

Threatened Species Legislation Amendment Bill 2004

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Threatened Species Conservation Act 1995* (the **TS Act**), the *Fisheries Management Act 1994* and various other threatened species legislation as follows:

- (a) Provision will be made for the biodiversity certification by the Minister of the native vegetation reform package, and of environmental planning instruments (**EPIs**) that seek to promote conservation of threatened species. The Minister must also take likely social and economic consequences and certain other factors into account in deciding whether to confer biodiversity certification on an EPI.
- (b) While biodiversity certification of the native vegetation reform package is in force, land within the area of operations of a catchment management authority has the benefit of that certification. Clearing of native vegetation authorised by a property vegetation plan will not need to be licensed under provisions of the *National Parks and Wildlife Act 1974* (the **NPW Act**) that prevent harm to threatened species. The obtaining of development consent for the clearing of native vegetation on the land will not require preparation of a species impact statement or consultation between Ministers.
- (c) When an EPI has biodiversity certification, development or an activity under the EPI will be deemed not likely to significantly affect threatened species for the purposes of Parts 4 and 5 of the *Environmental Planning and Assessment Act 1979* (the **EPA Act**), thereby removing the need to address the test of significance for threatened species and the need for preparation of a species impact statement.
- (d) Existing exemptions in respect of routine agricultural activities will be replaced by provisions that adopt exemptions for routine agricultural management activities that parallel exemptions under the *Native Vegetation Act 2003* (the **NV Act**). The exemption provisions will be extended to operate as a defence to the offence of harming protected fauna (not just threatened fauna, as at present). The new provisions will include regulation making powers to extend, vary or limit these exemptions.
- (e) An additional regulation making power will be inserted in the TS Act to authorise the making of regulations to deem development or an activity to constitute, or not constitute, development or an activity that is likely to significantly affect threatened species. The regulations will operate for the purposes of Part 6 (Licensing) of the TS Act and Parts 4 and 5 of the EPA Act.
- (f) The existing statutory priorities for the preparation of recovery plans and threat abatement plans will be replaced with provisions for the Director-General to prepare and adopt a Threatened Species Priorities Action Statement, which will establish priorities for the recovery of threatened species and for threat abatement for key threatening processes. Recovery plans and threat abatement plans will be required to be prepared in accordance with the priorities established by a Priorities Action Statement.
- (g) Various amendments will be made to the procedures for nomination and listing of threatened species, including amendments to achieve the

following:

- (i) The Minister will be able to refer a proposed final listing determination by the Scientific Committee back to the Committee for further consideration for reasons of a scientific nature.
- (ii) The Scientific Committee will be required to consider and determine listing proposals by reference to criteria prescribed by the regulations and to reference the relevant criteria in its reasons for a determination.
- (iii) The validity of a final determination will not be open to challenge on the ground that statutory timeframes were not met.
- (iv) A legal challenge to the validity of a final determination will not be permitted more than 3 months after the final determination is notified.
- (v) The Natural Resources Commission (**NRC**) will be able to refer a species to the Scientific Committee for a listing determination.
- (vi) The NRC and the Minister will be able to give advice and make recommendations to the Scientific Committee as to priorities in the consideration of nominations for listing.
- (vii) The NRC will be authorised to obtain the advice of the Scientific Committee on matters of a scientific nature.
- (h) An additional category of “critically endangered” will be established for listing of species and ecological communities.
- (i) The nomination and listing provisions of the *Fisheries Management Act 1994* will be amended for greater consistency with the procedures under the TS Act (in particular so that the Schedules of threatened species will be amended by the Fisheries Scientific Committee rather than by the Minister as at present).
- (j) A Threatened Species Social and Economic Advisory Council will be established to advise the Minister, the Director-General and the NRC on likely social and economic impacts of listing determinations and related matters.
- (k) The existing Biological Diversity Advisory Council will be re-established with an expert (rather than stakeholder) membership, and altered functions with respect to advising the Minister, the Director-General and the NRC on likely impacts on biological diversity resulting from listing decisions, and related matters.
- (l) Investigative powers of authorised officers under Chapter 7 of the *Protection of the Environment Operations Act 1997* will be conferred on authorised officers under the NPW Act for the purposes of functions under that Act, the *Threatened Species Conservation Act 1995*, the *Wilderness Act 1987* and the *Marine Parks Act 1997*.
- (m) Amendments will be made to create a presumption that a person who causes damage to the habitat of a threatened species knew that the land concerned was habitat of that kind if the person did not obtain required development consent or approval under Part 4 or 5 of the EPA Act or failed to comply with such a consent or approval.
- (n) The NPW Act will be amended to provide that, for purposes of offences concerning harm and threats to protected fauna or threatened species, the landholder of the land concerned is presumed to have carried out the offending activity unless it was carried out by some other person and the landholder did not cause or permit it to be carried out. A further provision is included to create an offence of causing or permitting an act or omission that constitutes such an offence.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation with the exception of specified amendments, which commence on the date of assent.

