

LEGISLATIVE ASSEMBLY

Threatened Species Conservation Amendment (Biodiversity Banking) Bill 2006

First Print

Amendments to be moved in Committee

- No. 1 Page 4, Schedule 1 [4], lines 7-10. Omit all words on those lines.
- No. 2 Page 5, Schedule 1 [6], lines 3-12. Omit all words on those lines.
- No. 3 Page 5, Schedule 1 [6], proposed section 127. Insert after line 35:
deferred retirement arrangement has the meaning given by section 127ZN.
- No. 4 Page 6, Schedule 1 [6], proposed section 127, lines 1-5. Omit all words on those lines.
- No. 5 Page 6, Schedule 1 [6], proposed section 127. Insert after line 13:
mining authority means an authority, mineral claim or opal prospecting licence under the *Mining Act 1992*.
- No. 6 Page 6, Schedule 1 [6], proposed section 127. Insert after line 30:
petroleum title means a petroleum title under the *Petroleum (Onshore) Act 1991*.
- No. 7 Page 6, Schedule 1 [6], proposed section 127. Insert after line 37:
restorative action, in relation to a development or activity, means any rehabilitation or restoration action taken on the site of a development or activity after the development or activity has been substantially completed.
- No. 8 Page 8, Schedule 1 [6], proposed section 127B. Insert after line 14:
(3) The Minister is to have regard to the following principles when establishing the methodology under this section:
(a) biodiversity values should be conserved across appropriate local and regional scales,
(b) all types of ecological communities should be adequately conserved,
(c) any areas conserved under the biobanking scheme must be viable in the long term.
- No. 9 Pages 8-9, Schedule 1 [6], proposed section 127B, line 27 on page 8 to line 24 on page 9. Omit all words on those lines. Insert instead:

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- (6) The biobanking assessment methodology must include provisions that ensure that if an environmental contribution is payable in respect of a development, the number of biodiversity credits required to be retired in respect of the development is reduced (or is nil) to take account of that environmental contribution.
 - (7) The biobanking assessment methodology may provide for any other matters required or authorised by this Part.
Note. See also Division 7, which allows the methodology to include provision for the deferred retirement arrangements where restorative actions are taken in respect of a development.
 - (8) A biobanking agreement cannot be entered into, and a biobanking statement cannot be issued, until the biobanking assessment methodology is published under this section.
 - (9) In this section, *environmental contribution* means any of the following contributions, or a part of such a contribution, if the contribution or part is required, or is to be used or applied, for the conservation or enhancement of the natural environment:
 - (a) a contribution (including a dedication of land or other material benefit) required by a planning agreement under Subdivision 2 of Division 6 of Part 4 of the *Environmental Planning and Assessment Act 1979*,
 - (b) a contribution (including a dedication of land or levy) required under Subdivision 3 or 4 of Division 6 of Part 4 of that Act.

No. 10 Page 9, Schedule 1 [6]. Insert after line 24:

127C Publication, amendment and review of biobanking assessment methodology

- (1) The Director-General is to ensure that a copy of the biobanking assessment methodology is available for public inspection:
 - (a) at the head office of the Department, and
 - (b) on the website of the Department.
- (2) Copies of the biobanking assessment methodology, or of any part of the methodology, are to be made available to the public on request, on payment of a fee (if any) fixed by the Director-General.
- (3) Subject to any requirements of the regulations, the biobanking assessment methodology may be amended, repealed or replaced by further order of the Minister published in the Gazette.
- (4) The regulations may:
 - (a) prescribe the circumstances in which the Minister is authorised to make an order that amends, repeals or replaces the biobanking assessment methodology, including by requiring consultation to be carried out before such an order is made, and
 - (b) require the Minister to undertake a periodic review of the biobanking assessment methodology and provide for consultation in respect of that review.

No. 11 Page 10, Schedule 1 [6], proposed section 127C, lines 8-10. Omit all words on those lines. Insert instead:

- (7) The Minister must consult with the Minister administering the

Environmental Planning and Assessment Act 1979, the Minister administering Part 2 of the *Mining Act 1992* and the Minister administering the *Petroleum (Onshore) Act 1991* before entering into any biobanking agreement.

- (8) The regulations may:
- (a) require the Minister, before entering into a biobanking agreement with a person, to consider whether the person (whether or not an individual) is a fit and proper person to enter into, and fulfil the obligations imposed by, the agreement, and
 - (b) specify the matters that may be considered by the Minister in determining whether the person is such a fit and proper person.

