental planning instrument. Before the designation of any such place, it will be necessary for the Minister for Planning to certify (on the advice of the Director of National Parks and Wildlife) that the protection of the habitat is essential for the survival of the species.

Endangered and Other Threatened Species Conservation 1992

Clause 32 makes it an offence to damage any such critical habitat. The maximum penalty is \$100,000 or 2 years imprisonment or both.

Clause 33 provides defences to that offence, namely, the accused was acting in compliance with planning instruments and laws, the damage was unlikely to increase the threat to the survival of the species or the damage was authorised by law and was reasonably necessary to avoid a threat to life or property.

PART 5—INTERIM PROTECTION ORDERS FOR CRITICAL HABITAT OF ENDANGERED SPECIES

Clause 34 provides that the Director of National Parks and Wildlife may recommend to the Minister the making of an interim protection order to prevent damage to critical habitat of an endangered species pending action under the proposed Act.

Clause 35 authorises the Minister to make an interim protection order recommended by the Director. The order may prohibit or regulate the carrying out of the activity concerned by the owner or occupier.

Clause 36 requires the Minister to give affected parties notice of the making of an order.

Clause 37 provides that the Minister may request the designation of the habitat in an environmental planning instrument or take other available action to protect the habitat. The order is to be revoked if that action is taken or a decision is made not to take that action.

Clause 38 deals with the duration of an order and permits its renewal. The total period of an order (and any renewal) is not to exceed 12 months.

Clause 39 enables the Minister to revoke an order.

Clause 40 makes it an offence to contravene an order.

Clause 41 gives an owner or occupier of land a right to appeal to the Land and Environment Court against an order.

Clause 42 provides for a register to be kept of orders in force.

PART 6—SCIENTIFIC COMMITTEE

Clause 43 establishes the Scientific Committee for the purposes of the proposed Act.

Clause 44 sets out the functions of the Scientific Committee. The principal function is to make recommendations on the listing of endangered or other threatened species under the proposed Act. In addition, the Committee is to advise the Director on recovery plans and other matters.

Clause 45 provides that the Scientific Committee is to consist of 8 members, being the Director or other officer of the National Parks and Wildlife Service, 2 Government scientists, 2 scientists employed by educational institutions and 3 non-Government scientists.

Clause 46 contains machinery provisions relating to the members of the Scientific Committee.

Endangered and Other Threatened Species Conservation 1992

Clause 47 contains machinery provisions relating to the procedure of the Scientific Committee.

Clause 48 specifies that the Scientific Committee is not subject to Ministerial control.

PART 7—MISCELLANEOUS

Clause 49 provides that the proposed Act binds the Crown.

Clause 50 requires the Director of National Parks and Wildlife to report on the operation of the proposed Act in the annual report of the National Parks and Wildlife Service.

Clause 51 authorises the Director of National Parks and Wildlife to delegate his or her functions under the proposed Act.

Clause 52 preserves the operation of the National Parks and Wildlife Act 1974 with respect to animals and plants.

Clause 53 authorises a court that convicts a person for an offence against the proposed Act to order the offender to restore habitat that has been damaged or to mitigate the damage.

Clause 54 enables proceedings for offences committed by corporations to be brought against directors and others who authorised or permitted the offence.

Clause 55 provides that proceedings for offences against the proposed Act are to be dealt with summarily by a Local Court or the Land and Environment Court. The maximum penalty that may be imposed by a Local Court is limited to \$5,000.

Clause 56 empowers the making of regulations for the purposes of the proposed Act.

Clauses 57–60 are formal provisions that give effect to the Schedules that amend the National Parks and Wildlife Act 1974, Environmental Planning and Assessment Act 1979, the Fisheries and Oyster Farms Act 1935, and certain other Acts, and to the Schedule of savings and transitional provisions.

Schedule 1 will list the endangered species of animals and plants.

Schedule 2 will list the other threatened species of animals and plants.

Schedule 3 amends the National Parks and Wildlife Act 1974 as follows:

- (a) to continue the amendment that provides that the Act binds the Crown;
- (b) to continue the amendment to extend the definition of "fauna" under the Act to include all amphibians (not just a limited class of protected amphibians);
- (c) to clarify the definition of "take" and the offence of taking or killing protected fauna outside national parks and other reserved land, by excluding the disturbance of fauna or their habitat and by including an intention to take or kill the fauna as an ingredient of the offence—offences relating to the habitat of endangered species of fauna and flora are to be dealt with in Part 4 of the proposed Act;

Endangered and Other Threatened Species Conservation 1992

- (d) to increase penalties for certain offences relating to protected fauna (the penalty for taking or killing of endangered or other threatened fauna is to be increased from \$10,000 or 2 years imprisonment to \$100,000 or 2 years imprisonment and for taking or killing of other protected fauna from \$2,000 or 6 months imprisonment to \$10,000 or 12 months imprisonment);
- (e) to make minor, consequential and ancillary amendments.

Schedule 4 amends the Environmental Planning and Assessment Act 1979 as follows:

- (a) to make it clear that environmental planning instruments may provide for the conservation of endangered species and their habitat and of other native animals and plants;
- (b) to require consent authorities to take into account the effect of any proposed development on endangered or other threatened species (and their habitat) and on other protected fauna and flora when considering whether to consent to the development;
- (c) to require environmental assessment under Part 5 (including any environmental impact statement) to address the effect on endangered or other threatened species (and their habitat) and other protected fauna or flora before a determining authority carries out an activity, or approves of the carrying out of an activity.

Schedule 5 amends other Acts, including the Fisheries and Oyster Farms Act 1935. The amendments to the Fisheries and Oyster Farms Act 1935 make it an offence to take endangered or other vulnerable and rare species of fish. The amendments to the other Acts are consequential.

Schedule 6 contains savings and transitional provisions.

ENDANGERED AND OTHER THREATENED SPECIES CONSERVATION BILL 1992

NEW SOUTH WALES



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**ENDANGERED AND OTHER THREATENED SPECIES
CONSERVATION BILL 1992**

NEW SOUTH WALES



No. , 1992

A BILL FOR

An Act to conserve endangered and other threatened species of animals and plants; to repeal the Endangered Fauna (Interim Protection) Act 1991; to amend the National Parks and Wildlife Act 1974, the Environmental Planning and Assessment Act 1979 and certain other Acts; and for other purposes.

Endangered and Other Threatened Species Conservation 1992

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Endangered and Other Threatened
5 Species Conservation Act 1992.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Objects of Act

- 10 3. The objects of this Act are as follows:
- (a) to maintain the genetic diversity of animals and plants and their potential for evolutionary development in the wild; and
 - (b) to prevent the extinction and promote the recovery of endangered and other threatened species of animals and plants; and
 - 15 (c) to protect the critical habitat of endangered species through the public process of environmental planning and assessment; and
 - (d) to ensure that the impact of any development on endangered and other threatened species of animals and plants is properly assessed.

Definitions

- 20 4. (1) In this Act:
- “animal” means any animal-life which is native to Australia (or which periodically migrates to Australia), whether vertebrate or invertebrate and in any stage of biological development, but does not include humans;
 - 25 “Director of National Parks and Wildlife” means the Director of National Parks and Wildlife appointed under the National Parks and Wildlife Act 1974;
 - “Director of Planning” means the Director of Planning appointed under the Environmental Planning and Assessment Act 1979;
 - 30 “endangered species” means a species of animal or plant specified in Schedule 1;
 - “environmental planning instrument” has the same meaning it has in the Environmental Planning and Assessment Act 1979;

Endangered and Other Threatened Species Conservation 1992

“government agency” means any public or local authority, and includes:

- (a) a government department and a State owned corporation; and
- (b) the head of a government agency;

“other threatened species” means a species of animal or plant specified in Schedule 2; 5

“plant” means any plant-life which is native to Australia, whether vascular or non-vascular and in any stage of biological development, and includes fungi and lichens;

“recovery plans” means plans prepared and approved under Part 3; 10

“Scientific Committee” means the Scientific Committee constituted under Part 6;

“species” has its generally accepted scientific meaning.

(2) A reference in this Act to animal-life or plant-life native to Australia is a reference to animal-life or plant-life of a species that was established in Australia before European settlement. 15

(3) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty. 20

Repeal of Endangered Fauna (Interim Protection) Act 1991 No. 66

5. (1) The Endangered Fauna (Interim Protection) Act 1991 is repealed.

(2) The repeal of that Act has the effect of restoring the Acts amended by that Act as they were immediately before they were so amended. 25

(3) The restoration of those Acts does not affect any other amendments made to those Acts after the enactment of the repealed Act (other than amendments made to the provisions inserted in those Acts by the repealed Act). 30

**PART 2—LISTING OF ENDANGERED AND OTHER
THREATENED SPECIES**

Division 1—Endangered species

Schedule 1—list of endangered species

6. Schedule 1 lists endangered species of animals and plants for the purposes of this Act. 35

Endangered and Other Threatened Species Conservation 1992

Listing of endangered species on recommendation of Scientific Committee

7. (1) The Governor may, by proclamation, amend Schedule 1:
- 5 (a) by inserting the name of any species of animal or plant that the Scientific Committee recommends should be listed as an endangered species; or
- (b) by omitting the name of any species of animal or plant that the Scientific Committee recommends should no longer be listed as an endangered species.
- 10 (2) The Governor may, by proclamation, amend this Act by omitting Schedule 1 and by inserting instead a Schedule containing the species of animals and plants that the Scientific Committee recommends should be listed as endangered species.

Species eligible for listing as endangered species

- 15 8. (1) A species of animal or plant is eligible to be listed as an endangered species if it is likely to become extinct in Australia within 20 years.
- (2) However, the regulations may prescribe a different period than 20 years for all or any one or more species. The regulations may also declare
- 20 that a species is likely to become extinct within the relevant period if there is a specified probability of extinction.

Division 2—Other threatened species

Schedule 2—list of other threatened species

- 25 9. Schedule 2 lists threatened species of animals and plants (other than endangered species) for the purposes of this Act.

Listing of other threatened species on recommendation of Scientific Committee

10. (1) The Governor may, by proclamation, amend Schedule 2:
- 30 (a) by inserting in Part 1 (Vulnerable species), Part 2 (Rare species), Part 3 (Indeterminate species) or Part 4 (Insufficiently known species) the name of any species of animal or plant that the Scientific Committee recommends should be listed as such a species; or
- 35 (b) by omitting the name of any species of animal or plant that the Scientific Committee recommends should no longer be listed as such a species.

Endangered and Other Threatened Species Conservation 1992

(2) The Governor may, by proclamation, amend this Act by omitting Schedule 2 and by inserting instead a Schedule containing the species of animals and plants that the Scientific Committee recommends should be listed as other threatened species.

Species eligible for listing as other threatened species 5

11. (1) A species of animal or plant is eligible to be listed in Part 1 of Schedule 2 (Vulnerable species) if it is likely to become extinct in Australia within 100 years.

