

## 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 **Principal Act**) to establish an accreditation scheme for ecological consultants preparing or carrying out certain assessments, impact statements or surveys under the Principal Act, the *Fisheries Management Act 1994* or the *Environmental Planning and Assessment Act 1979* (the **Planning Act**), and certain other documents and activities (**ecological assessments**).

The Bill will make it an offence for a person to:

- (a) prepare or carry out an ecological assessment if the person is not an accredited ecological consultant (unless the person is acting in accordance with the directions of, or under the supervision of, an accredited ecological consultant), or
- (b) prepare or carry out an ecological assessment requiring specialist accreditation if the person has not obtained specialist accreditation in accordance with the scheme (unless the person is acting in accordance with the directions of, or under the supervision of, a specialist ecological consultant), or
- (c) make representations, or cause or allow any representation to be made, that the person is accredited or has specialist accreditation under the scheme (unless the person is so accredited).

The Bill also:

- (a) establishes the processes for the grant and renewal of accreditation, and
- (b) enables the Chief Executive of the Office of Environment and Heritage (the **Chief Executive**) to impose, vary or revoke conditions in respect of accreditation or to revoke or suspend accreditation in certain circumstances, and
- (c) establishes an accreditation panel to perform certain functions relating to accreditation, such as making certain recommendations to the Chief Executive and conducting peer reviews of any ecological assessment that has been prepared or carried out by an accredited ecological consultant, and
- (d) establishes a process for the conduct by the accreditation panel of peer reviews of ecological assessments, so that the accreditation panel may make recommendations in respect of revocation or suspension of, or the imposition, variation or revocation of conditions on, a person's accreditation.

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 the date of assent to the proposed Act.

## Schedule 1 Amendment of Threatened Species

### Conservation Act 1995 No 101

#### Introduction of ecological consultant accreditation scheme

**Schedule 1 [2]** inserts a new Part 8A into the Principal Act, which establishes an accreditation scheme for any person who is engaged or employed to prepare or carry out an ecological assessment (an **ecological consultant**). Currently, the Principal Act gives the Director-General of the Department of Premier and Cabinet (the **Director-General**) the power to institute arrangements for the accreditation of suitably qualified and experienced persons to prepare species impact statements or to undertake and prepare surveys and assessments for use in connection with certain requirements under the Principal Act, the *Fisheries Management Act 1994* and the Planning Act. The new Part replaces that scheme.

#### Accreditation of ecological consultants

**Proposed section 138A** allows the regulations to make provision for or with respect to eligibility for accreditation as an ecological consultant. It also provides that only natural persons are eligible for accreditation.

**Proposed section 138B** enables the regulations to specify that certain types of ecological assessment require the ecological consultant preparing or carrying it out to have specialist accreditation. The regulations may also make provision for or with respect to eligibility for accreditation as a specialist ecological consultant.

**Proposed section 138C** requires the Minister to refer any proposed regulation relating to eligibility for accreditation to be referred to the accreditation panel for comment.

**Proposed sections 138D–138J** provide for the grant, renewal, revocation or suspension of accreditation. The Chief Executive may grant or renew accreditation subject to conditions, which the Chief Executive may impose, vary or revoke. The regulations may also impose conditions on accreditation or a class of accreditation. Accreditation remains in force for a fixed period of 3 years, unless sooner revoked. The regulations may make provision for an accreditation fee to be paid to the Chief Executive.

**Proposed section 138K** enables a person to apply to the Administrative Decisions Tribunal for a review of certain decisions made by the Chief Executive in respect of the person under the scheme.

**Proposed section 138L** provides that the Chief Executive is to keep a register of ecological consultants, in which the name, contact details and particulars of accreditation of all accredited ecological consultants and specialist ecological consultants are to be recorded. The register is to be made available for public inspection on the website of the Office of Environment and Heritage. The Chief Executive must also cause the name of any ecological consultant whose accreditation has been suspended or revoked, and the name of the employer of that ecological consultant, to appear in the register.

#### **Establishment of accreditation panel**

**Proposed sections 138M–138P** provide for the establishment of an accreditation panel. The functions of the accreditation panel include making recommendations to the Chief Executive regarding the eligibility of an applicant for accreditation (including specialist accreditation) and making recommendations following a peer review conducted by the accreditation panel of an ecological assessment. The accreditation panel may also make recommendations to the Minister regarding any regulation that makes provision for the eligibility of a person for accreditation (including specialist accreditation). The proposed sections also provide for the determination of the procedure of the panel and the disclosure of relevant interests by members of the panel.

#### **Peer reviews of ecological assessments**

The accreditation panel may conduct a peer review of any ecological assessment, following which the accreditation panel may make a recommendation to the Chief Executive that the accreditation of an ecological consultant be revoked or suspended, that conditions or further conditions be imposed on the ecological consultant's accreditation or that existing conditions on the accreditation be varied or revoked.

**Proposed section 138Q** provides that any accredited ecological consultant or a consent authority may request the accreditation panel to conduct a peer review of any ecological assessment. A person who is not an accredited ecological consultant or a consent authority, but whose request for peer review is supported by either an accredited ecological consultant or a consent authority, may also request a peer review. The request for peer review may only be made on the ground that the ecological assessment does not conform to industry best practice or on any other ground provided for by the regulations.

**Proposed section 138R** provides for the conduct of a peer review. The accreditation panel may refuse to carry out a peer review if it is of the opinion that the review request is frivolous or vexatious.

### **Offences**

**Proposed section 138S** makes it an offence for an ecological consultant to prepare or carry out an ecological assessment unless he or she is accredited under Part 8A. It is also an offence if an ecological consultant who does not have specialist accreditation prepares or carries out an ecological assessment that requires specialist accreditation. The proposed section provides that a person is not guilty of an offence if the person prepares or carries out, or assists in preparing or carrying out, an ecological assessment under the supervision of, or in accordance with the directions of, a person who is duly accredited. This offence does not apply to a Minister or an officer of the Crown exercising functions under the Principal Act, the Planning Act or any other law, nor does it apply to any other person in such circumstances as may be prescribed by the regulations.

**Proposed section 138T** makes it an offence for a person to make or cause or allow any representation to be made that he or she is duly accredited under Part 8A unless that person is duly accredited. The maximum penalty for each offence is 600 penalty units.

### **Responsibilities of ecological consultants**

Under the scheme, an ecological consultant has the responsibility to avoid conflicts of interest. Although it is not an offence not to do so, it may be grounds for suspension or revocation of accreditation. The regulations may also make further provision with respect to the responsibilities of ecological consultants (**proposed sections 138U and 138V**).

### **Other amendments**

**Schedule 1 [1] and [4]** repeal the existing provisions that relate to the Director-General's power to accredit persons to prepare species impact statements, assessments and surveys.

**Schedule 1 [5]** allows for regulations to be made that are of a savings or transitional nature.

**Schedule 1 [6]** provides that the new provisions relating to the ecological consultants accreditation scheme will not apply to any ecological assessment that was submitted to a consent authority or other person before the commencement of the amendments. It also provides for the phasing-in of the offence contained in

**proposed section 138S** and provides that the Minister must ensure that the making of a regulation under **proposed section 138A** is recommended within 6 months after the date of assent to the proposed Act.

**Schedule 1 [3]** makes a minor consequential amendment.