No. 12 Page 11, Schedule 1 [6], proposed section 127E, lines 31-34. Omit all words on those lines. Insert instead:

- (c) where the land is subject to a mortgage or charge, the mortgagee or chargee has consented in writing to the agreement, and
- (d) where the land is subject to a covenant, the Minister has consulted with the person entitled to the benefit of the covenant about the terms of the agreement, and
- (e) where the land is the subject of a mining lease or mineral claim under the *Mining Act 1992* or a production lease under the *Petroleum (Onshore) Act 1991*, the holder of the lease or claim has consented in writing to the agreement, and
- (f) where the land is the subject of any mining authority or petroleum title not referred to paragraph (e), the Minister has consulted with the holder of the mining authority or petroleum title about the terms of the agreement.

No. 13 Page 12, Schedule 1 [6], proposed section 127E, lines 19-22. Omit all words on those lines. Insert instead:

- (5) The Minister must not enter into a biobanking agreement for Crown land (within the meaning of the *Crown Lands Act 1989*), except with the consent of the Minister administering that Act.
- (6) In this section, a reference to a person entitled to the benefit of a covenant includes, in the case of a covenant imposed under section 88D or 88E of the *Conveyancing Act 1919*, a reference to a prescribed authority (within the meaning of those sections) or a person entitled to exercise, on behalf of the Crown, the functions of a prescribed authority under those sections.

No. 14 Page 13, Schedule 1 [6], proposed section 127G. Insert after line 37:

- (2) The Minister must not agree to any variation of a biobanking agreement with the owners of the biobank site unless:
 - (a) if the land is subject to a mortgage or charge, the mortgagee or chargee has consented in writing to the variation, and
 - (b) if the land is subject to a covenant, the Minister has consulted with the person entitled to the benefit of the covenant about the variation, and
 - (c) if the land is the subject of a mining lease or mineral claim under the *Mining Act 1992* or a production lease under the

Petroleum (Onshore) Act 1991, the holder of the lease or claim has consented in writing to the variation, and

- (d) if the land is the subject of any mining authority or petroleum title not referred to paragraph (c), the Minister has consulted with the holder of the mining authority or petroleum title about the variation.

No. 15 Page 14, Schedule 1 [6], proposed section 127G. Insert after line 20:

- (6) In this section, a reference to a person entitled to the benefit of a covenant includes, in the case of a covenant imposed under section 88D or 88E of the *Conveyancing Act 1919*, a reference to a prescribed authority (within the meaning of those sections) or a person entitled to exercise, on behalf of the Crown, the functions of a prescribed authority under those sections.

No. 16 Page 14, Schedule 1 [6], proposed section 127H, line 26. Omit “make an entry”. Insert instead “register the agreement, variation or termination by making an entry”.

No. 17 Page 16, Schedule 1 [6], proposed section 127K, lines 1-9. Omit all words on those lines. Insert instead:

- (3) Without limiting subsection (2), the Court may:
- (a) in the case of proceedings brought in the Court by the Minister, award damages against the owner of a biobank site for a breach of the biobanking agreement that arose from an intentional, reckless or negligent act or omission by or on behalf of the owner or a previous owner of the land (being an act or omission of which the owner had notice) including a failure by the owner or previous owner to prevent another person from causing a breach of the biobanking agreement, and
- (b) in any case, direct the owner of the biobank site to retire biodiversity credits of a specified number and class (if applicable) within a period specified in the order and, if the owner does not hold sufficient biodiversity credits to comply with the direction, to acquire the necessary biodiversity credits for the purpose of retiring them.

No. 18 Page 19, Schedule 1 [6], proposed section 127P, lines 28-31. Omit all words on those lines. Insert instead:

- (b) the Minister is satisfied that any adverse effect of the development on biodiversity values (including any future improvement to biodiversity values that would otherwise be achieved by the management actions on the biobank site) will be offset by the retirement of biodiversity credits by the public authority, or

No. 19 Pages 19-20, Schedule 1 [6], proposed section 127P, line 34 on page 19 to line 41 on page 20. Omit all words on those lines. Insert instead:

- (3) The Minister may, as a condition of granting consent under this section, direct the public authority to retire biodiversity credits of a number and class specified by the Minister to the Director-General and, if the person does not hold a sufficient number of biodiversity credits to comply with the direction, direct the public authority to acquire the necessary biodiversity credits for the purpose of retiring them.
- (4) The Minister may approve an arrangement under which:
- (a) the retirement of some or all of the biodiversity credits is

