

Submission Guide: Native Plants and Animals

A guide for making submissions on the NSW biodiversity reforms

This document provides the detailed information stakeholders will need to know about the new approach to regulating threatened species and wildlife in NSW to make a submission on these elements of the reforms. As well as providing detailed information, the guide asks a number of 'consultation questions' which stakeholders may address when making a submission.

More Information

Other submission guides are available for stakeholders who are interested in making submissions on the new land management framework, the Native Vegetation Regulatory Map, the new approach to delivering ecologically sustainable development in NSW, and the initiatives to support private land conservation.

The draft Biodiversity Conservation Bill and draft Local Land Services Amendment Bill are also available in full for public exhibition.

Visit <http://landmanagement.nsw.gov.au>

Have your say on the proposed changes

You can share your comments on the proposed changes by making a submission online at <http://landmanagement.nsw.gov.au/haveyoursay>.

You can also send your submission to:

Biodiversity Reforms - Have Your Say
PO Box A290
Sydney South
NSW 1232

Contents

1. A new framework for managing interactions with plants and animals.....	2
2. Protecting threatened species and areas of outstanding biodiversity value	7

1. A new framework for managing interactions with plants and animals

The way we regulate wildlife management activities is changing. The NSW Government is introducing a new, risk-based approach to regulating human interactions with wildlife that differentiates between low and high-risk activities.

A new risk-based approach to regulating wildlife interactions

The NSW Government is committed to protecting native animals and plants. A risk-based approach to managing wildlife interactions will ensure regulation is more efficient and effective and appropriate for the level of risk involved. Even for low-risk activities, the new approach seeks to:

- ensure appropriate measures remain in place to protect native animals and plants in the wild
- establish minimum standards of animal care
- maximise public safety.

To date, regulation has mostly been achieved through a complex licensing system that managed low and high-risk wildlife interactions in the same way, without differentiating between individual and commercial wildlife uses. The current framework under the *National Parks and Wildlife Act 1974* (NPW Act) starts from a position of prohibiting wildlife interactions.

The proposed approach adopts a tiered, risk-based approach that includes exempt activities (lowest risk), activities that comply with a code of practice (moderate risk) and licensed activities (highest risk). Legally, most wildlife interactions are offences. The new framework prohibits certain activities that impact on protected animals, protected native plants and threatened species and threatened ecological communities. The prohibited activities include:

- harming animals
- picking plants
- possessing plants or animals
- dealing in plants or animals
- liberating animals
- damaging habitat of a threatened species or ecological community.

In the following cases, the exposure Bill will allow activities that are otherwise prohibited:

- exempt activities listed in the regulations
- acting in accordance with a code of practice adopted by the regulation

- acting in accordance with a licence
- any other defences (for example acts necessary for carrying out development in accordance with consent, or in accordance with an activity authorised under the *Environmental Planning and Assessment Act 1979*, authorised clearing of native vegetation, forestry operations authorisations, or acts authorised and done in accordance with private land conservation agreements).

Activities listed in regulations as exempt activities

- Exempt activities will be listed in the regulations. These will be activities considered to pose a low risk to wildlife populations.
- These activities will carry no ongoing obligation, such as reporting or record keeping. This means that these activities will not need a licence, any record keeping or proof of purchase.
- The regulations will clearly outline circumstances where certain acts are exempt. This will include information on species, number of animals, location or time of year that an activity can be undertaken.
- An example of these activities is the harming of purple swamphens to limit crop damage in some regions.

Activities authorised by a code of practice

- Some activities will be allowed in accordance with a code of practice without any need for a licence or assessment. These activities are considered unlikely to harm wildlife populations, impact on animal welfare or threaten human health and safety when undertaken in a specific way.
- These activities will not require a licence but will need to be carried out following the requirements outlined in the relevant code of practice.
- Codes of practice outlining regulatory standards will be listed in the regulations. Copies of any codes of practice that are in force will be available on the OEH website and will be accompanied by explanatory material such as simple fact sheets to help compliance.
- An example of a code has been prepared for the commercial harvesting of kangaroos and is available at <https://www.landmanagement.nsw.gov.au/native-plants-and-animals/code-of-practice-for-commercial-kangaroo-harvesting-in-nsw/>