(2) However, the regulations may prescribe a different period than 100 years for all or any one or more species. The regulations may also declare that a species is likely to become extinct within the relevant period if there is a specified probability of extinction. 10

(3) A species of animal or plant is eligible to be listed in Part 2 of Schedule 2 (Rare species) if members of the species are located in restricted geographical areas in Australia or are thinly scattered over a more extensive range in Australia. 15

(4) A species of animal or plant is eligible to be listed in Part 3 of Schedule 2 (Indeterminate species) if the species is endangered, vulnerable or rare but there is insufficient information available to determine which category is appropriate. 20

(5) A species of animal or plant is eligible to be listed in Part 4 of Schedule 2 (Insufficiently known species) if the species is reasonably suspected to be, but because of a lack of information cannot be determined to be, endangered, vulnerable or rare.

Division 3—General provisions relating to listing 25

Recommendations of Scientific Committee for listing

12. (1) The Scientific Committee is required to make recommendations for the listing of endangered species in Schedule 1 as soon as practicable after the commencement of this Act.

(2) The Scientific Committee is required to make recommendations for the listing of other threatened species in Schedule 2 as soon as practicable after it has recommended the listing of endangered species. 30

(3) The Scientific Committee is to keep those listings under review and recommend any necessary changes.

(4) The Scientific Committee may make recommendations at any time on its own initiative or following a request by the Minister or any other person or body. 35

Endangered and Other Threatened Species Conservation 1992

Principles and guidelines for assessing eligibility for listing

13. (1) The regulations may set out principles to be used by the Scientific Committee for determining whether a species is eligible for listing as an endangered or other threatened species in accordance with this Part. Different principles may be prescribed for different species.

(2) The Scientific Committee may decide on its own guidelines for determining whether a species is, in accordance with this Part and any such principles, eligible to be so listed.

Discretion of Scientific Committee in deciding on listings

14. (1) The Scientific Committee may recommend that a species of animal or plant be listed as an endangered or other threatened species if it considers, on the information available to it, that the species is eligible to be so listed.

(2) In particular, any assessment of the likelihood of a species becoming extinct is to be made on the available information about current causal factors and future trends.

(3) The Scientific Committee may make a recommendation even though it is not certain that its assessment of the eligibility of the species for the listing is correct.

20 Public submissions on proposed listings

15. (1) Before making a recommendation that a species of animal or plant should be listed (or no longer listed) as an endangered or other threatened species, the Scientific Committee is to publish its proposed recommendation and invite public comment.

(2) The Scientific Committee is to take into account any relevant submission it receives on its proposed recommendation.

Species not to be listed

16. (1) Organisms which cause human disease are not eligible for listing as an endangered or other threatened species.

(2) A species of animal or plant which is an endangered or other threatened species in Australia is not eligible for listing under this Act if the Scientific Committee is satisfied (on the information available to it) that the species has not been established in the wild in New South Wales since European settlement.

PART 3—RECOVERY PLANS**Director of National Parks and Wildlife to prepare recovery plans**

17. (1) The Director of National Parks and Wildlife is required to prepare plans under this Part to conserve endangered species and, in particular, to prevent the extinction and promote the recovery of endangered species. 5

(2) The Director may also prepare such plans for other threatened species listed in Part 1 of Schedule 2 (Vulnerable species).

(3) A recovery plan may contain provisions relevant to more than one species and more than one recovery plan may be prepared for a species. For example, a recovery plan may contain measures dealing with factors threatening the survival of more than one species. 10

Aims of recovery plans

18. (1) The principal aim of recovery plans is to ensure the recovery of endangered or other threatened species to a position of viability in the wild. 15

(2) In particular, the Director of National Parks and Wildlife should seek, in preparing recovery plans and in deciding which measures to include in those plans:

(a) to provide effective conservation of endangered or other threatened species with the minimum adverse social or economic consequences; and 20

(b) to conserve biological diversity generally.

Priorities for recovery plans

19. The Director of National Parks and Wildlife is to determine priorities in the preparation of recovery plans (and in the timetable for their implementation) in accordance with the following criteria and any other criteria the Director considers relevant: 25

(a) Likelihood of extinction—whether the species has a greater likelihood of extinction than other species; 30

(b) Likelihood of recovery—whether the species is more likely to recover than other species;

(c) Taxonomic status—whether the species has fewer close genetic relatives than other species;

(d) Keystone species—whether many other species are dependent for survival on the species; 35

Endangered and Other Threatened Species Conservation 1992

- (e) Indicator species—whether the relative abundance of the species is a measure of the overall health of its ecosystem.

Identification of habitat and threats to survival of species

5 20. (1) The Director of National Parks and Wildlife may, for the purposes of preparing recovery plans:

- (a) identify the habitat of endangered or other threatened species; and
 (b) ascertain the population distribution and abundance of those species; and
 10 (c) identify the factors that are contributing to the decline of those species (for example, loss of a particular type of habitat; changes in the habitat caused by erosion, drainage, salinisation, the fire regime or other cause; introduced animals or plants that are predators of or displace the species).

(2) Any such information is to be included in a relevant recovery plan.

15 **Matters to be considered by Director**

21. (1) The Director of National Parks and Wildlife is also to consider, when preparing a recovery plan, all relevant social and economic matters.

20 (2) The Director is to estimate the cost of any measures proposed to be included in a recovery plan and include that estimate in the plan.

(3) The Director is to consider, when preparing a recovery plan, any measures by which the community may co-operate in the conservation of endangered or other threatened species.

Types of measures for inclusion in recovery plans

25 22. A recovery plan may provide for the conservation of an endangered or other threatened species by any one or more of the following means or by any other available means:

- (a) the restriction or prohibition, by an environmental planning
 30 instrument, on development of land that is or includes the habitat of the species;
 (b) a conservation agreement under the National Parks and Wildlife Act 1974 with the owner of that land;
 (c) the dedication or reservation of that land under the National Parks and Wildlife Act 1974, the Crown Lands Act 1989 or any other
 35 Act;
 (d) the acquisition of that land under Part 11 of the National Parks and Wildlife Act 1974 or any other Act;

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- (e) the declaration of the land as protected land under the Soil Conservation Act 1938;
- (f) captive breeding programs;
- (g) the collection and incubation of eggs of a species;
- (h) educational activities; 5
- (i) proposals for the enactment of legislation or the making of regulatory instruments;
- (j) the conduct of research or field studies into the species.

Timetable for implementation of recovery plans

23. A recovery plan is, where practicable, to include a proposed timetable for the implementation of the plan. 10

Consultation by Director

24. (1) The Director of National Parks and Wildlife is required to consult any government agency affected by a recovery plan (or the Minister responsible for the agency) before it is finalised. 15

(2) If a proposed recovery plan contains measures affecting public land within the meaning of the Natural Resources Management Council Act 1992, the Director of National Parks and Wildlife is to consult the Natural Resources Management Council before it is finalised.

- (3) If a recovery plan is to contain measures affecting any species of fish, the Director of National Parks and Wildlife is to consult the Director of N.S.W. Fisheries before it is finalised. 20

(4) The Director is to take any submission made by any such agency or that Council or Director into account before finalising the plan.

- (5) If a dispute arises with any such agency or that Council or Director, the matter is to be referred to the Minister. If the Minister is unable to settle the matter, the Minister is to refer the matter to the Premier for settlement. 25

Approval of recovery plan by Minister

25. (1) The Director of National Parks and Wildlife is to submit a recovery plan to the Minister for approval. 30

(2) The Minister may approve or refuse to approve the plan or may request the Director to revise the plan with respect to any matter.

- (3) The Minister is required to obtain the concurrence of the Premier before approving a recovery plan. 35

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Special provision relating to planning proposals

26. (1) Before submitting a recovery plan to the Minister, the Director of National Parks and Wildlife is to consult with the Director of Planning about any proposal to designate critical habitat in an environmental
5 planning instrument or to make other provision in any such instrument.

(2) Any such proposal is not to be included in a recovery plan unless it is approved or recommended by the Minister for Planning.

(3) The Director of National Parks and Wildlife is also to consult with any owner or occupier affected by any such proposal if the Minister for
10 Planning, having regard to the number of owners or occupiers affected, so directs.

(4) The Minister for Planning may, under and in accordance with the Environmental Planning and Assessment Act 1979, direct the council of a city, municipality or shire to prepare a draft local environmental plan to
15 give effect to any such proposal that is contained in an approved recovery plan.

(5) Any such proposal that is contained in an approved recovery plan is taken to be of significance for environmental planning for the State and any region concerned. Accordingly, a draft State environmental planning
20 policy or regional environmental plan may be prepared under and in accordance with the Environmental Planning and Assessment Act 1979 to give effect to the proposal.

Recovery plans to be published

27. (1) As soon as a recovery plan is approved, the Director of
25 National Parks and Wildlife is to make the plan public and to ensure that the plan is brought to the attention of all government agencies affected by it.

(2) If the Director of National Parks and Wildlife is of the opinion that the disclosure of the location of the habitat of a particular species may
30 result in damage to the habitat or other threat to the species, the Director is not required to publish the location of that habitat.

Implementation of recovery plans

28. (1) Ministers and government agencies (including the Director of
35 National Parks and Wildlife) are to take appropriate action available to them to implement any measures in an approved recovery plan for which they are responsible.

(2) If the implementation of the recovery plan affects a statutory discretion of a Minister or government agency, this section does not

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operate to exclude the discretion, but the Minister or agency must take the plan into account.

(3) This section does not operate to require or authorise any action by a Minister or government agency that is inconsistent with any statutory or other legal obligation of the Minister or government agency. 5

Review of recovery plans

29. (1) The Director of National Parks and Wildlife is required to keep each recovery plan under review and to consider any submissions from government agencies affected by the plan or the public.

(2) If the Director considers that any change should be made to a recovery plan, the Director is to prepare a new plan in accordance with this Part. 10

Obligations relating to other threatened species not subject to recovery plans

30. (1) The Director of National Parks and Wildlife and the Scientific Committee are to take steps to clarify the status of species listed in Part 3 (Indeterminate species) and Part 4 (Insufficiently known species) of Schedule 2, but only to the extent that it is practicable to do so. 15

(2) The Director of National Parks and Wildlife is to monitor species listed in Part 2 of Schedule 2 (Rare species) and may take any practicable measures available to protect those species. 20

**PART 4—DAMAGE TO CRITICAL HABITAT OF
ENDANGERED SPECIES**

Critical habitat

31. (1) For the purposes of this Part, critical habitat of an endangered species is habitat designated as critical habitat of that species in an environmental planning instrument. 25

(2) Any such instrument is not to designate critical habitat unless the Minister for Planning certifies, on the advice of the Director of National Parks and Wildlife, that the protection of the habitat is essential for the survival of the species concerned. The certificate is conclusive as to the matter it certifies in any proceedings which question the validity of the instrument. 30

(3) Any such instrument is to designate critical habitat by a description of the place concerned (including by means of a map). 35

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Offence to damage critical habitat

32. (1) A person must not damage any critical habitat of an endangered species.