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- deferred pending the completion of restorative actions that will restore or improve the biodiversity values affected by the development, and
- (b) the biodiversity credits the retirement of which is deferred pending the completion of those actions are required to be transferred to the Minister.
- (5) Division 7 applies in respect of any such arrangement as if it were a deferred retirement arrangement approved by the Director-General under that Division.
- (6) The Minister may, by order published in the Gazette, vary or terminate the biobanking agreement relating to a biobank site without the consent of the owner of the biobank site if consent to development is granted under this section and the variation or termination is necessary to enable to the public authority to carry out the development.
- (7) The owner of a biobank site is not entitled to any compensation as a result of the variation or termination of an agreement under this section.
- (8) Subsection (7) does not affect any right to compensation the owner may have under the *Land Acquisition (Just Terms Compensation) Act 1991* or any other Act in respect of the development.
- (9) This section does not apply:
- (a) to any part of a biobank site that is a wilderness area within the meaning of the *Wilderness Act 1987*, or
- (b) in respect of development proposed to be carried out by a public authority on a biobank site if the public authority is the owner of the biobank site and the proposed development is not inconsistent with the terms of the biobanking agreement.
- (10) The consent of the Minister under this section is not an approval for the purposes of Part 5 of the *Environmental Planning and Assessment Act 1979*.

No. 20 Page 21, Schedule 1 [6]. Insert after line 19:

127R Prospecting and mining on biobank sites

- (1) The Minister may, by order published in the Gazette, vary or terminate a biobanking agreement without the consent of the owner of the biobank site if a mining authority or petroleum title is granted in respect of the biobank site and the Minister is of the opinion that the activity authorised by the mining authority or petroleum title:
- (a) will adversely affect any management actions that may be carried out on the land under the biobanking agreement, or
- (b) will adversely affect the biodiversity values protected by the biobanking agreement.
- (2) If the Minister varies or terminates the biobanking agreement under this section, the Minister may, by order in writing to the holder of the mining authority or petroleum title, direct the holder to retire biodiversity credits of a specified number and class (if applicable) to the Minister within a time specified in the order.
- (3) A direction may be given to a person under subsection (2) only if

biodiversity credits have already been created in respect of management actions that were carried out or proposed to be carried out on the biobank site and have been transferred to any person.

- (4) A person must not, without reasonable excuse, fail to comply with a direction under subsection (2).

Maximum penalty: 10,000 penalty units.

- (5) It is not an excuse for a failure to comply with a direction under this section that the person who is the subject of the direction does not, at the time the direction is given, hold a sufficient number of biodiversity credits to comply with the direction.

Note. If the person who is the subject of the direction does not hold a sufficient number of credits to comply with the direction, the person may obtain the required number by purchasing them.

- (6) A court that convicts a person of an offence under subsection (4) may, in addition to or in substitution for any pecuniary penalty for the offence, by order direct the person to retire biodiversity credits of a specified number and class (if applicable) to the Director-General within a time specified in the order and, if the person does not hold sufficient biodiversity credits to comply with the direction, to acquire the necessary biodiversity credits for the purpose of retiring them,

- (7) The owner of a biobank site is not entitled to any compensation as a result of the variation or termination of an agreement under this section.

- (8) Subsection (7) does not affect any right to compensation the owner may have under the *Mining Act 1992*, the *Petroleum (Onshore) Act 1991* or any other legislation in respect of the grant of the mining authority or petroleum title.

- (9) In this section:

conviction includes the making of an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999*.

127S General provisions relating to variation or termination of agreements without consent of owner

- (1) This section applies if the Minister proposed to vary or terminate a biobanking agreement without the consent of the owner of the biobank site by order under section 127P or 127R.

- (2) The Minister is not to make such an order unless:

- (a) written notice of the Minister's intention to vary or terminate the agreement has been given to the owner of the biobank site stating that the owner may make submissions to the Minister within the period specified in the notice (being a period of not less than 28 days), and
- (b) the Minister has considered any submissions made by the owner of the biobank site, being submissions made within that specified period.

- (3) If the order is made, a copy of the order is to be laid before each House of Parliament within 30 sitting days of that House, or such other period as may be prescribed by the regulations, after publication of the order.

- (4) If the order varies the agreement, the owner of the biobank site may, by written notice given to the Minister, terminate the agreement, but only if:

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- (a) no biodiversity credits have been created in respect of the biobank site, or
 - (b) in a case where biodiversity credits have been created, the owner of the biobank site is the holder of all credits that have been created since registration of the biobank site (that is, none of the credits created have been retired) and all the credits are cancelled by the Director-General with the consent of the owner.

127T Activities authorised by mining authorities and petroleum titles not affected by biobanking agreement

Nothing in this Division:

- (a) prevents the grant of a mining authority or petroleum title in respect of a biobank site in accordance with the *Mining Act 1992* or the *Petroleum (Onshore) Act 1991*, or
- (b) prevents the carrying out, on or in respect of a biobank site, of any activity authorised by a mining authority or petroleum title in accordance with the *Mining Act 1992* or the *Petroleum (Onshore) Act 1991*.

