

NATURE CONSERVATION AMENDMENT BILL 2004

EXPLANATORY NOTES

GENERAL OUTLINE

Short Title

The short title of the Bill is the *Nature Conservation Amendment Bill 2004*.

Policy Objectives of the Legislation

The policy objective of the Bill is to make the hierarchy of categories of protected wildlife in the *Nature Conservation Act 1992* (NCA) more consistent with those used by the International Union for the Conservation of Nature (IUCN).

Reasons for the Bill

Different jurisdictions in Australia and around the world employ a wide range of systems for classifying the conservation status of wildlife. One of the most widely accepted is that developed by the IUCN. The general aim of the IUCN system is to “provide an explicit, objective framework for the classification of species according to their extinction risk. Thus, a listing in a higher extinction risk category implies a higher expectation of extinction, and over the time frames specified more taxa in the higher category are expected to go extinct than in a lower one (without effective conservation action).”

An election commitment was made in 1998 to introduce additional categories for protected wildlife to the NCA that are consistent with those recognised by the IUCN.

Achieving the Objective

To make the hierarchy of categories of protected wildlife in the NCA more consistent with those used by the IUCN:

- a new category of protected wildlife, to be known as “Near Threatened” wildlife will be established – this category will replace the existing Rare category over time;
- the names of two NCA wildlife categories will be replaced with names that are consistent with the IUCN terminology i.e.

Common” to “Least Concern”; and

Presumed Extinct” to “Extinct in the Wild”; and

- the criteria for the categories will be revised so that they are consistent with the IUCN criteria – based on three factors: population size, area of distribution and rate of decline.

No species will change status directly through these amendments. Species will be reclassified or placed in the new category of Near Threatened through statutory processes set out in the NCA.

Following passage of the *Nature Conservation Amendment Bill 2004*, consequential amendments to the *Nature Conservation Regulation 1994*, the *Nature Conservation (Wildlife) Regulation 1994* and the *Nature Conservation (Protected Plants) Conservation Plan 2000* will be made to ensure consistency with the amendments to the NCA.

Alternatives to the Bill

Legislative amendments were considered the only effective way to achieve the above objective.

Administrative costs and savings to Government

These legislative amendments will not impose additional costs on the Environmental Protection Agency (EPA), or on other Government departments.

Consistency with Fundamental Legislative Principles

The Bill is consistent with fundamental legislative principles.

Consultation

Extensive discussions within the EPA, and consultation with the Departments of Natural Resources and Mines (DNRM) and Primary Industries (DPI), the Minister's Queensland Scientific Advisory Committee (SAC), the Queensland Conservation Council (QCC), Wildlife Preservation Society of Queensland (WPSQ), and Agforce led to the following wildlife classes being proposed: Extinct in the Wild, Endangered, Vulnerable, Near Threatened, Rare (to be phased out in time) and Least Concern.

NOTES ON PROVISIONS**PART 1—PRELIMINARY****Clause 1 Short title**

Clause 1 sets out the short title of the Act as the *Nature Conservation Amendment Act 2004*.

Clause 2 Act Amended

Clause 2 provides that the *Nature Conservation Amendment Act 2004* amends the *Nature Conservation Act 1992*.

Clause 3 Commencement

Clause 3 provides that the Act will commence on a date to be fixed by proclamation.

PART 2—NATURE CONSERVATION ACT 1992**Clause 4 Amendment of s 62 (Restriction on taking etc. of cultural and natural resources of protected areas)**

Clause 4 provides for the addition of the new category Near Threatened wherever the category Rare appears in this section.

Clause 5 Amendment of s 71 (Classes of wildlife to which the Act applies)

Clause 5 subsection (1) replaces the reference to Presumed Extinct wildlife with Extinct in the Wild wildlife.

Clause 5 subsection (2) provides for the inclusion of the new Near Threatened wildlife class, and replaces the reference to Common wildlife with Least Concern wildlife.

