

Nature Conservation (Key Threatening Processes Eligibility) Criteria 2016

Disallowable instrument DI2016–256

made under the

Nature Conservation Act 2014, s78 (Key threatening processes - eligibility criteria)

EXPLANATORY STATEMENT

This explanatory statement relates to the *Nature Conservation (Key Threatening Processes 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 to 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 native species and ecological communities 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 processes that meet specific criteria as threatening as it assists decision makers to reduce their impact. Once a threatening process has been listed on the key threatening processes list an action plan must be prepared to set out proposals to minimise any effect of the processes on threatened species and ecological communities with targeted management and monitoring.

Overview of the provisions

This instrument is made under of the Act (s78) which provides that the Minister must develop criteria to be used in deciding whether a threatening process is eligible to be included on the key threatening processes list (the key threatening processes list criteria). In developing the criteria the Minister has consulted the Conservator of Flora and Fauna and the Scientific Committee (s78(4)).

The list criteria may only include scientific matters (s78(2)) and in developing the list criteria the Minister must have regard to (s78(3)) —

- the conservation of threatened native species and threatened ecological communities
- the ecological significance of threatened native species and threatened ecological communities
- any relevant national standards.

There are no national standards relating to key threatening processes, however, the key threatening processes list criteria outlined in the instrument are consistent with those outlined in the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

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 only regulatory impact of a key threatening process listing is the need to prepare an action plan
 - 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
 - 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.

Justification and Considerations

When assessing key threatening processes eligibility against the listing criteria, the Scientific Committee exercises its judgement to give practical meaning to the subjective terms of the criteria. They do this by considering the information provided via the nomination form in the context of the individual species, ecological community or populations' biology and relevant ecological factors, and having regard to the degree of complexity and uncertainty associated with that context and the information provided.

The Scientific Committee is informed by, but not bound by indicative thresholds, which have been adapted from "IUCN Red List Categories and Criteria Version 3.1, 2001" and closely aligned with the Commonwealth EPBC Act and *EPBC Regulations 2000*. When considering whether to use these thresholds, the Scientific Committee judges whether they are appropriate to the species in question.

A threatening process (as defined under the Act) means a process that threatens, or may threaten, the survival, abundance or evolutionary development of a native species or ecological community.

For a threatening process to be listed on the key threatening process list it is most useful if it is specific and targeted, rather than generic and non-targeted, to ensure that an action plan can be developed which will have a significant impact. For example, climate change impacts are general across multiple species and ecological communities and there are complex interactions between climate, species and ecological communities. Whereas, climate impacts specific to a particular species or ecological community; or a specific weed or disease affecting a particular landscape could be nominated for assessment under the Act as a key threatening process.

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 key threatening processes list criteria.