Activities authorised by biodiversity conservation licence

- Any wildlife activity that is not an exempt activity or covered by a code of practice will require a licence in order to be carried out lawfully, unless another defence applies.
- Licensed activities require ongoing regulation from government to manage harm to wildlife populations, animal welfare, and human health and safety. Examples of these activities include: activities that will significantly impact threatened species, pet shops selling native wildlife, trading in native plants and keeping higher risk reptiles.
- As is the case now, OEH will be able to attach conditions to a licence. The type and number of conditions attached to a licence will reflect an activity's level of risk.
- Regulations supporting the Biodiversity Conservation Bill will outline matters that OEH must consider when assessing licence applications.

Consultation Questions

- What needs to be considered when deciding which activities are included under each of the proposed categories (exempt activities, activities authorised by a code, or activities authorised by a licence)?
- The NSW Government has prepared an example wildlife code of practice that will be developed before the Biodiversity Conservation Act commences. Do you have any comments on the example code of practice for commercial kangaroo harvesting? How could it be improved?
- What other activities could be covered by a code of practice for wildlife management and why?

Have Your Say at <http://landmanagement.nsw.gov.au/haveyoursay>

How will the new framework consider activities that impact on threatened species?

The regulation of activities impacting threatened species, ecological communities and their habitats will fit in the proposed tiered approach.

Are marine mammals still protected?

The exposure Bill generally replicates the current model for protecting marine mammals including prescribing approach distances in regulations.

How will risk be assessed?

The status of a wildlife activity being exempt, code-based or requiring a licence will depend on its level of risk. OEH will consider both the activity and the species when assessing risk. The level of risk associated with wildlife interactions is based on the likely impacts on populations of native animals and plants, animal welfare, and human health and safety. Even for low-risk activities, the new approach seeks to ensure appropriate measures remain in place to protect native animals and plants in the wild, to establish minimum standards of animal care and to maximise public safety.

Some of the issues OEH will consider when assessing an activity include:

- the type of activity and what it involves
- any risk to human health and safety
- any risk to animal welfare
- the scale and likely impact of the activity
- commercial elements in the activity
- skills, equipment and techniques required to undertake the activity.

Some of the issues OEH will consider when assessing a species include:

- if the species is native, protected or threatened
- if the species is abundant and easily bred in captivity
- the conservation status of the species (e.g. whether it is threatened)
- whether populations in the wild are increasing, stable or decreasing

- if the species has simple and well-established husbandry requirements.

How many licences will no longer be required?

This new approach will result in many existing licences no longer being required because some wildlife activities will be exempt or they can be carried out in accordance with a code of practice.

Based on the list of exempt activities and the code of practice presented as part of the exposure Bill, the government estimates the number of licences could be significantly reduced. OEH currently issues approximately 20,000 licences for wildlife activities. More licences will be discontinued as additional codes are developed.

This would significantly reduce the number of licences and streamline the process for people wanting to undertake activities in compliance with the rules, as well as allow government to concentrate on education and more effectively regulating higher-risk activities.

What happens to existing licences?

Current licences will remain valid until they expire or are due for renewal. OEH will notify existing licence holders if they no longer need a licence.

Education on the new framework

Education is key to ensuring the success of the new risk-based approach to wildlife management. Increased community knowledge and understanding of NSW's unique native plants and animals will increase the chances that people will voluntarily comply with regulations to manage wildlife activities. Education is also likely to increase the community's desire to protect and ensure positive welfare outcomes for wildlife. The NSW Government will support the successful implementation of the new framework with the following education elements.

Education: new risk-based approach	Education: increasing knowledge about biodiversity in NSW
<p>Education materials will be developed to help users of the new framework. The materials will cover key information such as transitional arrangements, welfare needs for animals in captivity, and information about each code of practice.</p> <p>Education will be delivered through targeted approaches, including:</p> <ul style="list-style-type: none"> • informing wildlife networks such as pet shops, peak bodies and wildlife rehabilitation providers • publishing user-friendly information online • creating an online portal for licensed and code-complying activities • holding a series of information workshops with key stakeholder groups. 	<p>General education programs will be delivered to increase public understanding about native plants and animals and the impacts of human-wildlife interactions.</p> <p>These education programs will build on the success of existing wildlife education programs, such as Wild about Whales and Wilderquest.</p>

Consultation Question

- What needs to be considered in developing education materials on the new framework and for raising awareness about native plants and animals?

