

Nature Conservation (Protected Native Species) Criteria and Processes 2017

Disallowable instrument DI2017—294

made under the

Nature Conservation Act 2014, s113 (Minister to develop criteria and processes for protected native species list)

1 Name of instrument

This instrument is the *Nature Conservation (Protected Native Species) Criteria and Processes 2017*.

2 Commencement

This instrument commences on the day after its notification day.

3 Protected native species list criteria

Schedule 1 sets out the criteria, developed by me, to be used in deciding whether a species is eligible to be included in a category on the protected native species list.

4 Protected native species list processes

Schedule 2 sets out the processes, developed by me, to be followed in deciding whether a species is eligible to be included in a category on the protected native species list.

Mick Gentleman
Minister for the Environment and Heritage
30 November 2017

SCHEDULE 1

(see section 3)

PROTECTED NATIVE SPECIES LIST CRITERIA

1 Criteria for listing a restricted trade species

To be eligible to be listed in the restricted trade category on the protected native species list, a species must meet at least one of the following criteria:

- (a) The species is native to Australia and is listed in the Appendices of the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES) as in force from time to time.

Note: Species (s. 15) and native species (s.16) are defined in the *Nature Conservation Act 2014* (NC Act). The term species includes a subspecies and a variety.

- (b) The species is listed as a threatened native species or rare (or otherwise protected) species in another jurisdiction within Australia.

Note: Listed Threatened Native Species (NC Act, s. 63 (1)) require a licence for trade and they would not normally be listed on the Protected Native Species List as they have a higher level of protection through the threatened native species listing which affords special protection status. Species listed as threatened or migratory under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) also have special protection status which affords a higher level of protection.

- (c) The species is a native invertebrate or native fish species and expert opinion is provided stating that unrestricted trade in the species is likely to have a negative impact on populations of the species in the wild.

Note 1: Invertebrates and fish do not have ‘protection’ under the NC Act (s. 11) unless they are listed as protected or as threatened native species. Native animals are by definition ‘protected’ from being taken without a licence under the NC Act.

Note 2: Listed Threatened Native Species (NC Act, s. 63 (1)) require a licence for trade and they would not normally be listed in the Protected Native Species List as they have a higher level of protection through the threatened native species listing which affords special protection status. Species listed as threatened or migratory under the EPBC Act also have special protection status which affords a higher level of protection.

- (d) The native species is a plant and expert opinion is provided stating that unrestricted trade in the species is likely to have a negative impact on populations of the species in the wild.

Note: Listed Threatened Native Species (NC Act, s. 63 (1)) require a licence for trade and they would not normally be listed in the Protected Native Species List as they have a higher level of protection through the threatened species listing which affords special protection status. Species listed as threatened or migratory under the EPBC Act also have special protection status which affords a higher level of protection.

2 Criteria for listing a rare species

To be eligible to be listed in the rare category on the protected native species list, a species must not be a listed threatened native species, or have special protection status. It must be rare in the ACT as evidenced by at least one of the following criteria:

- (a) The species has a small distribution [area of occupancy and/or extent of occurrence].

- (b) There is a single and/or small population in the ACT.
Note: Assessment against this criterion should take into account the variability of the population and historic abundance.
- (c) The species is endemic to the ACT and/or the surrounding bioregions of which the ACT is a part.
- (d) The species has an estimated population of less than 10,000 individuals across its extent of occurrence and a significant proportion of the known total population occurs in the ACT.

3 Criteria for listing a data deficient species

A native species is eligible to be included in the data deficient category in the protected native species list if there is insufficient information about species in the ACT for the species to be eligible to be a threatened native species or included in any other category in the protected native species list. To be eligible to be listed as data deficient species, the species must meet at least one of the following criteria:

- (a) There is insufficient or inadequate information available to make a direct or indirect assessment of risk of extinction based on its distribution, population status, threats or other attributes because:
 - i. the distribution [extent of occurrence/area of occupancy] is poorly known; or
 - ii. the species is known from one or a few locations (generally five or less) in the surrounding bioregions of which the ACT is a part.
- (b) The available data is very uncertain because of natural variability, measurement error or other reasons.
- (c) The species is of unknown provenance, where the species is known only from one or more specimens with no, or extremely uncertain, locality information, so that it is not possible to make any further inference about its status.
- (d) The species is comparatively well known from one or more locations, but does not meet adequacy of survey requirements for assessment and listing in other categories of the protected native species list or for the threatened species list.
- (e) There is taxonomic uncertainty or there is a lack of information on distribution, status, ecology and threats because there are very few specimens and/or records.
- (f) The species is cryptic or difficult to survey adequately, or the populations are geographically inaccessible or unable to be assessed for other reasons.
- (g) There is very little information known about a species, but the available information indicates that the species may be declining or threatened.

