



New South Wales

# Threatened Species Conservation Amendment (Ecological Consultants Accreditation Scheme) Bill 2010

## 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 Director-General 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 Director-General 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 Environment, Climate Change and Water (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 Director-General may grant or renew accreditation subject to conditions, which the Director-General 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 Director-General.

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

**Proposed section 138L** provides that the Director-General 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 Department. The Director-General must also cause the name of any ecological consultant whose accreditation has been suspended or revoked 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 Director-General 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 Director-General 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 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

Threatened Species Conservation Amendment (Ecological Consultants Accreditation Scheme) Bill 2010

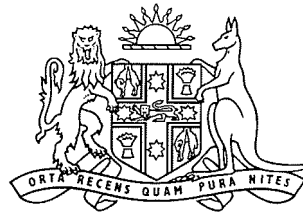
Explanatory note

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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.





New South Wales

# Threatened Species Conservation Amendment (Ecological Consultants Accreditation Scheme) Bill 2010

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New South Wales

# Threatened Species Conservation Amendment (Ecological Consultants Accreditation Scheme) Bill 2010

No. , 2010

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## A Bill for

An Act to amend the *Threatened Species Conservation Act 1995* to provide for an accreditation scheme in respect of persons who prepare or carry out species impact statements and other ecological assessments and surveys.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Threatened Species Conservation Amendment     (Ecological Consultants Accreditation Scheme) Act 2010.</i>	3 4
<b>2 Commencement</b>	5
This Act commences on the date of assent to this Act.	6

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<b>Schedule 1</b>	<b>Amendment of Threatened Species Conservation Act 1995 No 101</b>	1
		2
[1]	<b>Section 113 Director-General may accredit persons to prepare species impact statements</b>	3
	Omit the section.	4
		5
[2]	<b>Part 8A</b>	6
	Insert after Part 8:	7
	<b>Part 8A Ecological consultant accreditation scheme</b>	8
		9
	<b>Division 1 Preliminary</b>	10
137	<b>Definitions</b>	11
	In this Part:	12
	<i>accreditation panel</i> means the accreditation panel established under this Part.	13
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	<i>accredited ecological consultant</i> means a person who is accredited as an ecological consultant under this Part and whose accreditation is in force.	15
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		17
	<i>ecological assessment</i> means any of the following:	18
	(a) an environmental assessment, or part of an environmental assessment, carried out for the purposes of compliance with the environmental assessment requirements under Part 3A of the Planning Act that relates to biodiversity values or the impact of a project on biodiversity values,	19
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	(b) an environmental impact statement, or part of an environmental impact statement, prepared for the purposes of compliance with Part 4 or 5 of the Planning Act that relates to biodiversity values or the impact of a development or activity on biodiversity values,	24
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	(c) any other assessment, or part of an assessment, prepared to assist a consent authority in deciding under the Planning Act whether something is likely to have a significant effect on threatened species, populations or ecological communities, or their habitats,	29
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	(d) a species impact statement referred to in Division 2 of Part 6 or in Part 7A of the <i>Fisheries Management Act 1994</i> ,	34
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- (e) any survey or assessment of biodiversity values or of the impact of a proposal on biodiversity values prepared or carried out for the purposes of this Act or Part 7A of the *Fisheries Management Act 1994* (such as for use in connection with biodiversity certification or the biobanking scheme),
  - (f) any other document or activity prescribed by the regulations.
- ecological consultant* means any person who is engaged or employed to prepare or carry out an ecological assessment.
- specialist ecological consultant* means an accredited ecological consultant who has specialist accreditation under this Part and whose specialist accreditation is in force.

## **Division 2 Accreditation**

### **138 Ecological consultants must be accredited**

An ecological assessment is to be prepared and carried out by an ecological consultant only if the ecological consultant is accredited under this Part.

**Note.** For offences, see Division 5. This Part does not require an employee or other person who prepares an ecological assessment under the supervision of an accredited ecological consultant to also be accredited.

### **138A Eligibility for accreditation**

- (1) The regulations may make provision for or with respect to eligibility for accreditation as an ecological consultant.
- (2) Without limiting the above, the regulations may impose continuing requirements in respect of eligibility for accreditation, including continuing professional education requirements.
- (3) Only natural persons are eligible for accreditation.