No. 21 Page 24, Schedule 1 [6], proposed section 127V. Insert after line 9:

- (4) The transfer of a biodiversity credit does not affect any requirement imposed on the owner of a biobank site under a biobanking agreement. In particular, it does not affect any requirement that the owner carry out, or continue to carry out, management actions in respect of the land in relation to which the credit was created.

No. 22 Pages 25-26, Schedule 1 [6], proposed section 127Z, line 30 on page 25 to line 8 on page 26. Omit all words on those lines. Insert instead:

127Z Grounds for cancellation of biodiversity credit

- (1) The Director-General may cancel a biodiversity credit that is in force, or that has been suspended under this Part:
 - (a) if the Director-General is of the opinion that any management action in respect of which the biodiversity credit was created has not been carried out or completed, or is not being carried out, in accordance with the biobanking agreement, or
 - (b) if the person who applied for the creation of the credit provided any information to the Director-General in, or in connection with, the application that was false or misleading in a material particular, or
 - (c) if the credit was created in error, or
 - (d) if the holder of the credit has requested or agreed to the cancellation, or
 - (e) if authorised to do so by any other provision of this Act or the regulations.
- (2) Without limiting subsection (1), if the Minister varies or terminates a biobanking agreement because of activities authorised by a mining authority or petroleum title granted in respect of a biobank site, the Director-General may cancel any biodiversity credits created in respect of the biobank site that have not been transferred by the biobank site owner.

No. 23 Pages 26-27, Schedule 1 [6], proposed section 127Z, line 28 on page 26 to line 9 on

page 27. Omit all words on those lines.

No. 24 Page 27, Schedule 1 [6]. Insert after line 9:

127ZA General provisions relating to cancellation

- (1) The Director-General cancels a biodiversity credit by making a recording in the register of biodiversity credits, in relation to the biodiversity credit concerned, that indicates that the credit is cancelled.
- (2) The Director-General must give the holder of the credit notice in writing of the cancellation.
- (3) No compensation is payable for the cancellation of a biodiversity credit.
- (4) However, if a biodiversity credit is cancelled because of activities authorised by a mining authority or petroleum title granted in respect of a biobank site, the reasonable costs incurred by the biobank site owner in carrying out, before the cancellation, the management actions in respect of which the biodiversity credits were created are taken, for purposes of any compensation provisions of the *Mining Act 1992* or the *Petroleum (Onshore) Act 1991*, to be a loss caused by deprivation of the possession or of the use of the surface of the land concerned as a result of the exercise of the rights conferred by the mining authority or petroleum title.
- (5) If a biodiversity credit is cancelled, the Minister may vary or terminate the relevant biobanking agreement (with or without the consent of the owner of the biobank site) to make it clear that any obligation to carry out, or to continue to carry out, a management action that arises only because of the creation of that credit ceases to have effect.
- (6) If the variation or termination is made without the consent of the owner:
 - (a) the variation or termination is to be made by the Minister by order published in the Gazette, and
 - (b) a copy of the order is to be laid before each House of Parliament within 30 sitting days of that House, or such other period as may be prescribed by the regulations, after publication of the order.
- (7) The Minister is not to make an order referred to in subsection (6) unless:
 - (a) written notice of the Minister's intention to vary or terminate the agreement has been given to the owner of the biobank site stating that the owner may make submissions to the Minister within the period specified in the notice (being a period of not less than 28 days), and
 - (b) the Minister has considered any submissions made by the owner of the biobank site, being submissions made within that specified period.
- (8) The cancellation of a biodiversity credit does not prevent the Minister from seeking an award of damages against the owner of a biobank site for a breach of a biobanking agreement.

No. 25 Pages 27-28, Schedule 1 [6], proposed section 127ZB, line 23 on page 27 to line 19 on page 28. Omit all words on those lines. Insert instead:

127ZB Application for retirement of biodiversity credits

- (1) The holder of a biodiversity credit that is in force may, by application in writing to the Director-General, retire the credit.

Note. Once the creation of a biodiversity credit is registered, it remains in force unless it is cancelled or retired—see section 127U.

- (2) Any application to retire a biodiversity credit may be made by the holder of the credit:

(a) for the purpose of complying with a credit retirement condition specified in a biobanking statement, or

(b) for the purpose of complying with a direction made by the Minister or a court under this Part or under the *National Parks and Wildlife Act 1974*, or

(c) for the purpose of complying with a condition of an approval granted by the Minister under Part 3A of the *Environmental Planning and Assessment Act 1979* in respect of a project to which that Part applies, or

(d) on a voluntary basis.

- (3) If the Director-General accepts the application, the Director-General is to retire the biodiversity credit.