SCHEDULE 2

(see section 4)

PROTECTED NATIVE SPECIES LIST PROCESSES

1 Administration

- (a) Administration of the processes outlined in this Schedule is the responsibility of the Secretary to the Scientific Committee and associated support staff, except where specific roles are identified.
- (b) Correspondence should be addressed to the Secretariat of the ACT Scientific Committee, ScientificCommittee@act.gov.au
- (c) A record of each nomination, assessment, recommendation and Minister's decision will be maintained and be available for inspection, on application to the Secretary of the ACT Scientific Committee.
- (d) The Protected Native Species List is notified on the ACT Legislation Register.

2 Nominations

- (a) Nominations can be made by any person including the Scientific Committee.
Note: nominations would normally be made by Conservation Officers, or other Public Servants responsible for implementing the NC Act; the *Environment Protection Act 1997*; the *Fisheries Act 2000*; the *Water Resources Act 2007* or other Environmental legislation, including Commonwealth and other jurisdictions' legislation.
- (b) Nominations should include the full name and address of the nominator(s):
 - i. nominations may be submitted by individuals or groups;
 - ii. a group of people may appoint one person to make a nomination on its behalf, but must show evidence they have been appointed by the group.
- (c) Nominations should be made to the Secretary, Scientific Committee (as appointed by the Director-General, NC Act, s. 38).
- (d) Nominations should include adequate information for the species to be assessed (see Section 5, Information Requirements).
- (e) A nomination may be rejected if:
 - i. it fails to satisfy the eligibility requirements of the *Nature Conservation Act 2014* (s. 112) or the Protected Native Species List criteria (Schedule 1);
 - ii. the nominator acts in a mischievous or frivolous fashion, e.g. constantly re-nominating the same item without adequate new evidence;
 - iii. the nomination is not accompanied by adequate information (see below);
 - iv. the subject of the nomination is extinct; or
 - v. for the rare category, the subject of the nomination is not normally considered to be native to the ACT region.

3 Assessment without nomination

- (a) A species may be assessed without nomination:
 - i. if it has been assessed for threatened species listing (NC Act, Chapter 4), and has been identified as 'data deficient';
 - ii. if it has been assessed against the criteria for the 'rare category' of the protected species list and has been identified as 'data deficient';

- iii. if it is proposed to be moved from one category to another category within the Protected Native Species List;
- iv. if it has been listed as a threatened species under the NC Act and needs to be removed from the Protected Native Species List;
- v. if it is listed as threatened, protected or rare in another jurisdiction and is proposed for the 'restricted trade' category; or
- vi. at the discretion of the Scientific Committee.

4 Taxonomy

- (a) For assessments of conventionally accepted flora species the accepted taxonomic authority will be the Council of Heads of Australasian Herbaria:
 - i. where there is disputed taxonomy, a taxonomy and nomenclature accepted by the Scientific Committee based on the latest scientific evidence can be used to list protected species.
- (b) For assessments of conventionally accepted fauna species the accepted taxonomic authority will be the Australian Faunal Directory:
 - i. where there is disputed taxonomy, a taxonomy and nomenclature accepted by the Scientific Committee based on the latest scientific evidence can be used to list protected species.

Note: Section 16 (b) of the NC Act provides that a native species includes a species prescribed by regulation to be a native species. This can be used in situations of disputed taxonomy.