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

(2) It is not necessary for the prosecution to prove that the person knew that the habitat concerned was designated as critical habitat or that the person knew that it was the habitat of the species concerned.

10 (3) In this section, a reference to **damaging** the critical habitat of a species includes a reference to destroying that habitat and, in the case of a species of plant, includes a reference to **damaging** or destroying members of that species.

Defence

15 33. (1) It is a defence to any prosecution for an offence against section 32 if the accused proves that the act constituting the alleged offence:

- (a) was done in compliance with any applicable provisions of the Environmental Planning and Assessment Act 1979 and environmental planning instruments made under that Act; or
- 20 (b) was unlikely to increase the threat to the survival of the endangered species concerned; or
- (c) was authorised to be done by or under any Act or law (such as the Bush Fires Act 1949 or the State Emergency and Rescue Management Act 1989) and was reasonably necessary in order to
- 25 avoid a threat to life or property.

(2) It is not a defence to any such prosecution for the accused to prove that the act constituting the offence was authorised under Division 2 of Part 4 of the Environmental Planning and Assessment Act 1979 (Existing use).

30 **PART 5—INTERIM PROTECTION ORDERS FOR CRITICAL HABITAT OF ENDANGERED SPECIES**

Director of National Parks and Wildlife may recommend interim protection of areas of critical habitat

35 34. (1) The Director of National Parks and Wildlife may recommend to the Minister the making of an interim protection order in respect of a place:

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- (a) which the Director considers is critical habitat of an endangered species, that is, habitat that could be designated as critical habitat of that species in an environmental planning instrument; and
- (b) on which any activity is being or proposed to be carried out that the Director has reason to believe will damage or destroy that habitat and will threaten the survival of that species, 5

in order that action may be taken to designate that habitat as critical habitat or that other action may be taken for the permanent protection of that habitat.

(2) This section does not apply to any place that has already been designated as critical habitat in an environmental planning instrument. 10

Making of interim protection orders

35. (1) The Minister may, after considering the recommendation made by the Director of National Parks and Wildlife, make an interim protection order in respect of the place the subject of the recommendation. 15

(2) An interim protection order may contain such terms relating to the prohibition or regulation of the carrying out of the activity concerned by the owner or occupier of the place as the Minister considers necessary to prevent the damage to the habitat and the threat to the survival of the species. 20

(3) An interim protection order takes effect on the date of its publication in the Gazette or on a later date specified in the order.

(4) The Minister is not required, before making an interim protection order, to notify any person who will be affected by the order of the intention to make the order. 25

Notice of making of interim protection order

36. (1) The Minister must cause notice of an interim protection order and its terms to be given, as soon as practicable after its publication in the Gazette, to: 30

- (a) any person who appears to the Minister to be an owner or occupier of the place the subject of the order; and
- (b) the Minister for Planning; and
- (c) the council of the shire, municipality or city in which the area is situated; and any other person the Minister thinks fit. 35

(2) The Minister is required to consider any advice or submission made by any such person or council concerning the order.

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Minister to seek designation of critical habitat etc. after making order

37. (1) When the Minister notifies the Minister for Planning of the making of an interim protection order, the Minister may request the
 5 Minister for Planning to designate the land as critical habitat or to take other appropriate action under an environmental planning instrument for the protection of the habitat concerned.

(2) The Minister may, in addition or as an alternative to any such request, take any other available action to protect the habitat.

10 (3) The Minister is to revoke an interim protection order if the Minister for Planning notifies the Minister that no action is to be taken under an environmental planning instrument with respect to the habitat and if no other action is proposed by the Minister to protect the habitat.

15 (4) The Minister is to revoke an interim protection order if the Minister for Planning notifies the Minister that action has been taken under an environmental planning instrument to protect the habitat.

Duration of interim protection order

38. (1) An interim protection order has effect for such period as is specified in the order, unless it is sooner revoked by the Minister.

20 (2) An interim protection order may be renewed by the making of a further order or orders.

(3) However, an order may not be made for a period exceeding 12 months and may not be renewed if the total period of the order and any renewal would exceed 12 months.

25 (4) Only one order may be made (whether or not renewed) in respect of any particular activity or proposed activity on the place concerned.

(5) Before renewing an order, the Minister must consult the owner or occupier of the place the subject of the order, unless the owner or occupier has previously been consulted about the order.

30 (6) An interim protection order may not be made under this Part in respect of a particular activity or proposed activity if the activity is or was the subject of restrictions imposed by an interim protection order under the National Parks and Wildlife Act 1974. Similarly, an interim protection order may not be made under Part 6A of the National Parks and Wildlife
 35 Act 1974 for the purpose of restricting a particular activity or proposed activity if the activity is or was the subject of an interim protection order under this Part.

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Revocation of interim protection order

39. (1) The Minister may revoke an interim protection order by notice of revocation.

(2) A notice of revocation takes effect on the date of its publication in the Gazette or on a later date specified in the notice. 5

(3) The Minister must cause notice of the revocation to be given to the same persons to whom the Minister gave notice of the making of the order.

Offence

40. (1) An owner or occupier of any place subject to an interim protection order who contravenes the order is guilty of an offence. 10

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

(2) It is a defence to any prosecution for an offence against this section if the accused proves that the act constituting the alleged offence: 15

(a) was unlikely to increase the threat to the survival of the endangered species concerned; or

(b) was authorised to be done by or under any Act or law (such as 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. 20

Appeal against order

41. (1) An owner or occupier of the whole or any part of any place subject to an interim protection order may appeal to the Land and Environment Court against the imposition of the order or any of its terms. 25

(2) Such an appeal must be made within the time and in the manner provided by the rules of the Court.

(3) In deciding an appeal, the Court may have regard to:

(a) any hardship caused to the owner or occupier by the imposition of the order or any of its terms; and 30

(b) the purposes of the order.

(4) In deciding such an appeal, the Court has all the functions and discretions of the Minister under this Part and may make such order as it thinks fit.

(5) A decision of the Court on an appeal is final and is to be given effect to as if it were the decision of the Minister. 35

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Register of orders

42. (1) The Director of National Parks and Wildlife must keep a register containing copies of interim protection orders under this Part, as in force from time to time.
- 5 (2) The register must be open for public inspection during ordinary business hours, and copies of or extracts from the register are to be available on payment of the fee fixed by the Director.

PART 6—SCIENTIFIC COMMITTEE

Establishment of Scientific Committee

- 10 43. There is established by this Act a Scientific Committee.

Functions of Scientific Committee

44. The functions of the Scientific Committee are as follows:
- (a) to recommend species of animals or plants for listing under this Act as endangered or other threatened species;
- 15 (b) to advise the Director of National Parks and Wildlife on recovery plans under Part 3;
- (c) to advise the Director of National Parks and Wildlife on the exercise of the Director's functions under the National Parks and Wildlife Act 1974 in relation to animals and plants;
- 20 (d) to advise the Minister on any matter relating to the conservation of animals and plants that is referred to the Committee by the Minister or that the Committee considers appropriate.

Members of Scientific Committee

- 25 45. (1) The Scientific Committee is to consist of 8 members appointed by the Minister.
- (2) Of the members of the Scientific Committee:
- (a) 1 is to be the Director of National Parks and Wildlife, or an officer of the National Parks and Wildlife Service; and
- (b) 2 are to be scientists employed by the Government; and
- 30 (c) 2 are to be scientists employed by educational institutions; and
- (d) 3 are to be scientists not employed by the Government.
- (3) A member who is a scientist not employed by the Government is to be appointed by the Minister as Chairperson of the Committee.

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(4) A person appointed as a member of the Scientific Committee (other than the Chairperson) is to have expertise in one or more of the following areas of study (and between them those members are to have expertise in all those areas):

- (a) vertebrate ecology; 5
- (b) invertebrate ecology;
- (c) plant ecology;
- (d) limnology;
- (e) conservation genetics.

Provisions relating to members of Scientific Committee 10

46. (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. 15

(3) The office of a member becomes vacant if the member:

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or 20
- (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 25
- (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 30

(f) becomes a mentally incapacitated person.

(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. 35

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(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.

Procedure of the Scientific Committee

10 47. (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.

15 (2) The quorum for a meeting of the Scientific Committee is 5 members.

(3) The Chairperson of the Scientific Committee or, in the absence of the 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.

20 (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.

Scientific Committee not subject to Ministerial control

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

PART 7—MISCELLANEOUS

Act binds Crown

30 49. 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 other capacities.

Annual report by Director on operation of Act

50. In preparing the annual report of the National Parks and Wildlife Service, the Director of National Parks and Wildlife is to report on the operation of this Act.

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Delegation

51. The Director of National Parks and Wildlife may delegate to an officer of the National Parks and Wildlife Service any of the Director's functions under this Act, other than this power of delegation.

Relationship of Act to National Parks and Wildlife Act 1974 5

52. 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.

Court may order offender to restore damage to habitat

53. If a court convicts a person of an offence under this Act involving damage to any habitat, the court may, in addition to or substitution for any pecuniary penalty for the offence, direct the person: 10

- (a) to plant new trees or other vegetation and maintain them to a mature growth; and
- (b) to take any other action to mitigate the damage or to restore that habitat; and 15
- (c) to provide security for the performance of any obligation imposed under paragraph (a) or (b).

Offences by corporations

54. (1) If a corporation contravenes, whether by act or omission, any provision of this Act or a regulation, each person who is a director or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention. 20

(2) A person may be proceeded against and convicted under such a provision whether or not the corporation has been proceeded against or been convicted under that provision. 25

(3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations. 30

Proceedings for offences

55. (1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily before:

- (a) a Local Court constituted by a Magistrate sitting alone; or
- (b) the Land and Environment Court in its summary jurisdiction. 35

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5 (2) If proceedings for an offence against this Act or the regulations are taken before a Local Court, the maximum penalty that the Local Court may impose in respect of the offence is, despite any other provision of this Act, 50 penalty units or the maximum penalty provided by this Act or the regulations for the offence, whichever is the lesser. ...

(3) Proceedings for an offence against this Act or the regulations may be commenced not later than 12 months after the act or omission alleged to constitute the offence, despite the Justices Act 1902 or any other Act.

Regulations

10 56. (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 carrying out or giving effect to this Act.

15 (2) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

Amendment of National Parks and Wildlife Act 1974 No. 80

57. The National Parks and Wildlife Act 1974 is amended as set out in Schedule 3.

20 **Amendment of Environmental Planning and Assessment Act 1979 No. 203**

58. The Environmental Planning and Assessment Act 1979 is amended as set out in Schedule 4.

Amendment of other Acts

25 59. The Acts specified in Schedule 5 are amended as set out in that Schedule.