Have Your Say at <http://landmanagement.nsw.gov.au/haveyoursay>

Regulating wildlife rehabilitation providers

Wildlife carers provide important and specialised care and treatment for injured and sick animals and an important service to the community. The NSW Government is aware that the current approach to regulating wildlife rehabilitation presents many challenges, particularly in relation to standards of service delivery, training, licensing arrangements for new groups and procedures for dispute resolution.

The independent panel's report highlighted that government should take a more strategic approach to the regulation of wildlife rehabilitation providers and that this could extend to establishing an accreditation scheme to replace the existing scheme of individual licences and streamline the way wildlife care providers are regulated. The NSW Government will design the scheme in consultation with all interested parties to ensure that it provides the

community with animal rehabilitation services that are reliable, represent good practice and are cost effective.

Consultation Question

- What are the minimum requirements for accrediting a wildlife rehabilitation provider?

Have Your Say at <http://landmanagement.nsw.gov.au/haveyoursay>

2. Protecting threatened species and areas of outstanding biodiversity value

In NSW, almost 1000 plant and animal species are at risk of extinction. The NSW Government is adopting a modern approach to identifying and protecting these threatened plants and animals. This new approach will keep the best elements of the current system while drawing on lessons from around the world.

The new approach has four key elements that will work together to protect these plants and animals from further loss. These key elements are identified below.

- **Threatened plants and animals will continue to be listed.** By identifying plants and animals that are threatened, management actions can be targeted to help protect them from extinction.
- **It will continue to be illegal to harm threatened plants and animals and their habitat,** unless you have specific approvals, such as development consent or a licence.
- **A modern approach to threatened species conservation and recovery** will be achieved by legislating the successful Saving our Species program. The NSW Government will invest an additional \$100 million, over five years, to expand the Saving our Species program on the ground.
- **Areas of outstanding biodiversity value will be identified and protected.** These are areas that contain irreplaceable biodiversity values of state, national or international importance.

The proposals outlined in this guide align with the Independent Biodiversity Legislation Review Panel report recommendations 25 and 31 to 34.

How are threatened plants and animals listed?

At present, threatened plants and animals are listed under the *Threatened Species Conservation Act 1995* (TSC Act). The exposure Bill continues this listing process. It includes some improvements to make the process faster, more efficient and more scientifically rigorous and to reflect best practice.

The following strengths of the current listing process are proposed to be retained:

- an independent Scientific Committee will be responsible for listing threatened species, ecological communities, and key threatening processes, using transparent and scientifically based criteria

- any person may nominate a native species, ecological community, or threatening process for listing
- the community will be consulted on all proposals to change the lists
- threatened plants and animals will be listed according to their risk of extinction; for example a 'critically endangered' species has a higher extinction risk than a 'vulnerable' species.

Changes to reflect international best practice

Some of the threat categories will be changed (as outlined in Table 1) to better align with the standards developed by the International Union for Conservation of Nature (IUCN). IUCN standards are widely recognised as the most comprehensive approach for evaluating the conservation status of plant and animal species.

Table 1. Comparing threat categories under the exposure Bill with existing NSW threat categories

Threat category Biodiversity Conservation Bill		Existing threat category Threatened Species Conservation Act	
Species	Species	Populations ^[1]	
Extinct ^[2]	Presumed extinct	-	
Critically endangered	Critically endangered	-	
Endangered	Endangered	Endangered	
Vulnerable	Vulnerable	-	
Ecological communities		Ecological communities	
Collapsed ^[3]		-	
Critically endangered		Critically endangered	
Endangered		Endangered	
Vulnerable		Vulnerable	

The approach for listing key threatening process will not change.

Changes to deliver a more strategic and responsive listing process

The Independent Panel report notes that the current lists of threatened species show bias towards mammals, birds and other iconic species. To ensure lists are more representative, the exposure Bill allows the Scientific Committee to invite nominations on a particular theme. For example, a priority nomination theme could be for invertebrates and fungi, which, based on available evidence, appear to be under-represented on current threatened species lists. The Scientific Committee could prioritise their assessments for nominations received on the published theme. Nominations can continue to be made at any time on any theme.