Note. Biodiversity credits may also be retired under Division 7.

127ZC General provisions relating to retirement of biodiversity credits

- (1) The Director-General retires a biodiversity credit by making a recording in the entry relating to the credit in the register of biodiversity credits to indicate that the credit has been retired.

- (2) The retirement of a biodiversity credit does not affect any requirement imposed on the owner of a biobank site under a biobanking agreement. In particular, it does not affect any requirement that the owner carry out, or continue to carry out, management actions in respect of the land in relation to which the credit was created.

- (3) A biodiversity credit that has been suspended by the Director-General may not be retired during any period in which the suspension has effect.

- (4) The regulations may make further provision for the retirement of biodiversity credits, including the procedure for retiring a credit and the circumstances in which the Director-General may refuse an application to retire a credit.

No. 26 Page 29, Schedule 1 [6], proposed section 127ZC. Insert after line 31:

- (7) A court that convicts a person of an offence under subsection (5) may, in addition to or in substitution for any pecuniary penalty for the offence, by order direct the person to retire biodiversity credits of a specified number and class (if applicable) to the Director-General within a time specified in the order and, if the person does not hold sufficient biodiversity credits to comply with the direction, to acquire the necessary biodiversity credits for the purpose of retiring them.

No. 27 Page 29, Schedule 1 [6], proposed section 127ZC. Insert after line 34:

- (8) In this section:
conviction includes the making of an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999*.

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- No. 28 Page 30, Schedule 1 [6], proposed section 127ZD, lines 26-30. Omit all words on those lines. Insert instead “1979.”.
- No. 29 Page 30, Schedule 1 [6], proposed section 127ZE, lines 33-34. Omit “(including any development for which biobanking is compulsory)”.
- No. 30 Page 31, Schedule 1 [6], proposed section 127ZF, lines 30-31. Omit “, unless directed by the Minister to issue the statement under section 127ZG”.
- No. 31 Page 32, Schedule 1 [6], proposed section 127ZF, lines 6-8. Omit all words on those lines. Insert instead:
- (5) The Director-General must refuse an application for the issue of a biobanking statement if:
 - (a) the application relates to development that is not development for which biobanking is available, or
 - (b) the application relates to development that requires planning concurrence under section 127ZG and the Director-General of Planning does not concur with the issue of the statement.
- No. 32 Page 32, Schedule 1 [6], proposed section 127ZF, lines 22-36. Omit all words on those lines. Insert instead:
- (8) A refusal by the Director-General to issue a biobanking statement in respect of development does not prevent the development being evaluated or assessed in accordance with the provisions of the *Environmental Planning and Assessment Act 1979* that would apply in respect of the development, but for this Part.

Note. Participation in the biobanking scheme is voluntary. If a biobanking statement is not obtained in respect of a development (including because it is refused by the Director-General) the development may still be evaluated or assessed in accordance with the relevant provisions of the *Environmental Planning and Assessment Act 1979*. These provisions may require (among other things) the preparation of a species impact statement and the concurrence of, or consultation with, the Minister for the Environment and the Director-General.
 - (9) A consent authority or determining authority cannot refuse to consent to or approve a development or activity under Part 4 or 5 of the *Environmental Planning and Assessment Act 1979* on the ground that an application for a biobanking statement in respect of the development or activity was refused.
- No. 33 Page 33, Schedule 1 [6], lines 1-25. Omit all words on those lines. Insert instead:
- 127ZG Concurrence of Director-General of Department of Planning required in certain cases**
- (1) If the Director-General is of the opinion that a proposed development requires planning concurrence, the Director-General must not issue a biobanking statement in relation to the development unless:
 - (a) the Director-General has given the Director-General of the Department of Planning notice of the proposal to issue the biobanking statement, and
 - (b) the Director-General of the Department of Planning concurs with the issue of the biobanking statement.
 - (2) For the purposes of this section, development requires planning concurrence if the development is of a kind declared by a State environmental planning policy made under the *Environmental*

Planning and Assessment Act 1979 to be development requiring planning concurrence.

- (3) The Director-General of the Department of Planning may concur, or refuse to concur, with the issue of a biobanking statement by the Director-General of the Department of Environment and Conservation.
- (4) The Director-General of the Department of Planning may refuse to concur with the issue of a biobanking statement on any grounds specified in a State environmental planning policy made under the *Environmental Planning and Assessment Act 1979*.
- (5) If the Director-General of the Department of Planning fails to notify the Director-General of the Department of Environment and Conservation whether the Director-General concurs, or refuses to concur, with the issue of a biobanking statement by the end of the relevant consultation period, the Director-General of the Department of Planning is taken to have concurred with the issue of the biobanking statement.
- (6) For the purposes of this section, the ***relevant consultation period*** means the period of 21 days after the Director-General of the Department of Environment and Conservation gives the Director-General of the Department of Planning notice of the proposal to issue a biobanking statement or such other period as may be agreed (either generally or in a particular case) by the Director-General of the Department of Environment and Conservation and the Director-General of the Department of Planning.
- (7) For the purposes of the *Environmental Planning and Assessment Act 1979*, the kinds of development for which planning concurrence is required under this section, and the grounds on which the Director-General of the Department of Planning may refuse to concur to the issue of a biobanking statement, are taken to be matters of State environmental planning significance.