### **138B Specialist accreditation**

- (1) The regulations may specify the types of ecological assessment (if any) that require specialist accreditation.
- (2) An accredited ecological consultant is authorised to prepare or carry out an ecological assessment that requires specialist accreditation only if the ecological consultant has that specialist accreditation.
- (3) The regulations may make provision for or with respect to eligibility for accreditation as a specialist ecological consultant.

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(4)	Without limiting the above, the regulations may impose continuing requirements in respect of eligibility for specialist accreditation, including continuing professional education requirements.	1 2 3 4
(5)	Only natural persons are eligible for specialist accreditation.	5
<b>138C</b>	<b>Accreditation panel to be consulted on eligibility criteria</b>	6
(1)	A regulation that makes provision for or with respect to eligibility for accreditation as an ecological consultant (including specialist accreditation) may be made only on the recommendation of the Minister.	7 8 9 10
(2)	Before the Minister recommends the making of a regulation that makes provision for or with respect to eligibility for accreditation as an ecological consultant, the Minister must:	11 12 13
(a)	refer the proposed regulation to the accreditation panel for comment, and	14 15
(b)	consider any comment or recommendation made by the accreditation panel in respect of the proposed regulation.	16 17
<b>138D</b>	<b>Application for accreditation</b>	18
(1)	A person may apply to the Director-General for accreditation as an ecological consultant.	19 20
(2)	An application for accreditation as an ecological consultant must:	21
(a)	be made in the manner and form approved by the Director-General, and	22 23
(b)	be supported by any information required by the Director-General, and	24 25
(c)	be accompanied by the application fee (if any) prescribed by the regulations.	26 27
(3)	An application for accreditation that is duly made is to be referred by the Director-General to the accreditation panel.	28 29
(4)	If the accreditation panel considers it necessary in order to determine the eligibility of an applicant for accreditation, the accreditation panel may require the applicant to do one or both of the following:	30 31 32 33
(a)	furnish to the accreditation panel, within a specified time, any further particulars that the accreditation panel considers necessary,	34 35 36
(b)	appear before the accreditation panel for an interview.	37

(5)	The accreditation panel is to make a recommendation to the Director-General regarding the eligibility of an applicant for accreditation.	1 2 3
(6)	The Director-General, in determining whether the applicant is eligible for accreditation, is to have regard to the recommendation of the accreditation panel.	4 5 6
<b>138E</b>	<b>Grant of accreditation</b>	7
(1)	The Director-General is to determine an application for accreditation as an ecological consultant by granting accreditation or refusing accreditation.	8 9 10
(2)	The Director-General may refuse to grant accreditation:	11
(a)	if the applicant fails to comply with this Part or a requirement made under this Part, or	12 13
(b)	if, in the opinion of the Director-General, the applicant is not eligible for accreditation, or	14 15
(c)	if, within the period of 2 years before the date the application was made, the Director-General revoked or refused to renew the applicant's accreditation as an ecological consultant, or	16 17 18 19
(d)	on any other grounds prescribed by the regulations.	20
(3)	The Director-General must give notice in writing of the determination of the application to the applicant, including:	21 22
(a)	if accreditation is granted, notice of any conditions to which the accreditation is subject, and	23 24
(b)	if accreditation is refused, the reasons for the refusal.	25
<b>138F</b>	<b>Renewal of accreditation</b>	26
(1)	Accreditation as an ecological consultant may be renewed by the Director-General on application by the ecological consultant.	27 28
(2)	This Part applies, with any necessary modifications, to an application for renewal of accreditation in the same way as it applies to an application for accreditation.	29 30 31
	<b>Note.</b> Accordingly, the application would be referred to the accreditation panel for a recommendation as to eligibility.	32 33
(3)	The Director-General is to determine an application for renewal of accreditation as an ecological consultant by renewing accreditation or refusing to renew accreditation.	34 35 36