Savings, transitional and other provisions

60. Schedule 6 has effect.

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SCHEDULE 1—ENDANGERED SPECIES

(Sec. 6)

SCHEDULE 2—OTHER THREATENED SPECIES

(Sec. 9)

Part 1—Vulnerable species

5

Part 2—Rare species

Part 3—Indeterminate species

Part 4—Insufficiently known species

**SCHEDULE 3—AMENDMENT OF NATIONAL PARKS AND
WILDLIFE ACT 1974 No. 80**

10

(Sec. 57)

(1) Section 3:

After section 2, insert:

Act binds Crown

3. 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 other capacities.

15

(2) Section 5 (Definitions):

(a) Insert in section 5 (1) in alphabetical order the following definition:

20

“endangered or other threatened species” means a species of animal or plant that is an endangered or other threatened species within the meaning of the Endangered and Other Threatened Species Conservation Act 1992;

25

(b) Omit the definition of “endangered fauna” in section 5 (1).

(c) Omit the definition of “fauna” in section 5 (1), insert instead:

“fauna” means any mammal, bird, reptile or amphibian;

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**SCHEDULE 3—AMENDMENT OF NATIONAL PARKS AND
WILDLIFE ACT 1974 No. 80—*continued***

- (d) Omit the definition of “marine mammal” in section 5 (1),
insert instead:
- 5 “marine mammal” means any mammal of a species
 within the following orders:
- Cetacea* Whales, dolphins etc.
Pinnipedia Seals, sea lions etc.
Sirenia Dugongs etc.
- 10 (e) Omit the definition of “protected amphibian” in section 5
(1).
- (f) At the end of the definition of “protected native plant” in
section 5 (1), insert “, and includes any endangered or other
15 threatened species of plant whether or not named in Schedule
13”.
- (g) Omit the definition of “take” in section 5 (1), insert instead:
 “take” any fauna or other animal includes hunt, shoot,
 poison, net, snare, spear, capture, lure or injure the fauna
 or other animal;
- 20 (3) Section 6 (The Service):
 In section 6 (b), after “this Act”, insert “or the Endangered
 and Other Threatened Species Conservation Act 1992”.
- (4) Section 10 (Officers and employees):
 After “this Act”, insert “, the Endangered and Other
25 Threatened Species Conservation Act 1992”.
- (5) Section 11 (Use of services of officers etc. of Departments etc.):
 In section 11 (5), after “this Act”, insert “, the Endangered
 and Other Threatened Species Conservation Act 1992”.
- 30 (6) Section 69C (Purpose and content of conservation
agreements):
 In section 69C (1) (e), after “flora”, insert “(including the
 conservation of endangered or other threatened species)”.
- (7) Section 93 (Amendment of Schedule 11 (unprotected fauna)):
 After section 93 (2), insert:
- 35 (3) An endangered or other threatened species of fauna
 may not be included in Schedule 11 and, if such a species is

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**SCHEDULE 3—AMENDMENT OF NATIONAL PARKS AND
WILDLIFE ACT 1974 No. 80—*continued***

named in that Schedule, its inclusion in that Schedule is to be disregarded.

- (8) **Section 94 (Amendment of Schedule 12 (endangered fauna)):** 5
Omit the section.
- (9) **Section 94A (Amendment of Schedule 12A (protected amphibians)):**
Omit the section.
- (10) **Section 95 (Open seasons):** 10
From section 95 (3) (a), omit “endangered fauna”, insert instead “fauna of an endangered or other threatened species”.
- (11) **Section 96 (Locally unprotected fauna):**
After section 96 (3), insert: 15
(4) This section does not apply to fauna of an endangered or other threatened species.
- (12) **Section 97 (Certain protected fauna to be property of the Crown):**
(a) Omit section 97 (1) (b1). 20
(b) From section 97 (1) (c), omit “(not being a protected amphibian)”.
(c) After section 97 (5), insert:
(6) Subsection (1) (c) applies in respect of fauna that is an amphibian as if the reference in that subsection to the commencement day were a reference to: 25
(a) the date of assent to the National Parks and Wildlife (Amendment) Act 1983 in the case of an amphibian that was a protected amphibian immediately before the date of assent to the Endangered Fauna (Interim Protection) Act 1991; or 30
(b) the date of assent to the Endangered Fauna (Interim Protection) Act 1991 in the case of any other amphibian.

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**SCHEDULE 3—AMENDMENT OF NATIONAL PARKS AND
WILDLIFE ACT 1974 No. 80—continued**

(13) Section 98:

Omit section 98, insert instead:

5

Taking or killing of protected fauna

98. (1) A person must not take or kill any protected fauna.

Maximum penalty:

10

(a) in respect of fauna of an endangered or other threatened species or a marine mammal—1,000 penalty units or imprisonment for 2 years or both; or

(b) in respect of any other protected fauna—100 penalty units or imprisonment for 12 months or both.

15

(2) A person is not to be convicted of an offence arising under subsection (1) unless the prosecution proves that the person intended, by the act constituting the offence, to take or kill protected fauna.

20

(3) It is not necessary for the prosecution to prove that the accused intended to take or kill any protected fauna concerned if the prosecution proves that the accused intended to take or kill animals generally or animals of a kind that included protected fauna.

25

(4) It is not necessary for the prosecution to prove that the accused knew that the animal or kind of animals he or she intended to take or kill was or included protected fauna within the meaning of this Act.

(5) In any such prosecution, proof that the accused:

(a) was in possession of protected fauna; or

(b) set a trap, laid poison or used another device in a manner likely to take or kill protected fauna,

30

is evidence that the accused had the requisite intention to take or kill the protected fauna, and the onus of proof to the contrary is on the accused.

35

(6) A person is not to be convicted of an offence arising under subsection (1) if the person proves that:

(a) the act constituting the offence was done under and in accordance with or by virtue of the authority conferred by a licence under Part 9 or an authority under section 171; or

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SCHEDULE 3—AMENDMENT OF NATIONAL PARKS AND WILDLIFE ACT 1974 No. 80—*continued*

- (b) the act constituting the offence was required to be done by or under any other Act or law.
- (7) This section does not apply to the taking of: 5
- (a) locally unprotected fauna under section 96; or
- (b) any reptile of a species excluded from this section by the regulations.
- (8) In this section:
- “animal” means any kind of animal-life other than humans, including birds and fish; 10
- “take or kill” includes use an animal, firearm or other thing or means to take or kill.
- (14) Section 99 (Special provisions relating to marine mammals):
- (a) Omit section 99 (1), insert instead: 15
- (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.
- Maximum penalty: 100 penalty units or imprisonment for 6 months or both. 20
- (b) In section 99 (1A) (a), after “subsection (1)”, insert “or section 98 (1)”.
- (c) Omit section 99 (2) and (3), insert instead:
- (2) A person is not to be convicted of an offence arising under subsection (1) if the person proves that: 25
- (a) the act constituting the offence was done under and in accordance with or by virtue of the authority conferred by a licence under Part 9 or an authority under section 171; or
- (b) the act constituting the offence was required to be done by or under any other Act or law. 30
- (d) From section 99 (4), omit “(c)”.
- (15) Section 100 (Further exemptions respecting taking or killing protected fauna):
- Omit “98 (2)”, wherever occurring, insert instead “98 (1)”. 35

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SCHEDULE 3—AMENDMENT OF NATIONAL PARKS AND WILDLIFE ACT 1974 No. 80—*continued*

- 5 (16) Section 101 (**Buying, selling or possessing protected fauna**):
Omit the penalty provision from section 101 (1), insert instead:
Penalty:
- 10 (a) in respect of fauna of an endangered or other threatened species or a marine mammal—1,000 penalty units or imprisonment for 2 years or both; or
(b) in respect of any other protected fauna—200 penalty units or imprisonment for 12 months or both.
- 15 (17) Section 103 (**Taking or killing fauna for sale**):
From section 103 (4), omit “endangered fauna”, insert instead “fauna of an endangered or other threatened species”.
- 20 (18) Section 117 (**Restriction on picking or possession of native plant**):
After section 117 (3) (b), insert:
; or
25 (c) in the case of the Forestry Commission—the protected native plant was picked by the Forestry Commission in the course of exercising any of its powers, authorities, duties or functions under the Forestry Act 1916 (or was in the possession of the Commission after having been so picked).
- 30 (19) Section 121 (**Occupier’s licence**):
From section 121 (3), omit “endangered fauna”, insert instead “fauna of an endangered or other threatened species”.
- 35 (20) Section 122 (**Game licence**):
From section 122 (2), omit “endangered fauna”, insert instead “fauna of an endangered or other threatened species”.
- (21) Section 123 (**Trapper’s licence**):
After section 123 (2), insert:
(3) A trapper’s licence shall not be issued with respect to fauna of an endangered or other threatened species.

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**SCHEDULE 3—AMENDMENT OF NATIONAL PARKS AND
WILDLIFE ACT 1974 No. 80—continued**

- (22) Section 138 (Payments into the Fund) and section 139 (Payments out of the Fund):
- In sections 138 (1) and 139 (2) (a), after "Act" wherever occurring, insert "or the Endangered and Other Threatened Species Conservation Act 1992". 5
- (23) Section 145 (Acquisition of land for reservation etc.):
- At the end of the section, insert:
- (2) This section also applies for the purpose of obtaining land that is or includes habitat of an endangered or other threatened species as proposed under a recovery plan under the Endangered and Other Threatened Species Conservation Act 1992. 10
- (24) Section 148 (Power of Minister to accept gifts etc.): 15
- After "this Act", insert ", the Endangered and Other Threatened Species Conservation Act 1992".
- (25) Schedule 12 (Endangered fauna):
- Omit the Schedule.
- (26) Schedule 12A (Protected amphibians): 20
- Omit the Schedule.

**SCHEDULE 4—AMENDMENT OF ENVIRONMENTAL
PLANNING AND ASSESSMENT ACT 1979 No. 203**

(Sec. 58)

- (1) Section 26 (Contents of environmental planning instruments): 25
- After section 26 (e), insert:
- (e1) protecting, conserving or restoring native species of animals or plants (including their habitat);
- (2) Section 90 (Matters for consideration):
- After section 90 (1) (c1), insert: 30
- (c2) the effect of that development on any endangered or other threatened species within the meaning of the Endangered and Other Threatened Species Conservation Act 1992 (including the means that may be employed to protect their habitat); 35

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**SCHEDULE 4—AMENDMENT OF ENVIRONMENTAL
PLANNING AND ASSESSMENT ACT 1979 No. 203—*continued***

- 5 (c3) 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;

(3) Section 111 (Duty to consider environmental impact):

After section 111 (3), insert:

- 10 (4) Without limiting subsection (1), a determining authority shall consider the effect of an activity on:
- (a) any endangered or other threatened species within the meaning of the Endangered and Other Threatened Species Conservation Act 1992 (including the means that may be employed to protect their habitat); and
- 15 (b) any other protected fauna or protected native plants within the meaning of the National Parks and Wildlife Act 1974.