No. 34 Page 33, Schedule 1 [6], proposed section 127ZH. Insert after line 40:

- (2) If the biobanking statement specifies a credit retirement condition, it must also describe any deferred retirement arrangement that applies in respect of the credit retirement condition.

No. 35 Page 34, Schedule 1 [6], proposed section 127ZI, lines 36-38. Omit all words on those lines.

No. 36 Page 35, Schedule 1 [6], proposed section 127ZI, line 4. Omit “(but may)”.

No. 37 Page 35, Schedule 1 [6], proposed section 127ZI. Insert after line 5:

- (6) An applicant for development consent under Part 4 of the *Environmental Planning and Assessment Act 1979* may request the consent authority to review its determination to impose any conditions on the consent (not being an environmental contribution condition) that are additional to the conditions of a biobanking statement on the ground that the condition is inconsistent with the conditions of the biobanking statement. In particular, a review may be requested because the additional condition relates to impacts that were assessed by the Director-General, in accordance with the biobanking assessment methodology, prior to the issue of the biobanking statement.
- (7) Section 82A of the *Environmental Planning and Assessment Act*

1979 applies in respect of any such review, with any necessary modifications, whether or not the consent authority is a council, and whether not the determination is a determination to which that section would otherwise apply.

- No. 38 Page 35, Schedule 1 [6], proposed section 127ZI. Insert after line 17:
- (8) In this section:
environmental contribution condition means a condition that requires an environmental contribution (within the meaning of section 127B).
- No. 39 Page 36, Schedule 1 [6], proposed section 127ZJ, lines 5-7. Omit all words on those lines.
- No. 40 Page 36, Schedule 1 [6], proposed section 127ZJ, line 21. Omit “(but may)”.
- No. 41 Page 36, Schedule 1 [6], proposed section 127ZJ. Insert after line 22:
- (8) A determining authority is to make arrangements that enable a proponent of an activity to seek a review by the determining authority of any conditions imposed on an approval that are additional to the conditions of a biobanking statement, for the purpose of ensuring that the additional conditions are consistent with the conditions of the biobanking statement. In particular, the arrangements should enable a review to be obtained in relation to any additional condition that relates to impacts that were assessed by the Director-General, in accordance with the biobanking assessment methodology, prior to the issue of the biobanking statement.
- No. 42 Page 37, Schedule 1 [6], proposed section 127ZK, lines 26-27. Omit “Except in the case of development for which biobanking is compulsory, participation”. Insert instead “Participation”.
- No. 43 Page 39, Schedule 1 [6], proposed section 127ZL. Insert after line 10:
- (6) A court that convicts a person of an offence under subsection (4) may, in addition to or in substitution for any pecuniary penalty for the offence, by order direct the person to retire biodiversity credits of a specified number and class (if applicable) to the Director-General within a time specified in the order and, if the person does not hold sufficient biodiversity credits to comply with the direction, to acquire the necessary biodiversity credits for the purpose of retiring them,
- (7) In this section:
conviction includes the making of an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999*.
- No. 44 Page 39, Schedule 1 [6]. Insert after line 21:

Division 7 Arrangements for deferral of retirement of biodiversity credits

127ZN Deferred retirement arrangements

- (1) If the Director-General proposes to issue a biobanking statement subject to a credit retirement condition and is satisfied that restorative actions will be taken in relation to the development the Director-General may approve an arrangement (a **deferred retirement arrangement**) under which:

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- (a) the retirement of some or all of the biodiversity credits under the credit retirement condition is deferred pending the completion of those actions, and
 - (b) the biodiversity credits the retirement of which is deferred pending the completion of those actions are required to be transferred to the Minister.
 - (2) A credit retirement condition specified in a biobanking statement has effect subject to any such deferred retirement arrangement.
 - (3) Subject to the powers of the Director-General under this Division, the Minister is to hold biodiversity credits transferred to the Minister under a deferred retirement arrangement pending completion of the relevant restorative actions and is not permitted to transfer, retire, or otherwise deal with, the biodiversity credits.
 - (4) The biobanking assessment methodology may make provision with respect to deferred retirement arrangements, including:
 - (a) the types of restorative actions in respect of which deferred retirement arrangements are available, and
 - (b) the number and class of biodiversity credits that may be transferred back to a former holder of biodiversity credits (or to any person who acquires the rights of a former holder to apply for such a transfer) on completion of those actions.
 - (5) An application for registration of the transfer of biodiversity credits to the Minister under a deferred retirement arrangement is to be made in the manner required by Division 4. However, it is not necessary for the Minister to be a party to a transfer or application for registration of transfer.
 - (6) Sections 127Z, 127ZA and 127ZQ apply in respect of a biodiversity credit transferred to the Minister under a deferred retirement arrangement as if a reference to the holder of the biodiversity credit were a reference to the person who was the holder of the credit immediately before it was transferred to the Minister.

127ZO Transfer or retirement of biodiversity credits held subject to deferred retirement arrangement

- (1) A former holder of a biodiversity credit may, on the completion of any restorative actions the subject of a deferred retirement arrangement, apply to the Director-General for the transfer to the former holder of any biodiversity credits held by the Minister under that deferred retirement arrangement.
- (2) An application under this section:
 - (a) is to be in a form approved by the Director-General, and
 - (b) is to be accompanied by the fee (if any) approved by the Director-General for applications under this section and such information as the Director-General requires.
- (3) The Director-General is to determine the application in accordance with any relevant requirements of the biobanking assessment methodology.
- (4) If, as a result of the application, the Director-General determines that any of the biodiversity credits held by the Minister under the deferred retirement arrangement may be transferred back to the former holder:

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- (a) the Director-General is to register a transfer, from the Minister to the former holder of biodiversity credits, of those biodiversity credits (without requiring an application for registration of transfer), and
 - (b) the Director-General may retire any remaining biodiversity credits held by the Minister under the deferred retirement arrangement.
 - (5) If, as a result of the application, the Director-General determines that no biodiversity credits held by the Minister under the deferred retirement arrangement should be transferred to the former holder, the Director-General may retire all biodiversity credits held by the Minister under the arrangement.
 - (6) The Director-General must, before retiring biodiversity credits under this section, give notice of the retirement to the former holder of the biodiversity credits.
 - (7) The notice is to specify the date on which the biodiversity credits will be retired, being a date that is not less than 28 days after the notice is given to the former holder.
 - (8) The Director-General may reject an application under this section for the transfer of biodiversity credits to a former holder of the credits if an application has already been made and determined in respect of the development concerned, or for any other reason specified in the regulations.
 - (9) In this section, a **former holder** of a biodiversity credit means
 - (a) the person who held the biodiversity credit immediately before the biodiversity credit was transferred to the Minister under a deferred retirement arrangement, or
 - (b) a person who acquires the rights of the person referred to in paragraph (a) to apply for a transfer under this section in respect of the biodiversity credit.

127ZP Deadline for completion of restorative actions

- (1) A deferred retirement arrangement may provide for a period at the end of which the deferred retirement arrangement ceases to have effect.
- (2) At the end of that period, the Director-General may retire any biodiversity credits transferred to the Minister under the deferred retirement arrangement that continue to be held by the Minister.
- (3) The Director-General must, before retiring biodiversity credits under this section, give notice of the retirement to the person who held those credits immediately before they were transferred to the Minister.
- (4) The notice is to specify the date on which the biodiversity credits will be retired, being a date that is not less than 28 days after the notice is given to the former holder.

No. 45 Pages 46-47, Schedule 1 [6], proposed section 127ZX, line 33 on page 46 to line 10 on page 47. Omit all words on those lines. Insert instead:

- (4) A person who applies for the transfer to the person of a biodiversity credit held by the Minister pursuant to a deferred retirement arrangement and who is dissatisfied with a decision of the Director-General in respect of the application may appeal to the Land and Environment Court against the decision.
- (5) A person cannot appeal under subsection (4) against the

provisions of the biobanking assessment methodology or the reasonableness of any determination of the Director-General made in accordance with that methodology.

- (6) A person who held biodiversity credits immediately before they were transferred to the Minister pursuant to a deferred retirement arrangement and who is dissatisfied with a decision of the Director-General to retire those credits (other than a decision made as result of an application referred to in subsection (4)) may appeal to the Land and Environment Court against the decision.
- (7) A person against whom a direction is made under section 127R and who is dissatisfied with the decision of the Director-General to issue that direction may appeal to the Land and Environment Court against the decision.
- (8) An appeal may be made by a person under this section no later than 3 months after being notified by the Director-General of the decision.