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(4)	The Director-General may refuse to renew accreditation as an ecological consultant:	1
		2
(a)	if the applicant fails to comply with this Part or a requirement made under this Part, or	3
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(b)	if, in the opinion of the Director-General, the applicant is no longer eligible for accreditation, or	5
		6
(c)	if, in the opinion of the Director-General, there are grounds for the suspension or revocation of accreditation, or	7
		8
(d)	on any other grounds prescribed by the regulations.	9
(5)	The Director-General must not refuse to renew accreditation of a person unless, before doing so:	10
		11
(a)	the Director-General gives the person notice in writing of his or her intention to do so, specifying the reasons for his or her decision, and	12
		13
		14
(b)	the Director-General gives the person a reasonable opportunity to make submissions in relation to the proposed refusal to renew, and	15
		16
		17
(c)	the Director-General takes into consideration any submissions made by the person.	18
		19
(6)	The Director-General must give notice in writing to the applicant of the determination of an application for renewal of accreditation, including:	20
		21
		22
(a)	if accreditation is renewed, any conditions to which the accreditation is subject, and	23
		24
(b)	if the application is refused, the reasons for the refusal.	25
(7)	If an application for renewal of an accreditation that is in force is made to the Director-General before the expiry of the existing accreditation, the accreditation remains in force until notice in writing of the determination of the application is given to the applicant.	26
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<b>138G</b>	<b>Duration of accreditation</b>	31
(1)	An accreditation remains in force, subject to this Part, for a period of 3 years from the date on which it is granted or renewed, unless sooner revoked.	32
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		34
(2)	Accreditation does not have effect during the period of any suspension.	35
		36

<b>138H</b>	<b>Conditions of accreditation</b>	1
(1)	The Director-General may grant accreditation or a renewal of accreditation unconditionally or subject to conditions.	2 3
(2)	In addition, at any time while the accreditation is in force or suspended, the Director-General may, on a recommendation made by the accreditation panel following a peer review, by notice in writing given to the ecological consultant:	4 5 6 7
(a)	impose conditions or further conditions on the accreditation, or	8 9
(b)	vary or revoke any of the conditions to which the accreditation is subject.	10 11
(3)	A condition imposed by the Director-General, or the variation or revocation of a condition, takes effect on the date specified in the notice or on the date on which it is given to the ecological consultant, whichever is the later.	12 13 14 15
(4)	The regulations may impose a condition on an accreditation or class of accreditation.	16 17
(5)	A condition imposed by the regulations cannot be varied or revoked by the Director-General and prevails to the extent of any inconsistency over a condition imposed by the Director-General under this Part.	18 19 20 21
<b>138I</b>	<b>Accreditation fee</b>	22
	The regulations may require an accreditation fee to be paid to the Director-General, in respect of a grant or renewal of accreditation, within a time determined by the Director-General.	23 24 25
<b>138J</b>	<b>Revocation or suspension of accreditation</b>	26
(1)	The Director-General may, by notice in writing given to a person, suspend or revoke the person's accreditation if the Director-General is of the opinion that one or more of the following grounds exist:	27 28 29 30
(a)	the person is no longer eligible for accreditation as an ecological consultant,	31 32
(b)	the person has not satisfied any continuing professional education requirements that apply to accredited ecological consultants,	33 34 35
(c)	the person has contravened:	36
(i)	any of the provisions of this Part, or	37
(ii)	any of the provisions of the regulations, or	38



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| (iii) | a condition to which the accreditation is subject,   | 1                          |
| (d)   | the accreditation panel makes a recommendation,<br>following a peer review, that the person's accreditation be<br>suspended or revoked,  | 2<br>3<br>4                |
| (e)   | the person provided false or misleading information in<br>connection with an application for accreditation or renewal<br>of accreditation,   | 5<br>6<br>7                |
| (f)   | the person fails to pay an accreditation fee within the time<br>determined by the Director-General, or such further time<br>as the Director-General may allow,   | 8<br>9<br>10               |
| (g)   | any other ground prescribed by the regulations.  | 11                         |
| (2)   | The Director-General must not suspend or revoke accreditation<br>of a person unless, before doing so:  | 12<br>13                   |
| (a)   | the Director-General gives the person notice in writing of<br>his or her intention to do so, specifying the reasons for his<br>or her decision, and  | 14<br>15<br>16             |
| (b)   | the Director-General gives the person a reasonable<br>opportunity to make submissions in relation to the<br>proposed revocation or suspension, and   | 17<br>18<br>19             |
| (c)   | the Director-General takes into consideration any<br>submissions made by the person.   | 20<br>21                   |
| (3)   | The Director-General must give notice in writing to an accredited<br>ecological consultant of the revocation or suspension of his or her<br>accreditation, including the reasons for the revocation or<br>suspension.  | 22<br>23<br>24<br>25       |
| (4)   | A suspension of accreditation of a person has effect on the date<br>notice of the suspension is given to the person, or on a later date<br>specified in the notice.  | 26<br>27<br>28             |
| (5)   | If a person's accreditation is suspended until the fulfilment of<br>specified conditions, the Director-General must give the person<br>notice in writing that the accreditation is reinstated as soon as<br>practicable after he or she is satisfied that the specified conditions<br>have been fulfilled. | 29<br>30<br>31<br>32<br>33 |
| (6)   | A revocation of accreditation of a person takes effect on the date<br>on which notice of the revocation is given to the person, or on a<br>later date specified in the notice.   | 34<br>35<br>36             |
| (7)   | The Director-General may revoke an accreditation that is<br>suspended.   | 37<br>38                   |

