

TASMANIA

NATURE CONSERVATION AMENDMENT (THREATENED NATIVE VEGETATION COMMUNITIES) BILL 2005

CONTENTS

1. Short title
2. Commencement
3. Principal Act
4. Section 25 amended (Management agreement for private land)
5. Section 33 amended (Interpretation of Part)
6. Section 41 amended (Affected owner entitled to apply for compensation)
7. Section 41A inserted
 - 41A. Restrictions on entitlement to compensation
8. Section 42 amended (Assessment of compensation)
9. Section 44 amended (Effect of failure to pay compensation)
10. Section 76A inserted
 - 76A. Amendment of Schedule 3A
11. Schedule 3A inserted
 - Schedule 3A – Threatened native vegetation communities

**NATURE CONSERVATION AMENDMENT
(THREATENED NATIVE VEGETATION
COMMUNITIES) BILL 2005**

*(Brought in by the Minister for Environment and Planning, the
Honourable Judith Louise Jackson)*

A BILL FOR

An Act to amend the *Nature Conservation Act 2002*

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Nature Conservation Amendment (Threatened Native Vegetation Communities) Act 2005*.

2. Commencement

This Act commences on the day on which the *Forest Practices Amendment (Threatened Native Vegetation Communities) Act 2005* commences.

3. Principal Act

In this Act, the *Nature Conservation Act 2002** is referred to as the Principal Act.

4. Section 25 amended (Management agreement for private land)

Section 25(2) of the Principal Act is amended as follows:

- (a) by omitting “in respect of a private nature reserve or private sanctuary”;
- (b) by omitting from paragraph (a) “that reserved land” and substituting “the private land”;
- (c) by omitting from paragraph (b) “that” first occurring and substituting “the private land and it is”;
- (d) by omitting from paragraph (b) “met.” and substituting “met; and”;
- (e) by inserting the following paragraph after paragraph (b):
 - (c) any conservation objectives for the private land are met.

*No. 63 of 2002

5. Section 33 amended (Interpretation of Part)

Section 33 of the Principal Act is amended as follows:

- (a) by inserting “, unless the contrary intention appears” after “In this Part”;
- (b) by inserting “or protecting a threatened native vegetation community from clearance and conversion” after “fauna” in paragraph (a) of the definition of “affected owner”;
- (c) by inserting “or protecting a threatened native vegetation community from clearance and conversion” after “fauna” in paragraph (b) of the definition of “affected owner”;
- (d) by inserting “or involve the clearance and conversion of a threatened native vegetation community” after “fauna” in paragraph (c) of the definition of “affected owner”;
- (e) by inserting the following definition after the definition of “conservation covenant”:

“conservation determination” means a determination made by the Forest Practices Authority under section 19 of the *Forest Practices Act 1985* to –

- (a) certify a forest practices plan subject to

amendments made for the purpose of protecting a rare or endangered species of flora or fauna or maintaining a threatened native vegetation community; or

- (b) refuse to certify a forest practices plan application wholly or partially on the ground that implementation of the proposed forest practices plan would threaten a rare or endangered species of flora or fauna or involve the clearance and conversion of a threatened native vegetation community;
- (f) by omitting the definition of “Forest Practices Code, 1987” and substituting the following definition:

“Forest Practices Code” means the code of that name issued under section 30 of the *Forest Practices Act 1985*;
- (g) by inserting the following definition after the definition of “registered”:

“relevant conservation determination”, in relation to a landowner, means the conservation determination that

makes the landowner an affected owner;

- (h) by inserting the following definition after the definition of “taxon”:

“threatened native vegetation community” means a community of native vegetation specified in Schedule 3A;

6. Section 41 amended (Affected owner entitled to apply for compensation)

Section 41(3) of the Principal Act is amended by inserting “, subject to section 41A,” after “must”.

7. Section 41A inserted

After section 41 of the Principal Act, the following section is inserted in Division 4:

41A. Restrictions on entitlement to compensation

- (1) A landowner is not entitled to compensation pursuant to section 41 unless the Minister is satisfied that –
- (a) the relevant conservation determination has the effect of requiring the landowner to exercise a higher duty of care for the conservation of natural and cultural values on the relevant land than is required under the Forest Practices Code as in force

on the date of the determination;
and

- (b) the landowner is not entitled to any, or adequate, financial consideration from other sources (including voluntary, public or private, conservation funds) for the financial loss referred to in that section.
- (2) Also, without limiting the generality of subsection (1), a landowner is not entitled to compensation pursuant to section 41 in so far as the relevant conservation determination prevents the complete or partial clearance and conversion of a threatened native vegetation community unless the Minister is satisfied that –
 - (a) at the date of the determination, the proposed clearance and conversion was not prohibited under –
 - (i) a law of the State other than this Act or the *Forest Practices Act 1985*; or
 - (ii) a law of the Commonwealth; and
 - (b) for at least 2 years before the date of the determination, the landowner was actively managing the relevant land with the reasonable intention of

undertaking the proposed clearance and conversion; and

- (c) the landowner has undertaken to manage the threatened native vegetation community under a conservation covenant or management agreement.