Clause 6 Replacement of ss 76-80 (Native wildlife may be prescribed as presumed extinct, endangered, vulnerable, rare, near threatened or least concern wildlife)

Clause 6 (s 76) provides a prescription for the replacement category Extinct in the Wild wildlife.

Clause 6 (s 77) provides an amendment to the prescription for Endangered wildlife. Paragraph (a) acknowledges that wildlife may be prescribed as Endangered if it has not been seen in the wild over a period that is appropriate for the life cycle or form of the wildlife even though thorough searches have not been conducted for the wildlife. This paragraph recognises that, in the ordinary administration of the Act, wildlife research is done on a prioritised basis and it is therefore not always possible or practical to conduct ‘thorough’ searches for all endangered wildlife species that will meet the standards required or desired by scientific experts or other individuals at any particular time. However, the fact that such a search has not yet been conducted for a species does not prevent the species from being listed as Endangered wildlife if it has not been seen in the wild over a period that is appropriate for the life cycle or form of the species.

Clause 6 (s 78) provides an amendment to the prescription for Vulnerable wildlife and a definition for ‘endangered wildlife’ in this section.

Clause 6 (s 78A) provides an amendment to the prescription for Rare wildlife and indicates that this class will expire five years after it commences. It also provides a definition for ‘vulnerable wildlife’ as it relates to this section. A transitional provision relating to the abolishment of the Rare wildlife class is described under Part 12 of the Act (*Clause 12*). This transitional provision states that once Section 78A expires the Rare wildlife class will cease to exist and further references to “Rare wildlife” are redundant.

Clause 6 (s 79) provides a prescription for the new Near Threatened wildlife category and a definition for ‘vulnerable wildlife’ in this section.

Clause 6 (s 80) provides a prescription for the replacement category Least Concern wildlife.

Clause 7 Amendment of s 84 (Property in protected plants)

Clause 7 provides for an amendment to the protected plant definition in this section.

Clause 8 Amendment of s 89 (Restriction on taking etc. protected plants)

Clause 8 subsection (1) provides for an amendment to the title of this section.

Clause 8 subsection (2) provides for the addition of the new Near Threatened wildlife class to this section.

Clause 9 Amendment of s 90 (Restriction on using threatened or rare plants)

Clause 9 subsection (1) provides for an amendment to the title of this section.

Clause 9 subsection (2) provides for the addition of the new Near Threatened wildlife class to this section.

Clause 9 subsection (3) simplifies but does not change the definition of ‘authorised person’.

Clause 10 Amendment of s 102 (Issue of order)

Clause 10 provides for the addition of the new Near Threatened wildlife class to this section.

Clause 11 Insertion of new pt 12, div 1, hdg

Clause 11 provides for an amendment to Part 12 to allow for the insertion of a new division under this part of the Act.

Clause 12 Insertion of new pt 12, div 2

Clause 12 provides for the insertion of a new division (Division 2) under Part 12 titled “Transitional provision for the *Nature Conservation Amendment Act 2004*”. *Clause 12* also provides for the creation of a new section (Section 184), which describes the transitional provision relating to the Rare wildlife category (Section 78A). This transitional provision states that once Section 78A expires the Rare wildlife class will cease to exist and further references to “Rare wildlife” are redundant.

Clause 13 Amendment of sch (Dictionary)

Clause 13 subsection (1 and 2) deletes the three existing Common wildlife, Presumed Extinct wildlife and ‘protected wildlife’ definitions and provides for the inclusion of definitions for the two replacement classes - Least Concern wildlife and Extinct in the Wild wildlife. It also adds a new Near Threatened wildlife class. In addition, the ‘protected wildlife’ definition has been replaced with one that reflects amendments to the wildlife classes.

Clause 13 subsection (3) provides for ‘protected animal’ and ‘protected plant’ definitions to include the new Near Threatened wildlife class, and replaces references to Common wildlife with that of Least Concern wildlife.

Clause 13 subsection (4) provides that the reference to Presumed Extinct wildlife in the ‘threatened wildlife’ definition be replaced with Extinct in the Wild wildlife.