- (c) For assessments of species that are not conventionally accepted (i.e. not described):
 - i. a taxonomic diagnosis and description of the species in forms suitable for publication in conventional scientific literature should be provided.
 - ii. if such information is not available, then the following should be included in the assessment documentation:
 - a. evidence that a scientific institution (such as state/territory museum or herbarium) has a voucher specimen of the species/subspecies; and
 - b. a written statement signed by a taxonomist or other person who has relevant expertise, confirming the validity of the new species/subspecies.
- (d) The taxonomic level used in a nomination should be the most general that incorporates all related items that are eligible to be included. For example, if both a subspecies and a species need to be included in the protected native species list, only the species should be nominated because its listing automatically includes the subspecies.
- (e) A nomination below the subspecies level (e.g. variety or race) may only be eligible for listing if there is a special nature conservation need to conserve the item. Evidence of this need must be stated in the nomination.

Note1: Section 16 (b) of the NC Act provides that a native species includes a species prescribed by regulation to be a native species. This can be used in situations of disputed taxonomy.

Note 2: Race is the faunal equivalent of the term variety which applies to plants.

5 Information requirements

Basic requirements:

- (a) The following information is required to assess a species for inclusion on the Protected Species list:
 - i. name (common and scientific);
 - ii. taxonomy (see section 4);
 - iii. description;
 - iv. preliminary assessment of available information against the criteria for the appropriate category, including a statement on the standard of scientific evidence and adequacy of survey;
 - v. recommendation of the proposed category of protected species resulting from the preliminary data gathering; and
 - vi. references cited.

Additional information requirements for trade restricted species

- (b) A statement outlining the circumstances that require trade to be restricted.

Additional information requirements for rare species

- (c) The distribution and abundance of the species locally and relative to its full extent of occurrence (where known).

Note: Distribution could include a GIS map of the species' distribution, preferably shown as polygons (but point occurrences may also be displayed).
- (d) The estimated population size, locally and relative to its full extent of occurrence (where known) and any population trend data.

Note: A detailed description of the population (size and trends) should include current population trends (improving, deteriorating, stable and uncertain, or not assessed), and an indication of the basis for estimating the population (observed, surveyed, modelled, estimated, inferred, suspected) and the level of certainty relating to the estimation.
- (e) Any available historical distribution, abundance or population data to support the listing.
- (f) Any other relevant information about its biology/ecology including threats to its continued persistence.

Additional information requirements for data deficient

- (g) An outline of the survey or assessment process that has led to its nomination/assessment as data deficient.

Note 1: To be eligible for listing as data deficient the species should first be assessed for listing in the threatened species list (National and Regional Categories) or against the Protected Native Species List Criteria. The outcome of the assessment may indicate that there is inadequate information to make an assessment of risk of extinction or species rarity based on distribution, population status or other attributes. Where this is the case the species may be listed as data deficient.

Note 2: Species identified as data deficient are flagged for further survey and/or taxonomic research and kept under review.

6 Assessment

- (a) Nominations will be assessed by the Scientific Committee (the Committee) against:
 - i. the eligibility requirements of the Act; and
 - ii. Protected Native Species List Criteria (Schedule 1).

- (b) The Committee may request nominations to be peer reviewed.
- (c) The Committee may consult with the public or any relevant experts in forming their advice.
- (d) The Committee may consider:
 - i. the information included in the nomination (where a nomination is provided); and
 - ii. any additional information the Committee considers necessary, including outcomes of any peer review conducted, expert advice or public consultation.
- (e) The Secretary for the Committee may assist the Committee in undertaking assessments, seeking additional information, organising peer reviews, undertaking consultations on behalf of the Committee, or in other ways as agreed between the Chair of the Committee and the Secretary.

7 Advice to Minister about including species in the protected native species list

- (a) The Committee may provide advice to the Minister about the nominations and assessments that have been undertaken; and recommend that a species be:
 - i. included on the protected native species list;
 - ii. transferred into a different category on the protected native species list; or
 - iii. removed from the protected native species list.

Note: A species may be removed from protected native species list because it is no longer eligible (e.g. if a species is listed as a threatened native species it is no longer eligible to be listed as a protected native species under the rare or data deficient categories. A species may also be removed if it no longer meets the criteria to be a protected native species.
- (b) The Minister may seek, and consider, the advice of the Conservator of Flora and Fauna, or any other person the Minister considers appropriate before making a decision to include a species in any category of the protected native species list.