8. Section 42 amended (Assessment of compensation)

Section 42(2)(c) of the Principal Act is amended as follows:

- (a) by omitting from subparagraph (ii) “any” and substituting “if the relevant land is forested, any”;
- (b) by inserting the following subparagraphs after subparagraph (v):
 - (va) any government restrictions relating to the clearance and conversion of threatened native vegetation communities, including restrictions under the Forest Practices Code as from time to time in force;
 - (vb) in respect of the conservation of natural and cultural values on the relevant land, the extent to which the duty of care that the landowner is being required to exercise regarding those values exceeds the duty of care required under the Forest Practices Code

as in force on the date of the
relevant conservation
determination;

9. Section 44 amended (Effect of failure to pay compensation)

Section 44(8) of the Principal Act is amended as follows:

- (a) by inserting in paragraph (a) “or a threatened native vegetation community” after “fauna”;
- (b) by inserting in paragraph (b) “or a threatened native vegetation community” after “fauna”;
- (c) by inserting in paragraph (c) “or a threatened native vegetation community” after “fauna”;
- (d) by inserting in paragraph (d) “or a threatened native vegetation community” after “fauna”.

10. Section 76A inserted

After section 76 of the Principal Act, the following section is inserted in Part 8:

76A. Amendment of Schedule 3A

- (1) The Minister, by order, may amend Schedule 3A by doing one or more of the following:

- (a) inserting an item in the Schedule;
 - (b) omitting an item from the Schedule;
 - (c) omitting an item from the Schedule and substituting a new item.
- (2) An order under this section is not an instrument of a legislative character for the purpose of the *Subordinate Legislation Act 1992*.

11. Schedule 3A inserted

After Schedule 3 to the Principal Act, the following Schedule is inserted:

SCHEDULE 3A – THREATENED NATIVE VEGETATION COMMUNITIES

Section 33

1. Alkaline pans
2. *Allocasuarina littoralis* forest
3. *Athrotaxis cupressoides*/*Nothofagus gunnii* short rainforest
4. *Athrotaxis cupressoides* open woodland
5. *Athrotaxis cupressoides* rainforest
6. *Athrotaxis selaginoides*/*Nothofagus gunni* short rainforest
7. *Athrotaxis selaginoides* rainforest

8. *Athrotaxis selaginoides* subalpine scrub
9. *Banksia marginata* wet scrub
10. *Banksia serrata* woodland
11. *Callitris rhomboidea* forest
12. Coastal complex on King Island
13. Cushion moorland
14. *Eucalyptus amygdalina* forest and woodland on sandstone
15. *Eucalyptus amygdalina* inland forest and woodland on cainozoic deposits
16. *Eucalyptus brookeriana* wet forest
17. *Eucalyptus globulus* dry forest and woodland
18. *Eucalyptus globulus* King Island forest
19. *Eucalyptus morrisbyi* forest and woodland
20. *Eucalyptus ovata* forest and woodland
21. *Eucalyptus risdonii* forest and woodland
22. *Eucalyptus tenuiramis* forest and woodland on sediments
23. *Eucalyptus viminalis* - *Eucalyptus globulus* coastal forest and woodland
24. *Eucalyptus viminalis* Furneaux forest and woodland

25. *Eucalyptus viminalis* wet forest
26. Heathland on calcarenite
27. Heathland scrub complex at Wingaroo
28. Highland *Poa* grassland
29. Highland grassy sedgeland
30. Lowland *Poa labillardierei* grassland
31. Lowland *Themeda* grassland
32. *Melaleuca ericifolia* swamp forest
33. *Melaleuca pustulata* scrub
34. *Notelaea* - *Pomaderris* - *Beyeria* forest
35. Rainforest fernland
36. Riparian scrub
37. Seabird rookery complex
38. *Sphagnum* peatland
39. Subalpine *Diplarrena latifolia* rushland
40. Subalpine *Leptospermum nitidum*
woodland
41. Wetlands