SCHEDULE 5—AMENDMENT OF OTHER ACTS

(Sec. 59)

Fisheries and Oyster Farms Act 1935 No. 58

20 After section 114, insert:

Offence to take endangered species of fish

115. (1) A person must not take any fish which is:

- 25 (a) an endangered species; or
(b) any other threatened species listed as vulnerable or rare,

under the Endangered and Other Threatened Species Conservation Act 1992.

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

- 30 (2) A person is not to be convicted of an offence arising under subsection (1) if the person proves that the act constituting the offence was done under and in accordance with a permit issued under section 15.

Endangered and Other Threatened Species Conservation 1992

SCHEDULE 5—AMENDMENT OF OTHER ACTS—*continued*

Land and Environment Court Act 1979 No. 204

Section 20 (Class 4—environmental planning and protection civil enforcement):

- (a) After section 20 (1) (cj), insert: 5
 - (ck) proceedings under section 41 of the Endangered and Other Threatened Species Conservation Act 1992;
- (b) In section 20 (3) (a), in alphabetical order of Acts, insert: 10
 - Endangered and Other Threatened Species Conservation Act 1992;

Non-Indigenous Animals Act 1987 No. 166

Section 4 (Application of Act):

- At the end of section 4 (2), insert: 15
 - Endangered and Other Threatened Species Conservation Act 1992.

Soil Conservation Act 1938 No. 10

- (a) Section 21B:
 - Omit section 21B (b), insert instead: 20
 - (b) land containing endangered or other threatened species within the meaning of the Endangered and Other Threatened Species Conservation Act 1992;
- (b) Section 21D:
 - Omit section 21D (3A) (c), insert instead: 25
 - (c) an adverse effect on endangered or other threatened species within the meaning of the Endangered and Other Threatened Species Conservation Act 1992;

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

(Sec. 60)

Regulations 30

- 1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

Endangered and Other Threatened Species Conservation 1992

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later date.

5 (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:

- 10 (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.

15 **Interim endangered species of fauna for purposes of National Parks and Wildlife Act 1974**

20 2. Until endangered species of animals are specified in Schedule 1 to this Act, endangered species of fauna for the purposes of the National Parks and Wildlife Act 1974 are those species that were, immediately before the repeal by this Act of Schedule 12 to that Act, endangered fauna of a species listed in Part 1 of that Schedule or marine mammals.

Interim other threatened species of fauna for purposes of National Parks and Wildlife Act 1974

25 3. Until other threatened species of animals are specified in Schedule 2 to this Act, other threatened species of fauna for the purposes of the National Parks and Wildlife Act 1974 are those species that were, immediately before the repeal by this Act of Schedule 12 to that Act, endangered fauna of a species listed in that Schedule (apart from Part 1 and marine mammals).

30 **Savings and transitional provisions consequent on repeal of Endangered Fauna (Interim Protection) Act 1991**

4. (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.

35 (2) Any requirement for the preparation or consideration of a fauna impact statement prepared under section 92D of the National Parks and

Endangered and Other Threatened Species Conservation 1992

SCHEDULE 6—SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS—*continued*

- Wildlife Act 1974, as inserted by the Endangered Fauna (Interim Protection) Act 1991, ceases to apply in respect to any matter arising before or after the repeal of that section by this Act. 5
- (3) Any stop work order made under section 92E of the National Parks and Wildlife Act 1974, as inserted by the Endangered Fauna (Interim Protection) Act 1991, ceases to have effect. However, nothing in this clause prevents the making of an interim protection order under Part 5 of this Act with respect to the same activity to which the stop work order applied. 10
- (4) The repeal of the Endangered Fauna (Interim Protection) Act 1991 by this Act does not affect any offence committed before the repeal.
- (5) The repeal of the Endangered Fauna (Interim Protection) Act 1991 by this Act does not affect any general licence issued under section 120 of the National Parks and Wildlife Act 1974 before the repeal. 15
- Consequential amendment of Environmental Planning and Assessment Regulation 1980**
5. The Environmental Planning and Assessment Regulation 1980 is amended by omitting clause 41A (c)–(e) and clause 56 (f) and (e1). 20
-

EXPOSURE DRAFT

**ENVIRONMENTAL PLANNING AND ASSESSMENT
(AMENDMENT) BILL 1992**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

This Bill is cognate with the Natural Resources Management Council Bill 1992.

Part 5 of the Environmental Planning and Assessment Act 1979 sets out the environmental assessment obligations of government agencies which propose to carry out, or propose to approve of others carrying out, activities which do not require development consent (and which therefore are not subject to environmental assessment under Part 4 of that Act by the council or other authority granting consent). If the activity is likely to significantly affect the environment, the agency is required to obtain an environmental impact statement, place it on public exhibition and take account of responses to the statement. Typical examples of such activities are the construction of freeways, logging operations, and other major public works.

The object of this Bill is to amend the Environmental Planning and Assessment Act 1979 to provide that, where a Government agency is both the proponent and the determining authority for any activity for which an environmental impact statement has been obtained under Part 5 of that Act, the Minister for Planning and not the agency will finally decide whether the activity may proceed and any conditions to which it will be subject following the examination of the statement and public responses to it.

The principal features of the Bill are as follows:

- (a) The obligation to refer the proposed activity to the Minister for Planning will arise only where the agency has decided to obtain an environmental impact statement because the activity is likely to significantly affect the environment.
- (b) That obligation will arise only if the agency is the proponent of the activity. The Forestry Commission is declared to be the proponent of all forestry activities authorised by it on land under its management. Similar declarations in respect of other agencies may be made by the regulations or by the Minister for Planning.
- (c) The obligation to refer a proposed activity to the Minister for Planning will not apply if the agency is a council, county council or other specially excluded body.

Environmental Planning and Assessment (Amendment) 1992

- (d) After an agency obtains an environmental impact statement, the agency will be required to publicly exhibit the statement and consider the public responses to it before deciding whether to proceed with the activity and referring it to the Minister for Planning.
- (e) Before the Minister for Planning makes a decision on whether the activity should proceed, the Director of Planning is to prepare a public report on the matter. The Minister for Planning is to have regard to that report, any report of a public inquiry and any submission from the Minister with the relevant portfolio responsibility for the activity.
- (f) The Minister for Planning may approve of the activity (with or without conditions) or disapprove of the activity. For that purpose, the Minister is to review the decision of the agency having regard to the environmental assessment of the activity and the rights and obligations of the agency.
- (g) The Director of Planning will be required to prepare a report within 3 months and the Minister for Planning will be required to make a decision on the matter within 21 days.
- (h) The power of the Minister for Planning to instigate a public inquiry by a Commissioner under the Act is not affected—before the Minister for Planning determines the matter the relevant agency will be required to reconsider the proposed activity having regard to the findings of the inquiry.
- (i) The new procedures will not apply to environmental impact statements that have already been prepared or that are currently being prepared in accordance with the requirements of the Director of Planning, unless the Minister for Planning directs that the new procedures are to apply.

The Bill makes consequential amendments to the Timber Industry (Interim Protection) Act 1992 which includes interim measures for the Minister for Planning to approve of logging operations to which that Act applies (the approval of the Minister for Planning for those logging operations will continue to be required under the Bill).

The Bill also makes consequential amendments to the State Owned Corporations Act 1989 (which provides that Part 5 of the EPA Act applies instead of Part 4 for significant State or regional development certified by the Minister for Planning and provides for the portfolio Minister of the State owned corporation to determine the development). The Bill will enable the Minister for Planning to decide in those cases whether an environmental impact statement is required and to determine the development under the new arrangements in the place of the portfolio Minister.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the several provisions of the proposed Act.

Clause 3 is a formal provision that gives effect to the amendments to the Environmental Planning and Assessment Act 1979 in Schedule 1.

Clause 4 is a formal provision that gives effect to the consequential amendments to the State Owned Corporations Act 1989 and the Timber Industry (Interim Protection) Act 1992 in Schedule 2.

Schedules 1 and 2 make the amendments set out above.

**ENVIRONMENTAL PLANNING AND ASSESSMENT
(AMENDMENT) BILL 1992**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Environmental Planning and Assessment Act 1979 No. 203
4. Consequential amendment of other Acts

**SCHEDULE 1—AMENDMENT OF ENVIRONMENTAL PLANNING AND
ASSESSMENT ACT 1979**

SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF OTHER ACTS

**ENVIRONMENTAL PLANNING AND ASSESSMENT
(AMENDMENT) BILL 1992**

NEW SOUTH WALES



No. , 1992

A BILL FOR

An Act to amend the Environmental Planning and Assessment Act 1979 with respect to proposed activities of government agencies that are subject to environmental impact statements under Part 5 of that Act; and to consequentially amend certain other Acts.

Environmental Planning and Assessment (Amendment) 1992

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Environmental Planning and Assessment (Amendment) Act 1992.

5 Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Environmental Planning and Assessment Act 1979 No. 203

10 3. The Environmental Planning and Assessment Act 1979 is amended as set out in Schedule 1.

Consequential amendment of other Acts

4. The State Owned Corporations Act 1989 and the Timber Industry (Interim Protection) Act 1992 are amended as set out in Schedule 2.

15 **SCHEDULE 1—AMENDMENT OF ENVIRONMENTAL
PLANNING AND ASSESSMENT ACT 1979**

(Sec. 3)

(1) Section 23 (Delegation):

20 In section 23 (8) (b), after "118", insert "or by Division 4 of Part 5".

(2) Part 5, Division 1, heading:

Before section 110, insert:

Division 1—Preliminary

(3) Section 110 (Definitions):

25 (a) In the definition of "proponent", after "the activity", insert
"and includes any person taken to be the proponent of the activity by virtue of section 110B".

(b) At the end of the section, insert:

30 (2) The Minister is not a determining authority in relation to an activity for the purposes of this Part merely because the Minister's approval is required under Division 4.

Environmental Planning and Assessment (Amendment) 1992

**SCHEDULE 1—AMENDMENT OF ENVIRONMENTAL
PLANNING AND ASSESSMENT ACT 1979—continued**

- (4) Section 110B:
 After section 110A, insert:
Determining authorities taken to be proponents of activities 5
 110B. (1) A proponent of an activity for the purposes of this Part is taken to include the following:
 (a) the Forestry Commission in respect of forestry activities authorised by that Commission on land under the management of that Commission; 10
 (b) any determining authority which the Minister certifies in writing to be the proponent of a particular activity specified in the certificate or which the regulations declare to be the proponent of activities of the kind specified in the regulations. 15
 (2) In any such case, a reference in this Part to a determining authority carrying out an activity includes a reference to the Forestry Commission or such a determining authority granting an approval in relation to the activity. 20
- (5) Part 5, Division 2, heading:
 Before section 111, insert:
Division 2—Duty of determining authorities to consider environmental impact of activities
- (6) Part 5, Division 3, heading: 25
 Before section 112, insert:
Division 3—Activities for which EIS required
- (7) Section 112 (Decision of determining authority in relation to certain activities):
 (a) After section 112 (1) (c), insert: 30
 (c1) if Division 4 applies—any requisite approval of the Minister has been obtained and the activity is carried out in accordance with that approval;
 (b) After section 112 (6), insert:
 (6A) However, the provisions of subsection (4) do not authorise a determining authority which is the proponent of an activity to do anything contrary to an approval under Division 4. 35

Environmental Planning and Assessment (Amendment) 1992

**SCHEDULE 1—AMENDMENT OF ENVIRONMENTAL
PLANNING AND ASSESSMENT ACT 1979—*continued***

- (8) Section 113 (**Publicity and examination of environmental impact statements**):

5 In section 113 (5), after “section 119”, insert “or Division 4 applies”.

- (9) Part 5, Division 4:

After section 115, insert:

10 **Division 4—Minister administering this Act to be
approving authority instead of proponent where EIS
prepared**

Requirement for Minister’s approval

15 115A. (1) A determining authority is not to carry out an activity to which this Division applies if it is the proponent of the activity unless the Minister has approved of the activity being carried out.