<b>138K</b>	<b>Right to seek review from Administrative Decisions Tribunal</b>	1
	A person may apply to the Administrative Decisions Tribunal for a review of the following decisions:	2
		3
	(a) a decision of the Director-General to refuse to grant the person accreditation as an ecological consultant,	4
		5
	(b) a decision of the Director-General to refuse to grant the person accreditation as a specialist ecological consultant,	6
		7
	(c) a decision of the Director-General to refuse to renew the person's accreditation as an ecological consultant,	8
		9
	(d) a decision of the Director-General to impose, vary or revoke any conditions of the person's accreditation as an ecological consultant,	10
		11
		12
	(e) a decision of the Director-General to revoke or suspend the person's accreditation as an ecological consultant.	13
		14
<b>138L</b>	<b>Director-General to keep register of ecological consultants</b>	15
	(1) The Director-General is to keep a register of ecological consultants.	16
		17
	(2) The Director-General is to cause the following to be recorded in the register:	18
		19
	(a) the name and contact details of each accredited ecological consultant,	20
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	(b) the name and contact details of each accredited specialist ecological consultant,	22
		23
	(c) the particulars of accreditation, including any conditions of accreditation imposed by the Director-General,	24
		25
	(d) the name of any ecological consultant whose accreditation has been suspended or revoked,	26
		27
	(e) such other information relating to accreditation as the Director-General considers appropriate.	28
		29
	(3) The Director-General is to cause the register to be made available for public inspection on the website of the Department.	30
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<b>Division 3</b>	<b>Accreditation panel</b>	1
<b>138M</b>	<b>Accreditation panel</b>	2
(1)	There is to be an accreditation panel.	3
(2)	The accreditation panel is to consist of the following members:	4
(a)	the Director-General or an officer of the Department nominated from time to time by the Director-General, who is to be Chairperson of the panel, and	5 6 7
(b)	4 or more appointed members, being persons appointed by the Director-General as members who are not officers of the Department.	8 9 10
(3)	Each appointed member must be a person who, in the opinion of the Director-General, is an expert in biodiversity values.	11 12
(4)	An appointed member of the accreditation panel holds office for such period (not exceeding 5 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.	13 14 15 16
(5)	The Director-General may remove an appointed member from the accreditation panel at any time by giving the member notice in writing.	17 18 19
(6)	An appointed member of the accreditation panel is entitled to such allowances in connection with the work of the panel as the Director-General approves in respect of the member.	20 21 22
<b>138N</b>	<b>Functions of accreditation panel</b>	23
(1)	The functions of the accreditation panel are:	24
(a)	to make recommendations to the Director-General regarding the eligibility of an applicant for accreditation (including specialist accreditation), and	25 26 27
(b)	to make recommendations to the Minister regarding any regulation that makes provision for eligibility for accreditation as an ecological consultant (including specialist accreditation), and	28 29 30 31
(c)	to conduct peer reviews of ecological assessments carried out by ecological consultants, and	32 33
(d)	to make recommendations to the Director-General following such peer reviews, and	34 35
(e)	to provide such other advice to the Director-General as the Director-General may request.	36 37

