

# Nature Conservation (Threatened Ecological Communities Eligibility) Criteria 2016

## Disallowable instrument DI2016–255

made under the

Nature Conservation Act 2014, s71 (Threatened ecological communities list—eligibility criteria)

## EXPLANATORY STATEMENT

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This explanatory statement relates to the *Nature Conservation (Threatened Ecological Communities 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 with 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 ecological communities, this is achieved by protecting, conserving, enhancing, restoring and improving their habitats. The objects of the Act are progressed through listing those ecological communities as threatened that meet specific criteria, as the listing requires decision-makers to put in place adequate protections. Once an ecological community has been listed on the threatened ecological communities list it is afforded additional protection in terms of environmental assessment processes and specific recovery/action/conservation plans/advises with targeted management and monitoring. The nature of any plans and advises and resulting management and monitoring may be determined, amongst other qualifiers, by the listing category in which the community is assigned.

### **Overview of the provisions**

This instrument is made under the Act (s71) which provides that the Minister must develop criteria to be used in deciding whether an ecological community is eligible to be included in a category on the threatened ecological communities list (the threatened ecological communities list criteria). In developing the criteria the Minister has consulted with the Conservator of Flora and Fauna and the Scientific Committee (s71(4)).

The list criteria may only include scientific matters (s71(2)) and in developing the list criteria the Minister must have regard to (s71(3)) —

- the conservation of the ecological community;
- the ecological significance of the ecological community; and
- any relevant national standards.

The threatened ecological communities list criteria outlined in the instrument meet national standards for the listing of threatened ecological communities. 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 apply the *IUCN Guidelines for the Application of IUCN Red List of Ecosystems Categories and Criteria, Version 1.0*. Interpretation and application of the IUCN criteria, categories, thresholds and definitions will be in accordance with the IUCN guidelines and the MOU.

### **Eligibility for listing**

Under the instrument, an ecological community will satisfy at least one of the IUCN criteria to be eligible for listing as threatened under the critically endangered, endangered or vulnerable categories. The IUCN criteria are referenced in the instrument. The instrument declares the eligibility criteria for collapsed and

provisional communities as the IUCN does not have relevant criteria for these categories of threatened communities.

## **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 Bill's Committee Terms of Reference. In particular, the instrument:

1. is made under a ministerial power found in the 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 an ecological community has a number of regulatory impacts including licensing of actions that would otherwise constitute an offence and also requiring an assessment of the ecological community 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 2001* (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 ecological communities list eligibility criteria.

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

This clause provides that s47(5) of the Legislation Act does not apply in relation to the instrument. This means that the *Guidelines for the Application of IUCN Red List of Ecosystems Categories and Criteria* are not required to be notified on the Legislation Register. However, references, including websites are provided in the schedule to assist the reader.