(2) This Division applies to an activity only if:

- 20 (a) the proponent has obtained an environmental impact statement in respect of the activity; and
(b) the proponent of the activity is not an authority excluded from this Division by section 115D.

25 (3) When considering whether to approve of an activity, the Minister is to review the decision of the proponent to carry out the activity having regard to the assessment of the activity under this Part and the rights and obligations of the proponent.

Provisions relating to Minister’s approval

30 115B. (1) A proponent may seek the Minister’s approval under this Division after it has complied with section 112 (1) (a)–(c).

35 (2) If a proponent seeks the Minister’s approval under this Division, the Minister is required to approve of the activity (with or without conditions or modifications) or disapprove of the activity. The Minister is to notify the proponent of the decision and indicate the reasons for any conditions or modifications or any disapproval of the activity.

Environmental Planning and Assessment (Amendment) 1992

**SCHEDULE 1—AMENDMENT OF ENVIRONMENTAL
PLANNING AND ASSESSMENT ACT 1979—*continued***

(3) The Minister, when approving of an activity, may impose only such conditions or require only such modifications as will in the Minister's opinion eliminate or reduce any detrimental effect of the activity on the environment. The Minister may, at the request of the proponent, revoke or vary any such condition or modification at any time. 5

(4) Before making a decision under this Division, the Minister is to obtain a report from the Director under section 115C. A report is not required if the Minister has directed that an inquiry be held in accordance with section 119. 10

(5) If the proponent is not a Minister, the Minister is to consult the Minister responsible for the proponent before making a decision under this Division. 15

(6) When making a decision under this Division, the Minister is to take into account any report of the Director under section 115C, any findings and recommendations of a Commission of Inquiry and, if the proponent is not a Minister, any submission from the Minister responsible for the proponent. 20

(7) If the Minister has directed that an inquiry be held in accordance with section 119 with respect to an activity to which this Division applies, the Minister is to defer a decision on the activity until the proponent advises the Minister whether it proposes to proceed with or modify the activity following its consideration of the findings and recommendations of the Commission of Inquiry and any advice of the Minister. 25
30

(8) The Minister's decision on an activity is to be made within 21 days after the Minister receives the Director's report under section 115C or (if subsection (7) applies) within 21 days after the proponent advises the Minister that it proposes to proceed with or modify the activity. The proponent may agree to an extension of any such period. 35

(9) If the Minister's decision is not made within the period required by subsection (8), the approval of the Minister under this Division is no longer required in respect of the activity. This subsection does not affect any obligation of the proponent under the other Divisions of this Part. 40

Environmental Planning and Assessment (Amendment) 1992

**SCHEDULE 1—AMENDMENT OF ENVIRONMENTAL
PLANNING AND ASSESSMENT ACT 1979—*continued***

Director's report

5 115C. (1) The Director is to report to the Minister on the assessment of a proposed activity under this Part and the decision of the proponent to carry out the activity.

10 (2) When preparing a report, the Director is to examine the environmental impact statement, the representations made in response to the public exhibition of the statement, any submissions from the proponent and any other thing the Director considers relevant.

 (3) A copy of the report is to be given to the proponent immediately after it is given to the Minister.

15 (4) The report is to be made within 3 months after the proponent seeks the Minister's approval under this Division to carry out the activity. The proponent may agree to an extension of any such period.

20 (5) If the report is not made within the period required by subsection (4), the approval of the Minister under this Division is no longer required in respect of the activity. This subsection does not affect any obligation of the proponent under the other Divisions of this Part.

25 (6) The Director may make a report under this section even though an inquiry is held in accordance with section 119. However, subsections (4) and (5) do not apply to the report.

Excluded determining authorities

 115D. The following determining authorities are excluded from this Division:

- 30 (a) the Minister or the corporation constituted by section 8 (1);
- (b) a council or county council;
- (c) any person or body excluded from this Division by an Act or by the regulations.

Environmental Planning and Assessment (Amendment) 1992

**SCHEDULE 1—AMENDMENT OF ENVIRONMENTAL
PLANNING AND ASSESSMENT ACT 1979—*continued***

Miscellaneous provisions

115E. (1) Any public authority or body to which an appeal may be made by or under any Act in relation to an activity to which this Division applies is, in deciding the appeal, to consider and take into account a report of the Director to the Minister under section 115C and the decision of the Minister. 5

(2) The following are to be made public:

(a) a decision of the Minister to approve or disapprove of an activity under this Division (together with any report of the Director to the Minister under section 115C); 10

(b) a decision of the Minister to impose (or revoke or vary) a condition or modification to which such an approval is subject. 15

(3) Nothing in this Division prevents the proponent of an activity approved by the Minister under this Division from modifying the activity after that approval is given, unless the modification is not consistent with the terms of the approval or the modification is such that a further environmental impact statement is required under this Part. 20

(4) A proponent obtains an environmental impact statement for the purposes of this Division if it obtains an environmental impact statement itself or if it is furnished, at its request, with such a statement. 25

Transitional arrangements

115F. (1) This Division does not apply to an activity if the proponent obtained the environmental impact statement before the commencement of this Division or if the Director has notified, under the regulations, the person preparing the statement of requirements with respect to the form and contents of the statement. 30

Environmental Planning and Assessment (Amendment) 1992

**SCHEDULE 1—AMENDMENT OF ENVIRONMENTAL
PLANNING AND ASSESSMENT ACT 1979—*continued***

- 5 (2) However, if the activity to which an environmental impact statement relates has not been carried out, this Division applies to the activity if the Minister (by notice in writing to the proponent) so directs.

**SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF
OTHER ACTS**

(Sec. 4)

10 **State Owned Corporations Act 1989 No. 134**

Omit section 37A (4) and (5), insert instead:

- 15 (4) The Minister administering the Planning Act may direct, by notice in writing to a State owned corporation, that the corporation is required to obtain an environmental impact statement under Part 5 of that Act in respect of development to which subsection (3) applies. Accordingly, the State owned corporation is taken to be the determining authority under Part 5 of that Act and must obtain the approval of that Minister under Division 4 of Part 5 of that Act before carrying out the development.

- 20 (5) If an environmental impact statement is not required to be obtained in respect of development to which subsection (3) applies, the State owned corporation is not to carry out the activity unless it has obtained the approval of the Minister administering the Planning Act. Before giving that approval, that Minister is required to comply with section 111 of that Act as if that Minister were the determining authority.

Timber Industry (Interim Protection) Act 1992 No. 1

- 30 (1) Section 6 (Moratorium on logging operations on Schedule 1 or 2 land):

Omit section 6 (2).

- (2) Section 8 (Logging operations on Schedule 4 land and their environmental assessment):

- 35 (a) After section 8 (3), insert:

(3A) After it obtains any such environmental impact statement and it has complied with section 112 (1) (a)–(c) of

Environmental Planning and Assessment (Amendment) 1992

**SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF
OTHER ACTS—*continued***

- the EPA Act, the Forestry Commission is required to seek the Minister for Planning's approval under Division 4 of Part 5 of the EPA Act in respect of the logging operations to which the statement applies as if Part 5 of the EPA Act were not suspended. 5
- (b) From section 8 (4), omit "section 9", insert instead "Division 4 of Part 5 of the EPA Act".
- (c) Omit section 8 (5). 10
- (3) **Section 9 (Minister for Planning to be determining authority for environmental impact statements on logging operations):**
Omit the section.
- (4) **Section 9A:**
Before section 10, insert: 15
Transitional provision consequent on repeal of section 9
9A. (1) A determination of the Minister for Planning under section 9 that was made before the repeal of that section by the Environmental Planning and Assessment (Amendment) Act 1992 is taken, after that commencement, to be a determination of that Minister under Division 4 of Part 5 of the EPA Act. 20
(2) If, on the repeal of section 9, a determination of the Minister for Planning is pending under that section, anything done under that section is taken on that repeal to have been done under Division 4 of Part 5 of the EPA Act. 25
- (5) **Section 13 (Amendment of EPA Act):**
Omit the section.
- (6) **Section 14 (Quarterly reporting by the Minister for the Environment):** 30
Omit the section.
- (7) **Section 16 (Expiry of this Act):**
Omit " , except for sections 1, 2, 4, 9 (8), 13, 14 and 16".
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EXPOSURE DRAFT

FOREST (RESOURCE SECURITY) BILL 1992

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

This Bill is cognate with the Natural Resources Management Council Bill 1992.

The objects of this Bill are:

- (a) to provide for resource security with respect to forested public land by its allocation for timber production in accordance with Government decisions based on reports of the proposed Natural Resources Management Council; and
- (b) to provide for resource security with respect to forested public land by contractual arrangement for compensation for withdrawal of that land from timber production.

PART 1—PRELIMINARY

Clause 1 sets out the short title of the proposed Act.

Clause 2 provides that the proposed Act will commence on a day or days to be proclaimed.

Clause 3 sets out the objects of the proposed Act.

Clause 4 contains definitions used in the proposed Act. Key definitions are those of "forested public land" which includes all State forests and timber reserves and "forestry operations" which includes logging and other operations for the purposes of timber production.

PART 2—RESOURCE SECURITY BY ALLOCATION OF FORESTED PUBLIC LAND FOR TIMBER PRODUCTION

Division 1—Classification of forested public land

Clause 5 states that the Part applies to forested public land classified for the purposes of the Part.

Forest (Resource Security) 1992

Clause 6 provides 3 classifications of forested public land for the purposes of the Part, namely, Preserved Native Forest, Restricted Use Forest and Timber Production Forest.

Clause 7 sets out the objectives of each classification. Generally:

- Preserved Native Forest is valuable native forest which should be preserved;
- Restricted Use Forest is native forest in which restricted harvesting of valuable timber resources should be allowed subject to the usual environmental planning and assessment requirements;
- Timber Production Forest is timber plantation forest or native forest of low conservation value in which the harvesting of timber resources should be secure.

Clause 8 provides that forested public land may be classified by an environmental planning instrument.

