

Act No. 66

ENDANGERED FAUNA (INTERIM PROTECTION) BILL 1991 *

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the National Parks and Wildlife Act 1974 and the Environmental Planning and Assessment Act 1979 to make further provision for the protection of fauna.

The amendments to the National Parks and Wildlife Act 1974 are as follows:

- (a) to provide that the Act binds the Crown;
- (b) to extend the definition of “fauna” under the Act to include all amphibians (not just a limited class of protected amphibians as at present);
- (c) to clarify the definition of “take” (in the context of prohibitions against taking or killing protected fauna) by including the significant modification of the habitat of fauna which is likely to adversely affect its essential behavioural patterns;
- (d) to establish a 3 member Scientific Committee and charge it with the function of reviewing Schedule 11 (Unprotected Fauna) and Schedule 12 (Endangered Fauna) to the Act and producing a revised (interim) Schedule 12 within 1 month;
- (e) to provide for Schedule 12 (Endangered Fauna) to be divided into 3 parts (Part 1—Threatened, Part 2—Vulnerable and Rare, Part 3—Marine Mammals);
- (f) to require an application for a licence under the Act to take or kill endangered fauna to be accompanied by a fauna impact statement and to introduce “user pays” in relation to the costs of processing such an application;
- (g) to enable appeals to the Land and Environment Court against the decision on such an application;
- (h) to empower the Minister and the Director to issue a stop work order against any activity likely to significantly affect the environment of any protected fauna;

* Amended in committee—see table at end of volume.

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- (i) to provide that species are not to be added to the list of unprotected fauna, or added to or removed from the list of endangered fauna, except on the recommendation of the Scientific Committee;
- (j) to increase penalties for certain offences involving endangered and other protected fauna;
- (k) to permit the taking or killing of protected fauna (other than endangered fauna) where it is essential for the purposes of an activity under a development consent or approval under the Environmental Planning and Assessment Act 1979;
- (l) to permit the taking or killing of endangered fauna where it is essential for the purposes of an activity under a development consent or approval under the Environmental Planning and Assessment Act 1979, but only until the revised (interim) Schedule 12 is in place;
- (m) to provide that section 99 (Taking or killing etc. endangered fauna) does not prevent action being taken that is authorised by the Bush Fires Act 1949;
- (n) to remove the power to confer by regulation exemptions from the provisions dealing with the taking or killing of endangered fauna;
- (o) to provide that proceedings for offences under certain sections of the Act concerning protected fauna may be taken only in the Land and Environment court;
- (p) to make minor, consequential and ancillary amendments.

The amendments to the Environmental Planning and Assessment Act 1979 are as follows:

- (a) to require a development application to be accompanied by a fauna impact statement if the development is likely to significantly affect the environment of protected fauna;
- (b) to provide for the matters that must be taken into account in deciding whether there is likely to be a significant effect on the environment of protected fauna;
- (c) to require consent authorities to take into account the effect of any proposed development on the environment of protected fauna when considering whether to consent to the development;
- (d) to require the preparation of a fauna impact statement (or an environmental impact statement that addresses the same matters) before a determining authority carries out an activity, or approves of the carrying out of an activity, under Part 5 of the Act.

Clause 1 specifies the short title of the proposed Act.

Clause 2 lists the objects that the proposed Act is intended to achieve.

Clause 3 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Clause 4 gives effect to Schedule 1.

Clause 5 gives effect to Schedule 2.

Clause 6 makes a consequential amendment to the Land and Environment Court Act 1979.

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Clause 7 deals with the repeal of certain amendments to be made by proposed Act and is explained by an explanatory note that follows that clause.

Clause 8 provides that the explanatory notes appearing in the Bill do not form part of the proposed Act.

Schedules 1 and 2 make the amendments to the National Parks and Wildlife Act 1974 and the Environmental Planning and Assessment Act 1979 described above. Each amendment is explained in detail in the explanatory note relating to the amendment concerned.