The Scientific Committee will undertake periodic reviews of lists, at least every five years. The exposure Bill introduces some changes that will help the Committee deliver a more responsive listing process, such as:

- streamlining publication requirements for determinations; for example publishing on a government website rather than in print newspapers (with the Scientific Committee being able to use the savings to fund more assessments and reviews)
- extending the existing provisional listing process to allow the Scientific Committee to quickly but temporarily list species that are under imminent and significant threat of extinction.

Aligning State and Commonwealth lists

Commonwealth, State and Territory governments have worked together to develop a common assessment method to better align listing processes nationally. The common assessment method is consistent with the IUCN guidelines.

Governments are considering possible arrangements for implementing the common assessment method. Depending on the agreed outcomes of inter-jurisdictional discussions, some minor changes may be required to the threatened species framework proposed in the exposure Bill.

How will threatened plants and animals be protected?

It is illegal to harm threatened plants or animals

The exposure Bill continues to make it illegal to pick threatened plants, harm threatened animals or damage their habitat, unless you have specific approvals or authorisation. For example, picking a threatened plant or ecological community or harming a threatened animal may be allowed, if it is done:

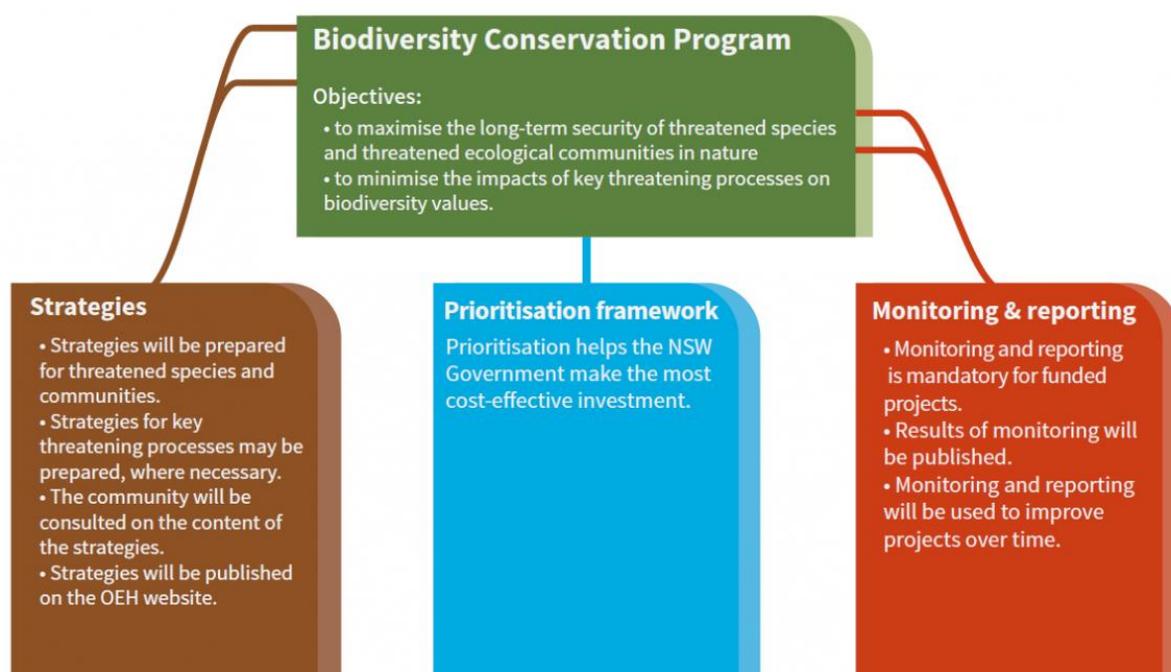
- in accordance with a development consent
- in accordance with the new risk-based framework for managing interactions with wildlife; for example some activities will be allowed if they are authorised by a biodiversity conservation licence or code of practice
- as an allowable activity, or in accordance with a code made under the Local Land Services Act
- in other specific circumstances, including under other existing laws and in emergency situations to protect life or property.