Clause 9 ensures that, before land is classified or its classification is changed or revoked, the proposed Natural Resources Management Council is required to report on the use of the land.

Clause 10 provides, however, that certain land in the South-east forests which has been the subject of thorough assessment may be classified without a report from the proposed Council.

Clause 11 promotes resource security by preventing land being withdrawn from the Timber Production Forest classification unless the proposed Council has changed its assessment of the value of the land because of new information or circumstances.

Clause 12 ensures that national parks and other dedicated and reserved land can not be classified for forest operations and that any such dedication or reservation may be made despite their classification under the Part.

Clause 13 prevents the classification of any land subject to the Timber Industry (Interim Protection) Act 1992 until that Act expires on 31 December 1994 or until the Forestry Commission obtains an E.I.S. for the land (whichever first occurs).

Division 2—Land use of classified forested public land

Clause 14 provides for the prohibition of all forestry operations on land classified as Preserved Native Forest.

Clause 15 provides for forestry operations on land classified as Restricted Use Forest subject to compliance with all relevant environmental planning and assessment laws and the proposed Forestry Practices Codes.

Clause 16 ensures that forestry operations may be carried out on land classified as Timber Production Forest and, for that purpose, declares that the operations are not subject to the environmental assessment or approval procedures of Part 5 of the Environmental Planning and Assessment Act 1979, that the operations do not require development consent under Part 4 of that Act and that forestry operations may not be prohibited or restricted by an environmental planning instrument. However, forestry operations are to be subject to the proposed Forestry Practices Codes.

Forest (Resource Security) 1992

Clause 17 provides that, if land ceases to be classified as Timber Production Forest or Restricted Use Forest, there are to be no existing use rights to continue forestry operations on that land.

Clause 18 provides that, except as otherwise provided by the Division, the Environmental Planning and Assessment Act 1979 and environmental planning instruments apply to classified land.

PART 3—RESOURCE SECURITY BY CONTRACTUAL ARRANGEMENTS FOR COMPENSATION FOR WITHDRAWAL OF FORESTED LAND FROM TIMBER PRODUCTION

Clause 19 states that the Part applies to timber supply contracts with the Forestry Commission for taking timber from land classified as Timber Production Forest.

Clause 20 provides for the inclusion in relevant timber supply contracts of a right to compensation if the Forestry Commission is unable to supply timber under the contract because land classified as Timber Production Forest is withdrawn from timber production.

Clause 21 provides that land classified as Timber Production Forest is withdrawn from timber production for the purposes of the Part if the land ceases to be classified as Timber Production Forest or forestry operations are prohibited or restricted by State legislation or State Government decisions.

Clause 22 provides for the reimbursement of the Forestry Commission from public money of any such compensation paid by it under a contract approved by the Treasurer.

Clause 23 ensures that the Part does not limit the powers of the Forestry Commission.

PART 4—FORESTRY PRACTICES CODES

Clause 24 declares that Forestry Practices Codes apply to forestry operations on land classified as Timber Production Forest or Restricted Use Forest. The Codes may be applied to other land by or under another Act.

Clause 25 enables Codes to regulate the manner in which forestry operations and ancillary activities are carried out for the purpose of protecting the environment and promoting ecologically sustainable forest use.

Clause 26 authorises the Minister to prepare Codes.

Clause 27 requires the Minister, when preparing Codes, to consult relevant persons and give the public an opportunity for comment.

Clause 28 requires Codes to be adopted by regulation before they come into force.

Clause 29 requires the Forestry Commission and its licensees to take all practicable steps to comply with any relevant Codes.

Clause 30 provides that Forestry Commission plans of management and logging practices continue to apply subject to compliance with the Codes.

Clause 31 provides for the appointment of forestry practices officers to supervise compliance with Codes.

Forest (Resource Security) 1992

PART 5—MISCELLANEOUS

Clause 32 provides that the proposed Act binds the Crown.

Clause 33 empowers the Governor to make regulations, including transitional provisions consequent on the enactment of the proposed Act.

FOREST (RESOURCE SECURITY) BILL 1992

NEW SOUTH WALES



TABLE OF PROVISIONS

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PART 2—RESOURCE SECURITY BY ALLOCATION OF FORESTED PUBLIC LAND FOR TIMBER PRODUCTION

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Division 2—Land use of classified forested public land

14. Preserved Native Forest
15. Restricted Use Forest
16. Timber Production Forest
17. No existing use rights if land reclassified etc.
18. EPA Act and instruments apply subject to this Division

Forest (Resource Security) 1992

**PART 3—RESOURCE SECURITY BY CONTRACTUAL ARRANGEMENTS
FOR COMPENSATION FOR WITHDRAWAL OF FORESTED LAND FROM
TIMBER PRODUCTION**

19. Timber supply contracts with Forestry Commission to which Part applies
20. Resource security compensation arrangements in timber supply contracts
21. Withdrawal of forested public land from timber production
22. Reimbursement of Forestry Commission from public money if compensation payable
23. Powers of Forestry Commission not limited by this Part

PART 4—FORESTRY PRACTICES CODES

24. Application of Codes to forested public land
25. Matters to be regulated by Codes
26. Minister to prepare Codes
27. Public consultation during preparation of Codes
28. Adoption of Code by regulations
29. Forestry Commission and licensees to comply with Codes
30. Codes prevail over management plans and codes of logging practice of Forestry Commission
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PART 5—MISCELLANEOUS

32. Act binds Crown
 33. Regulations
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FOREST (RESOURCE SECURITY) BILL 1992

NEW SOUTH WALES



No. , 1992

A BILL FOR

An Act to provide for resource security with respect to forested public land; and for other purposes.

Forest (Resource Security) 1992

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Forest (Resource Security) Act 1992.

5 Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Objects of Act

3. The objects of this Act are:
- 10 (a) to provide for resource security with respect to forested public land by its allocation for timber production in accordance with Government decisions based on reports of the Natural Resources Management Council; and
- 15 (b) to provide for resource security with respect to forested public land by contractual arrangement for compensation for withdrawal of that land from timber production.

Definitions

4. In this Act:

20 “environmental planning instrument” has the same meaning as in the Environmental Planning and Assessment Act 1979;

“forested public land” means:

- (a) any State forest, flora reserve or timber reserve within the meaning of the Forestry Act 1916; or
- 25 (b) any other land that is public land within the meaning of the Natural Resources Management Council Act 1992 (other than a body of water);

“forestry operations” means:

- 30 (a) logging operations, namely, the cutting and removal of timber from land for the purposes of timber production and the provision of access roads to enable or assist the cutting and removal of the timber, but not the clearing of native forest for pine or other exotic timber plantations or for agricultural or other uses; or

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- (b) forest products operations, namely, the harvesting of products of trees, shrubs or other vegetation (other than timber) that are of economic value; or
- (c) silviculture, namely, silvicultural activities (such as thinning, planting or bush fire hazard reduction) relating to the management of forested public land for timber production; 5
- “Forestry Practices Code”** means a Forestry Practices Code in force under Part 4;
- “government agency”** means any public or local authority, and includes: 10
- (a) a government department, State owned corporation and council of a local government area; and
- (b) the head of a government agency;
- “Natural Resources Management Council”** means the Natural Resources Management Council of New South Wales established by the Natural Resources Management Council Act 1992. 15

PART 2—RESOURCE SECURITY BY ALLOCATION OF FORESTED PUBLIC LAND FOR TIMBER PRODUCTION

Division 1—Classification of forested public land

Part to apply to classified forested public land 20

5. This Part applies to any forested public land in the State which is classified for the purposes of this Part.

Classifications of forested public land

6. The 3 classifications of forested public land for the purposes of this Part are as follows: 25

- Preserved Native Forest
- Restricted Use Forest
- Timber Production Forest

Objectives of classifications of forested public land

7. The objectives of the classification of forested public land for the purposes of this Part are as follows: 30

Preserved Native Forest—to preserve native forested public land with high conservation value.

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Restricted Use Forest—to enable restricted harvesting of valuable timber resources on native forested public land with significant conservation value in accordance with relevant environmental planning and assessment requirements.

- 5 **Timber Production Forest**—to secure the harvesting of timber resources on timber plantations and on native forested public land with low conservation value.

State policy or other planning instrument to effect classification

- 10 8. (1) Forested public land may be classified for the purposes of this Part by a State environmental planning policy or other environmental planning instrument.

(2) Any such classification is taken to be of significance for environmental planning for the State and for any region concerned.

15 **Classification of forested public land subject to prior review by Natural Resources Management Council**

- 20 9. (1) Forested public land is not to be classified for the purposes of this Part until the Natural Resources Management Council has reported on the use of the land under the Natural Resources Management Council Act 1992. Any such classification is not to be changed or revoked until the Council has made a further report on the use of the land.

25 (2) The Natural Resources Management Council, in any regional review of forested public land, is required to consider whether the land should be classified for the purposes of this Part or whether any such classification should be changed. If so, the Council is required to assess and recommend the appropriate classification.

(3) The Natural Resources Management Council may make a recommendation as to the appropriate classification of land despite any dedication or reservation of the land under any Act.

30 **Certain land in South-east forests may be classified without prior review by Council**

10. (1) Forested public land to which this section applies may be classified for the purposes of this Part even though the Natural Resources Management Council has not reported on the use of the land as referred to in section 9.

- 35 (2) This section applies to forested public land within the following State forests:

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Bemboka (No. 1007); Bermagui (No. 142); Bombala (No. 130); Bondi (No. 128); Broadwater (No. 570); Bruces Creek (No. 777); Cathcart (No. 607); Coolangubra (No. 547); East Boyd (No. 127); Glen Allen (No. 1031); Glenbog (No. 149); Gnupa (No. 132); Mumbulla (No. 605); Murrabrine (No. 947); Murrah (No. 140); Nadgee (No. 125); Nalbaugh (No. 129); Nullica (No. 545); Nungatta (No. 131); Tanja (No. 544); Tantawangalo (No. 134); Timbillica (No. 768); Towamba (No. 908); Yambulla (No. 126); Yurammie (No. 133).

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Restriction on withdrawal of land from Timber Production Forest classification

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11. The classification of forested public land as Timber Production Forest is not to be changed or revoked unless the Minister for Planning certifies that it is necessary to do so because the Natural Resources Management Council has changed its assessment of the conservation, economic or other significance of the land to the State as a result of new information or circumstances.

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Dedicated or reserved land

12. (1) In this section, "dedicated or reserved land" means land declared as a wilderness area under the Wilderness Act 1987, land dedicated or reserved under the National Parks and Wildlife Act 1974, land dedicated as a flora reserve under the Forestry Act 1916 or land dedicated for a similar public purpose under the Crown Lands Act 1989.

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(2) Dedicated or reserved land may not be classified for the purposes of this Part as Restricted Use Forest or Timber Production Forest while it remains dedicated or reserved land.

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(3) Nothing in this Part prevents land classified for the purposes of this Part becoming dedicated or reserved land.

