

Nature Conservation (Threatened Native Species Eligibility) Criteria 2016

Disallowable instrument DI2016–254

made under the

Nature Conservation Act 2014, s65 (Threatened native species list—eligibility criteria)

EXPLANATORY STATEMENT

This explanatory statement relates to the *Nature Conservation (Threatened Native Species Eligibility) Criteria 2016* as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the disallowable instrument and to help inform debate on it. It does not form part of the disallowable instrument and has not been endorsed by the Assembly.

The statement must be read in conjunction with the disallowable instrument. It is not, and is not meant to be, a comprehensive description of the disallowable instrument. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Introduction

Worldwide, many species of wildlife, both plants and animals, are in danger of extinction. Such losses of biodiversity are largely the direct or indirect result of human activities. This problem is being addressed globally and on a regional basis.

At an international level, organisations such as the International Union for the Conservation of Nature (IUCN) and the governments of numerous countries are working to document, assess and control threats to wildlife. Australia is party to many international agreements (e.g. Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and Convention on Biological Diversity) aimed at achieving a global approach to conservation. Australia has also developed national strategies for the protection of our unique flora and fauna.

In addition, all states and territories provide legislative protection for the wildlife within their respective jurisdiction. In the ACT, protection of the natural environment is primarily provided for under the *Nature Conservation Act 2014* (the Act). The ACT Scientific Committee (formerly the Flora and Fauna Committee) has the primary role to assess native species and ecological communities that are threatened with extinction, as well as processes that threaten the survival of native species and communities in the ACT region.

The Act commenced on 11 June 2015 and is the primary ACT legislation for the protection and management of native plants and animals, the identification and

protection of threatened species and ecological communities, management of national parks and nature reserves and the conservation of the ACT's natural resources.

The main object of the Act (s6) is to protect, conserve and enhance the biodiversity of the ACT. In relation to native species this is to be achieved by protecting, conserving, enhancing, restoring and improving their habitats. The objects of the Act are progressed through the listing of species that meet specific criteria as threatened as it assists decision-makers to put in place adequate protections. This includes the development of conservation advices and action plans. The nature of any plans and advices and resulting management and monitoring may be determined, amongst other qualifiers, by the listing category in which the species is assigned. Once a species has been listed on the threatened species list it has special protection status (SPS) which affords additional protection in terms of trade restrictions, licensing, offences and penalties.

Overview of the provisions

This instrument is made under s65 of the Act and provides that the Minister must develop criteria to be used in deciding whether a species is eligible to be included in a category on the threatened native species list (the threatened native species list criteria). In developing the criteria the Minister has consulted with the Conservator of Flora and Fauna and the Scientific Committee (s65(4)).

The list criteria may only include scientific matters (s65(2)) and in developing the list criteria the Minister must have regard to (s65(3)) —

- the conservation of the species
- the ecological significance of the species
- any relevant national standards.

The threatened native species list criteria outlined in the instrument meet national standards for the listing of threatened species. The criteria have been developed in accordance with the *Intergovernmental Memorandum of Understanding: Agreement on a Common Assessment Method for Listing of Threatened Species and Threatened Ecological Communities* (MOU-CAM) and consistent with those of the International Union for the Conservation of Nature as specified in the *IUCN Red List Categories and Criteria*. Interpretation and application of the IUCN criteria, categories, thresholds and definitions will be in accordance with the IUCN guidelines and the MOU-CAM.

Eligibility for listing

Under the instrument, species (or a formally recognised variety of a species) will need to satisfy the criteria in the instrument. The instrument declares that the IUCN eligibility listing criteria for critically endangered, endangered and vulnerable apply to the listing of species in those categories. The instrument declares the eligibility criteria for extinct, extinct in the wild, nationally conservation dependent, regionally threatened, regionally conservation dependent and provisional species. The IUCN does not have relevant criteria for these categories of threatened species.

The IUCN categories and criteria for species have been developed, trialled and adjusted iteratively over 50 years. They are intended to be an easily and widely understood system for classifying species at high risk of global extinction. The

general aim of the system is to provide an explicit, objective framework for the classification of the broadest range of species according to their extinction risk. The IUCN categories and criteria have several specific aims to:

- provide a system that can be applied consistently by different people;
- improve objectivity by providing users with clear guidance on how to evaluate different factors which affect the risk of extinction;
- provide a system which will facilitate comparisons across widely different taxa; and
- give people using threatened species lists a better understanding of how individual species were classified.

Human rights impacts

The instrument does not engage or limit any person's human rights.

The instrument is consistent with the Legislative Assembly's Scrutiny of Bills Committee Terms of Reference. In particular, the instrument:

1. is made under a ministerial power found in the Nature Conservation Act
2. is in accord with the general objects of the Act under which it is made
 - The criteria are consistent with the objects of the Act (s6) to protect, conserve and enhance the biodiversity of the ACT
3. does not unduly trespass on rights previously established by law
 - The listing of a species has a number of regulatory impacts including licensing of actions that would otherwise constitute an offence and also requiring an assessment of the species as part of an environmental impact assessment.
 - These regulatory impacts already exist and are not increased through the development of these criteria.
4. does not make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions
 - The criteria do not directly impact on any rights, liberties and/or obligations of individuals. Regulatory impacts such as requirements for licensing are reviewable, and this instrument does not change those arrangements.
 - The criteria themselves do not remove or create rights, liberties or obligations, except for the obligation for the Scientific Committee to use the criteria in making an assessment and by the Minister in making a decision to list.

Costs and benefits

This disallowable instrument is not likely to impose appreciable costs on the community, or part of the community and therefore a regulatory impact statement is not required (*Legislation Act 2001* (s34)). Further, a regulatory impact statement is unnecessary, in accordance with of the Legislation Act (s36), as the disallowable instrument does not operate to the disadvantage of anyone by adversely affecting the person's rights, or imposing liabilities on the person.

Provisions in detail

Clause 1 Name of Instrument

This clause provides the name of the instrument.

Clause 2 Commencement

This clause provides the date of commencement of the instrument.

Clause 3 Details of the Instrument

This clause declares the threatened native species list eligibility criteria and the definitions.

Clause 4 Non-application of s47(5) of the *Legislation Act*

This clause provides that s47(5) of the *Legislation Act 2001* does not apply in relation to the instrument. This means that the *IUCN Red List Categories and Criteria*, *Guidelines for Using the IUCN Red List Categories and Criteria*, *Guidelines for Application of the IUCN Red List Criteria at Regional and National Levels* and *Guidelines for Reintroductions and Other Conservation Translocations* are not required to be notified on the Legislation Register. However, references, including websites are provided to assist the reader.