Expanding the Saving our Species program

The exposure Bill allows for a contemporary conservation program for threatened plants and animals in NSW (Diagram 1) to be established. The program reflects the approach taken by the Saving our Species program and builds on existing recovery plans and threat minimisation (abatement) planning.

The strategies developed under the conservation program will be delivered through Saving our Species. As part of the biodiversity reforms, the NSW Government has committed an additional \$100 million over five years to support and expand Saving our Species to deliver more on-ground actions.

The conservation program includes a prioritisation framework that guides investment, so that as many threatened species and ecological communities can be secured as possible.



Conserving 'Areas of Outstanding Biodiversity Value'

The government recognises there are some special areas that contain irreplaceable biodiversity values that are important to the whole of NSW, Australia or globally. The exposure Bill allows the Minister for the Environment to declare these as 'Areas of Outstanding Biodiversity Value' (AOBV).

Similar to the current concept for critical habitats (which protect areas that are crucial to the survival of particular threatened species, populations and ecological communities) an AOBV may include sites that are critically important for reducing the risk of species extinction. However, an AOBV may also provide other significant and unique biodiversity benefits, such as conserving species diversity, ecological integrity, maintaining landscape connectivity or supporting migratory species.

The existing critical habitats declared under the *Threatened Species Conservation Act 1995* will be AOBVs under the Biodiversity Conservation Act. These include:

- Mitchell's Rainforest Snail (*Thersites mitchellae*) critical habitat in Stotts Island Nature Reserve (declared 2001)
- Little Penguin (*Eudyptula minor*) critical habitat in Sydney's North Harbour (declared September 2002, updated June 2003)
- Gould's Petrel (*Pterodroma leucoptera leucoptera*) critical habitat on Cabbage Tree Island, John Gould Nature Reserve (declared 2006)
- Wollemi Pine critical habitat (*Wollemia nobilis*) in Wollemi National Park (declared 2007).

The Office of Environment and Heritage (OEH) will recommend areas for declaration to the Minister for the Environment. The Minister can declare an area as an AOBV if it meets the criteria in the exposure Bill (see Box 1). Regulations and guidelines will be developed to help apply these criteria when identifying AOBVs.

The criteria have been designed to identify the most valuable sites for biodiversity conservation. AOBVs will be used to protect the most significant and irreplaceable sites across the state.

Box 1: Areas of Outstanding Biodiversity Value criteria set out in the exposure Bill

An area may be eligible to be declared an 'Area of Outstanding Biodiversity Value' if it makes a significant contribution to the persistence of one or more of the following:

- multiple species or at least one ecological community
- irreplaceable biological distinctiveness
- ecological processes or integrity
- outstanding ecological value for education or scientific research

and is of importance at a state, national or global scale as determined in accordance with sub-criteria prescribed by the regulations.

If your land is recommended as a potential AOBV, OEH will contact you for your views on the recommendation.

OEH will also:

- seek public comments on any proposed declaration
- consider the views of the NSW Scientific Committee and the Biodiversity Conservation Trust before recommending an area for declaration.

Landowners can choose to apply to enter a funded private land conservation agreement with the Minister if their land is declared an AOBV. It is expected the Minister will delegate this authority to the Biodiversity Conservation Trust (the Trust). If your land is declared to comprise an AOBV, the Trust will prioritise your access to private land conservation funds to help you manage and protect the biodiversity values on the declared land.

As well as investing in managing AOBVs to support their biodiversity values, it is also important to make sure they are protected from damage. The exposure Bill therefore makes it an offence to damage the biodiversity values of an AOBV, unless you have specific authorisation to do so (e.g. development consent). The Biodiversity Assessment Method will be applied to any development proposal located on an AOBV.

Consultation Question

- Is the proposed protection for Areas of Outstanding Biodiversity Value appropriate?

Have Your Say at <http://landmanagement.nsw.gov.au/haveyoursay>

References

1. Populations will now be defined as part of a species, to align with IUCN. A population of a particular species will only be eligible to be listed as threatened if that species is not already listed as threatened.
2. The TSC Act uses the term 'presumed extinct'. The exposure Bill uses the term 'extinct' to better align with IUCN.
3. The concept of a 'collapsed' ecological community mirrors the concept of an extinct species, and would not have land use planning implications. IUCN uses the term collapsed ecological communities.