(4) If land classified for the purposes of this Part as Restricted Use Forest or Timber Production Forest becomes dedicated or reserved land, that classification is revoked.

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Prohibition on classification of land subject to Timber Industry (Interim Protection) Act 1992

13. (1) Any land specified in Schedule 1, 2 or 4 to the Timber Industry (Interim Protection) Act 1992 is not to be classified for the purposes of this Part until:

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- (a) that Act expires; or
 - (b) the Forestry Commission has obtained any environmental impact statement required by that Act in respect of logging operations on the land,
- 5 whichever first occurs.
- (2) If the approval of the Minister for Planning is sought under Division 4 of Part 5 of the Environmental Planning and Assessment Act 1979 for forestry operations on any such land, that Minister may:
- 10 (a) deal with the matter under that Division whether or not the land is classified for the purposes of this Part; or
 - (b) decline to deal with the matter under that Division if the land is so classified.

Division 2—Land use of classified forested public land

Preserved Native Forest

- 15 14. An environmental planning instrument that classifies land as Preserved Native Forest must prohibit all forestry operations on the land.

Restricted Use Forest

- 20 15. (1) An environmental planning instrument that classifies land as Restricted Use Forest must permit forestry operations on the land, subject to any requirement for environmental assessment or approval under Part 5 of the Environmental Planning and Assessment Act 1979 or for development consent under Part 4 of that Act or any other provision of the instrument.

- 25 (2) Forestry operations on any such land are subject to Part 4 (Forestry Practices Codes).

Timber Production Forest

16. (1) Forestry operations on land classified under this Part as Timber Production Forest are permitted, subject to compliance with this Act and the relevant provisions of any other law.
- 30 (2) Part 5 of the Environmental Planning and Assessment Act 1979 does not apply in respect of the carrying out of forestry operations by the Forestry Commission on any such land.
- (3) Development consent under Part 4 of the Environmental Planning and Assessment Act 1979 is not required for forestry operations by the
35 Forestry Commission on any such land.

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(4) Forestry operations by the Forestry Commission on any such land may not be prohibited or restricted by an environmental planning instrument.

(5) Forestry operations on any such land are subject to Part 4 (Forestry Practices Codes). 5

(6) A reference in this section to forestry operations by the Forestry Commission includes a reference to forestry operations by any person under a licence or other authority issued by the Forestry Commission.

No existing use rights if land reclassified etc.

17. If land classified as Timber Production Forest or Restricted Use Forest ceases to be so classified, Division 2 of Part 4 of the Environmental Planning and Assessment Act 1979 does not apply so as to authorise the continued use of the land for forestry operations. 10

EPA Act and instruments apply subject to this Division

18. (1) Except as otherwise provided by this Division, the Environmental Planning and Assessment Act 1979 and any environmental planning instruments apply to any forested public land classified for the purposes of this Part. 15

(2) Without limiting subsection (1), that Act and those instruments apply so as to enable the regulation or prohibition of any development on that land, whether or not related to forestry operations. 20

**PART 3—RESOURCE SECURITY BY CONTRACTUAL
ARRANGEMENTS FOR COMPENSATION FOR
WITHDRAWAL OF FORESTED LAND FROM TIMBER
PRODUCTION**

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Timber supply contracts with Forestry Commission to which Part applies

19. This Part applies to any timber supply contract between the Forestry Commission and any other person under which:

(a) the Forestry Commission agrees to supply timber to the person or to issue licences under the Forestry Act 1916 for the taking of timber by the person; and 30

(b) any of the timber is to be taken from land classified as Timber Production Forest for the purposes of Part 2.

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Resource security compensation arrangements in timber supply contracts

20. (1) In any timber supply contract to which this Part applies provision may be included for the payment of compensation by the
5 Forestry Commission if it is unable to supply timber (or to issue the relevant licences) in accordance with the contract because of a withdrawal from timber production of forested public land classified as Timber Production Forest for the purposes of Part 2.

(2) The manner of determining the amount of compensation and any
10 conditions of payment are to be as agreed between the parties to the contract.

Withdrawal of forested public land from timber production

21. For the purposes of this Part, forested public land is withdrawn from timber production if the land is classified as Timber Production
15 Forest and:

- (a) the land ceases to be so classified; or
- (b) forestry operations on the land are prohibited or restricted by the enactment of legislation of this State or the making of any statutory instrument of this State; or
- 20 (c) forestry operations on the land are prohibited or restricted by a decision of a Minister of this State or government agency of this State (other than the Forestry Commission).

Reimbursement of Forestry Commission from public money if compensation payable

25 22. (1) If the Forestry Commission pays any such compensation under a timber supply contract approved by the Treasurer for the purposes of this section, the Forestry Commission is to be reimbursed for the payment from public money.

(2) The amount to be reimbursed is to be paid, from money advanced
30 by the Treasurer or appropriated by Parliament for the purpose, at such times and in such amounts as the Treasurer determines.

(3) The approval of a timber supply contract by the Treasurer for the purposes of this section may be subject to conditions imposed by the Treasurer when giving that approval.

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Powers of Forestry Commission not limited by this Part

23. Nothing in this Part limits the powers of the Forestry Commission with respect to contracts for the supply of timber or for the issue of licences under the Forestry Act 1916.

PART 4—FORESTRY PRACTICES CODES 5

Application of Codes to forested public land

24. (1) Forestry Practices Codes apply to forested public lands classified as Timber Production Forest or Restricted Use Forest for the purposes of Part 2.

(2) Forestry Practices Codes may also be applied to other land by or under any other Act, including by conditions of any statutory authority. 10

Matters to be regulated by Codes

25. (1) A Forestry Practices Code may regulate the manner in which forestry operations and ancillary activities are carried out for the purposes of protecting the environment and promoting ecologically sustainable forest use. 15

(2) In particular, a Forestry Practices Code may deal with the following matters:

(a) the establishment and maintenance of forests (including standards for restocking land with trees); 20

(b) the harvesting of timber (including harvesting plans);

(c) road construction and other works ancillary to forestry operations;

(d) soil deterioration, erosion and salination;

(e) water quality and flow;

(f) native animals and plants; 25

(g) bush fire hazard reduction.

(3) A Forestry Practices Code may apply to all relevant land or only to land in a particular region or of a particular kind.

(4) A Forestry Practices Code may apply differently according to different factors, such as whether the forest is a native forest or a timber plantation. 30

Minister to prepare Codes

26. (1) Forestry Practices Codes are to be prepared by the Minister in accordance with this Part.

(2) The Minister is to prepare such a Code applying to all relevant land as soon as practicable after the commencement of this Part.

Public consultation during preparation of Codes

5 27. (1) The Minister, when preparing a draft Forestry Practices Code, is to consult any particular Ministers, government agencies, representatives of the timber industry or conservation groups or other persons who he or she considers have an interest in the Code.

(2) The Minister is to make a draft Forestry Practices Code available to the public at least 30 days before finalising the Code.

10 (3) The Minister is to take into account any submissions made on the draft Code before it is finalised.

Adoption of Code by regulations

28. (1) The regulations may adopt a Forestry Practices Code prepared by the Minister in accordance with this Act.

15 (2) A Forestry Practices Code does not have any effect unless it is so adopted.

(3) A Forestry Practices Code is to be set out in the regulation that adopts it.

20 (4) A Forestry Practices Code ceases to have effect if the regulation that adopts it is repealed.

(5) A Forestry Practices Code that has been adopted may be amended by a further regulation that amends the regulation adopting the Code. The provisions of this Act relating to the preparation of a Forestry Practices Code apply to any such amendment unless the Minister certifies that the nature of the amendment does not require compliance with those provisions.

Forestry Commission and licensees to comply with Codes

29. (1) The Forestry Commission is to take all practicable steps to ensure that forestry operations and ancillary activities are carried out in accordance with any Forestry Practices Code applying to them.

35 (2) It is a condition of every licence or other authority issued by the Forestry Commission (whether before or after the commencement of this section) in respect of forestry operations and ancillary activities that all practicable steps are taken to ensure that those operations and activities are carried out in accordance with any Forestry Practices Code applying to them.

*Forest (Resource Security) 1992***Codes prevail over management plans and codes of logging practice of Forestry Commission**

30. Management plans and codes of logging practice prepared under the Forestry Act 1916 continue to apply to any relevant forested public land, but Forestry Practices Codes prevail to the extent of any inconsistency. 5

Forestry practices officers

31. (1) The Minister may appoint persons as forestry practices officers to investigate and report to the Minister on whether Forestry Practices Codes are being complied with. 10

(2) For the purposes of exercising those functions, such an officer may enter any forested public land classified for the purposes of Part 2 and require the person conducting or authorising the conduct of forestry operations on that land to provide such information as the officer requires. 15

(3) Any such right of entry or information is a condition of every licence or other authority issued by the Forestry Commission (whether before or after the commencement of this section) in respect of forestry operations on those lands.

PART 5—MISCELLANEOUS 20**Act binds Crown**

32. This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Regulations 25

33. (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 carrying out or giving effect to this Act.

(2) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act. 30

EXPOSURE DRAFT

HERITAGE (AMENDMENT) BILL 1992

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

This Bill is cognate with the Natural Resources Management Council Bill 1992.

The object of this Bill is to amend the Heritage Act 1977 so as to exclude from the operation of that Act:

- (a) places that are part of the natural environment and are significant only because they are part of that environment; and
- (b) Aboriginal relics or places within the meaning of the National Parks and Wildlife Act 1974.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of provisions of the proposed Act.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the Heritage Act 1977.

Clause 4 saves any existing orders under the Heritage 1977 which relate to matters that in future are to be excluded from the operation of the Act.

Schedule 1 makes the amendments described above.

HERITAGE (AMENDMENT) BILL 1992

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Heritage Act 1977 No. 136
4. Savings

SCHEDULE 1—AMENDMENTS

HERITAGE (AMENDMENT) BILL 1992

NEW SOUTH WALES



No. , 1992

A BILL FOR

An Act to amend the Heritage Act 1977 with respect to the application of that Act.

Heritage (Amendment) 1992

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Heritage (Amendment) Act 1992.

Commencement

- 5 2. This Act commences on a day to be appointed by proclamation.

Amendment of Heritage Act 1977 No. 136

3. The Heritage Act 1977 is amended as set out in Schedule 1.

Savings

- 10 4. The amendments made by this Act do not affect any order made under the Heritage Act 1977 and in force immediately before the commencement of this Act.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

- (1) Section 4 (1), definition of "environmental heritage":

- 15 (a) Omit ", natural".
 (b) At the end of the definition, insert ", but does not include anything excluded by section 4A".

- (2) Section 4A:

After section 4, insert:

20 **Exclusions from Act**

4A. The following are not items of environmental heritage for the purposes of this Act:

- 25 (a) places that are part of the natural environment and that are significant only because they are part of that environment, such as wilderness areas;
 (b) relics or Aboriginal places within the meaning of the National Parks and Wildlife Act 1974.
-