No. 46 Page 47, Schedule 1 [6], proposed section 127ZY, lines 29-30. Omit all words on those lines. Insert instead:

- (a) provide for the accreditation of persons as conservation brokers, including by specifying matters that may be taken into consideration in determining whether a person (whether or not an individual) is a fit and proper person to be accredited as a conservation broker, and

No. 47 Page 48, Schedule 1 [6], proposed section 127ZZB, line 19. Omit “scheme.”. Insert instead:

scheme, and

- (c) make provision for the resolution of disputes arising in connection with the operation of the scheme.

No. 48 Page 48, Schedule 1 [6]. Insert after line 30:

127ZZD Review of operation of biobanking scheme

- (1) The Minister is to cause a review of the operation of the biobanking scheme to be carried out as soon as possible after the period of 2 years after the biobanking assessment methodology is first published in the Gazette.
- (2) The Minister may:
 - (a) determine the terms of reference of the review, and
 - (b) appoint a person or persons to carry out the review.
- (3) The Minister is to give ensure that the public are given an opportunity to make submissions on the review.
- (4) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 2 years.

No. 49 Page 51, Schedule 2.1 [1], lines 4-36. Omit all words on those lines.

No. 50 Page 52, Schedule 2.1 [2]. Insert after line 9:

- (6) The Minister may approve an arrangement under which:
 - (a) the retirement of some or all of the biodiversity credits is deferred pending the completion of any rehabilitation or restoration action proposed to be taken on the site of the

project, after the project has been substantially completed, that will restore or improve the biodiversity values affected by the project, and

- (b) the biodiversity credits the retirement of which is deferred pending the completion of those actions are required to be transferred to the Minister administering the *Threatened Species Conservation Act 1995*.

- (7) Division 7 of Part 7A of the *Threatened Species Conservation Act 1995* applies in respect of any such arrangement as if it were a deferred retirement arrangement approved by the Director-General of the Department of Environment and Conservation under that Division.

- No. 51 Page 52, Schedule 2.1 [3], lines 21-27. Omit all words on those lines.
- No. 52 Page 52, Schedule 2.1 [5], lines 39-42. Omit “For some types of development it may be compulsory to obtain a biobanking statement under that Part before development consent is granted under this Part.”
- No. 53 Page 53, Schedule 2.1 [6], line 5. Omit “(but may)”.
- No. 54 Page 53, Schedule 2.1 [7], lines 8-22. Omit all words on those lines.
- No. 55 Page 54, Schedule 2.1 [11], line 39. Omit “(but may)”.
- No. 56 Page 55, Schedule 2.1 [12], lines 7-9. Omit “For some activities, it may be compulsory to obtain a biobanking statement under that Part before the activity is carried out, or an approval is granted, under this Part.”
- No. 57 Page 55, Schedule 2.1 [13], lines 10-31. Omit all words on those lines.
- No. 58 Page 56, Schedule 2.3 [3], line 24. Insert “127R,” after “sections”.
- No. 59 Page 56, Schedule 2. Insert after line 34:

2.5 Mining Act 1992 No 29

Section 381A

Insert after section 381:

381A Biobank sites

The Minister is to notify the Minister administering the *Threatened Species Conservation Act 1995* of the grant of any authority, mineral claim or opal prospecting licence in relation to land that is a biobank site (within the meaning of Part 7A of that Act).

- No. 60 Page 57, Schedule 2.5. Insert after line 1:

[1] Section 118E Court may order offender to restore habitat and take other actions

Omit section 118E (1). Insert instead:

- (1) If a court convicts a person of an offence under this Part involving damage to any critical habitat or habitat of a threatened species, an endangered population or an endangered ecological community, the court may, in addition to or in substitution for any pecuniary penalty for the offence, make either or both of the following orders:

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- (a) an order directing the person to take any action to mitigate the damage or to restore that critical habitat or habitat,
 - (b) an order directing the person to retire to the Director-General of the Department of Environment and Conservation, in accordance with the *Threatened Species Conservation Act 1995*, biodiversity credits of a specified number and class (if applicable) within a period specified in the order and, if the person does not hold sufficient biodiversity credits to comply with the direction, to acquire the necessary biodiversity credits for the purpose of retiring them.

[2] Section 118E (5)

Insert after section 118E (4):

- (5) In this section:

biodiversity credit has the same meaning as it has in Part 7A of the *Threatened Species Conservation Act 1995*.

No. 61 Page 57, Schedule 2. Insert after line 29:

2.6 Petroleum (Onshore) Act 1991 No 84

Section 9 Grant of petroleum titles

Insert after section 9 (5):

- (6) The Minister is to notify the Minister administering the *Threatened Species Conservation Act 1995* of the grant of any petroleum title in relation to land that is a biobank site (within the meaning of Part 7A of that Act).