(2)	The accreditation panel has such other functions as are conferred or imposed on the panel by or under this or any other Act.	1 2
(3)	Anything done or omitted to be done by a member of the accreditation panel in exercising the functions of the panel or member under this Act does not, if the thing was done or omitted to be done in good faith, subject the member personally to any action, liability, claim or demand.	3 4 5 6 7
<b>138O</b>	<b>Procedure of accreditation panel</b>	8
	The procedure of the accreditation panel is to be determined by the Director-General or (subject to any determination of the Director-General) by the accreditation panel.	9 10 11
<b>138P</b>	<b>Disclosure of relevant interests</b>	12
(1)	If:	13
(a)	a member has a relevant interest in a matter being considered or about to be considered by the accreditation panel, and	14 15 16
(b)	the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,	17 18 19
	the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest to the accreditation panel.	20 21 22
(2)	A disclosure by a member to the accreditation panel that the member:	23 24
(a)	is a member, or is in the employment, of a specified company or other body, or	25 26
(b)	is a partner, or is in the employment, of a specified person, or	27 28
(c)	has some other specified interest relating to a specified company or other body or to a specified person,	29 30
	is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subsection (1).	31 32 33 34
(3)	Particulars of any disclosure made under this section must be recorded by the accreditation panel in a book kept for that purpose and that book must be open at all reasonable hours for inspection by any person on payment of the fee determined by the accreditation panel.	35 36 37 38 39

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- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Director-General or the accreditation panel otherwise determines:
- (a) be present during any deliberation of the accreditation panel with respect to the matter, or
  - (b) take part in any decision of the accreditation panel with respect to the matter.
- (5) For the purposes of the making of a determination by the accreditation panel under subsection (4), a member who has a relevant interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the accreditation panel for the purpose of making the determination, or
  - (b) take part in the making by the accreditation panel of the determination.
- (6) A contravention of this section does not invalidate any decision of the accreditation panel.
- (7) A member has a *relevant* interest in a matter if:
- (a) the member has a direct or indirect pecuniary interest in the matter, or
  - (b) the member is related to a person involved in the matter.
- (8) A member of the accreditation panel is related to a person for the purposes of this section if the member:
- (a) is an employer, partner or employee of the person, or
  - (b) is a spouse, de facto partner, sibling, parent or child of the person, or
  - (c) has a contractual arrangement with the person that might reasonably be seen to give rise to a conflict between the member's duties as a member of the accreditation panel and the member's interests under the arrangement, or
  - (d) is employed by the same employer as the person.
- Note.** *De facto partner* is defined in section 21C of the *Interpretation Act 1987*.

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<b>Division 4</b>	<b>Peer reviews</b>	1
<b>138Q</b>	<b>Referral of ecological assessment to accreditation panel for peer review</b>	2 3
(1)	The following persons may request the accreditation panel to review an ecological assessment carried out by an ecological consultant:	4 5 6
(a)	any accredited ecological consultant,	7
(b)	any consent authority,	8
(c)	any other person, but only if that person's request is supported by an accredited ecological consultant or a consent authority.	9 10 11
(2)	A request may relate to more than one ecological assessment.	12
(3)	A request may be made only on the following grounds:	13
(a)	that the ecological assessment does not conform to industry best practice,	14 15
(b)	any other grounds provided for by the regulations.	16
(4)	The regulations may make further provision for review requests, including requiring a fee to be paid in connection with a review request.	17 18 19
<b>138R</b>	<b>Peer review</b>	20
(1)	The accreditation panel may, following a request made in accordance with this Division, conduct a review of any ecological assessment carried out by an ecological consultant.	21 22 23
(2)	This review is a <i>peer review</i> .	24
(3)	In a peer review, the accreditation panel may assess the quality of the work of the ecological consultant, in relation to but not limited by the following:	25 26 27
(a)	the ecological consultant's methodology in preparing an ecological assessment,	28 29
(b)	the species identification skills of the ecological consultant,	30 31
(c)	the ecological consultant's ability to develop and advise on appropriate management and mitigation measures.	32 33
(4)	Following a peer review, the accreditation panel may make any of the following recommendations to the Director-General:	34 35
(a)	that the accreditation, or specialist accreditation, of the ecological consultant be revoked or suspended,	36 37

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- (b) that conditions or further conditions be imposed on the accreditation of the ecological consultant or that existing conditions be varied or revoked. 1  
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- (5) 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. 4  
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**Division 5 Offences** 7