Clause 3 is a formal provision that gives effect to the amendments to the *Threatened Species Conservation Act 1995*, the *Fisheries Management Act 1994* and other threatened species legislation set out in Schedules 1–3.

Schedules 1–3 contain the amendments described in the Overview.

Schedule 1 Amendment of Threatened Species Conservation Act 1995 No 101

Schedule 1 [64] and [65] make the amendments referred to in paragraphs (a), (b) and (c) of the Overview.

Schedule 1 [63] makes the amendment referred to in paragraph (e) of the Overview.

Schedule 1 [22], [26], [32]–[34], [39], [55] and [57]–[64] make the amendments referred to in paragraph (f) of the Overview.

Schedule 1 [20], [23], [25], [35], [37], [47] and [69] make the amendments referred to in paragraph (g) of the Overview.

Schedule 1 [4]–[16], [18], [19], [21], [24], [30], [38], [40]–[46], [48]–[54], [56], [68] and [73]–[76] make the amendments referred to in paragraph (h) of the Overview.

Schedule 1 [70] and [71] make the amendments referred to in paragraphs (j) and (k) of the Overview.

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Schedule 1 [17], [29], [31] and [36] makes amendments to the grounds for listing of threatened species, populations and ecological communities, and provides for listing decisions to be made in accordance with, and for reasons for decisions to reference, criteria prescribed by the regulations, for consistency with parallel provisions of Commonwealth legislation.

Schedule 1 [77] and [78] enact savings and transitional provisions.

Schedule 1 [1]–[3] and [72] make amendments that are minor, ancillary or consequential on other amendments made by Schedule 1.

Schedule 2 Amendment of Fisheries Management Act 1994 No 38

Schedule 2 [27] and [42] make the amendments referred to in paragraphs (a), (b) and (c) of the Overview.

Schedule 2 [28] and [29] make the amendments referred to in paragraph (d) of the Overview.

Schedule 2 [39] makes the amendment referred to in paragraph (e) of the Overview.

Schedule 2 [16], [30], [32], [34]–[36], [38] and [44] make the amendments referred to in paragraph (f) of the Overview.

Schedule 2 [7], [9], [10], [12], [13], [15], [17]–[19], [21]–[23], [33], [37], [41] and [43] make the amendments referred to in paragraphs (g) and (i) of the Overview.

Schedule 2 [2]–[6], [8], [14], [20], [24], [25], [31], [40] and [45]–[47] make the amendments referred to in paragraph (h) of the Overview.

Schedule 2 [26] makes the amendment referred to in paragraph (m) of the Overview.

Schedule 2 [11] makes amendments to the grounds for listing of threatened species, populations and ecological communities, and provides for listing decisions to be made in accordance with, and for reasons for decisions to

reference, criteria prescribed by the regulations, for consistency with parallel provisions of Commonwealth legislation.

Schedule 2 [48] and [49] enact savings and transitional provisions.

Schedule 2 [1] makes a consequential amendment.

Schedule 3 Amendment of other threatened species legislation

Schedule 3.1 [1], [8] and [10]–[15] and 3.2 make the amendments referred to in paragraph (l) of the Overview.

Schedule 3.1 [3]–[5] make the amendments referred to in paragraph (b) of the Overview.

Schedule 3.1 [7] makes the amendment referred to in paragraph (d) of the Overview.

Schedule 3.1 [6] makes the amendment referred to in paragraph (m) of the Overview.

Schedule 3.1 [9] makes the amendment referred to in paragraph (n) of the Overview.

Schedule 3.1 [16] and [17] enact savings and transitional provisions.

Schedule 3.3 makes an amendment referred to in paragraph (b) of the Overview.

Schedule 3.1 [2], 3.4 and 3.5 make minor or consequential amendments.