**138S Ecological consultant must be accredited under this Part** 8

- (1) A person must not: 9
- (a) prepare or carry out an ecological assessment unless the person is an accredited ecological consultant, or 10  
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- (b) make any representation, or cause or allow any representation to be made, to the effect that he or she is able to prepare or carry out an ecological assessment unless the person is an accredited ecological consultant. 12  
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- Maximum penalty: 600 penalty units. 16
- (2) A person must not: 17
- (a) prepare or carry out an ecological assessment that requires specialist accreditation, unless the person is a specialist ecological consultant authorised to prepare or carry out the ecological assessment, or 18  
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- (b) make any representation, or cause or allow any representation to be made, to the effect that he or she is able to prepare or carry out an ecological assessment that requires specialist accreditation, unless the person is a specialist ecological consultant authorised to prepare or carry out the ecological assessment. 22  
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- Maximum penalty: 600 penalty units. 28
- (3) A person who prepares or carries out, or assists in preparing or carrying out, an ecological assessment does not commit an offence against this section if the person is acting in accordance with the directions of, or under the supervision of, an accredited consultant authorised to prepare or carry out the ecological assessment. 29  
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- (4) This section does not apply: 35
- (a) to a Minister when exercising functions conferred by this Act, the Planning Act or any other law, or 36  
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- (b) to an officer of the Crown when exercising functions conferred by this Act, the Planning Act or any other law, or 1  
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- (c) to other such persons or in such other circumstances as may be prescribed by the regulations. 3  
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**138T False representations** 5

A person must not make any representation, or cause or allow any representation to be made: 6  
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- (a) to the effect that the person is accredited under this Part unless the person is an accredited ecological consultant, or 8  
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- (b) to the effect that the person has specialist accreditation under this Part, unless the person is a specialist ecological consultant. 10  
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Maximum penalty: 600 penalty units. 13

**Division 6 Responsibilities of ecological consultants** 14

**138U Ecological consultant to avoid conflicts of interest** 15

- (1) An ecological consultant must not carry out an ecological assessment: 16  
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  - (a) if he or she is or is related to a person by whom any part of any land to which the assessment is related is owned or occupied, or 18  
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  - (b) if he or she has a pecuniary interest in any part of the land to which the assessment relates, in any activity carried out on the land or in any development or activity to which the assessment relates, or 21  
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  - (c) if it involves the ecological consultant reviewing any aspect of any work carried out by, or a report written by, the ecological consultant or a person to whom the ecological consultant is related. 25  
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- (2) An ecological consultant has a pecuniary interest for the purposes of this section if there is a reasonable likelihood or expectation of appreciable financial gain or loss to the ecological consultant, or to a person to whom he or she is related, from the relevant land, activity or development. However, an ecological consultant does not have such an interest if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision that the ecological consultant might make in relation to an ecological assessment. 29  
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(3)	An ecological consultant is related to a person for the purposes of this section if the ecological consultant:	1
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(a)	is an employer, partner or employee of the person, or	3
(b)	is a spouse, de facto partner, sibling, parent or child of the person, or	4
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(c)	has a contractual arrangement with the person that might reasonably be seen to give rise to a conflict between the ecological consultant's duties as an ecological consultant and the ecological consultant's interests under the arrangement, or	6
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(d)	is employed by the same employer as the person.	11
	<b>Note.</b> <i>De facto partner</i> is defined in section 21C of the <i>Interpretation Act 1987</i> .	12
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(4)	Contravention of this section is not an offence but is grounds for the suspension or revocation of accreditation as an ecological consultant.	14
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<b>138V</b>	<b>Other regulations</b>	17
	The regulations may make further provision with respect to the responsibilities of ecological consultants, including:	18
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(a)	a code of conduct for ecological consultants, and	20
(b)	record-keeping requirements for accredited ecological consultants.	21
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<b>[3]</b>	<b>Section 136A References to Minister and Director-General</b>	23
	Renumber the section as section 139.	24
<b>[4]</b>	<b>Section 142B Director-General may accredit persons to prepare assessments and surveys</b>	25
	Omit the section.	26
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<b>[5]</b>	<b>Schedule 7 Savings, transitional and other provisions</b>	28
	Insert at the end of clause 1 (1):	29
	<i>Threatened Species Conservation Amendment (Ecological Consultants Accreditation Scheme) Act 2010</i>	30
		31

<b>[6] Schedule 7</b>	1
Insert after Part 8:	2
<b>Part 9 Provision consequent on enactment of Threatened Species Conservation Amendment (Ecological Consultants Accreditation Scheme) Act 2010</b>	3 4 5 6
<b>33 Accreditation of ecological consultants</b>	7
Part 8A of the <i>Threatened Species Conservation Amendment (Ecological Consultants Accreditation Scheme) Act 2010</i> does not apply to any ecological assessment that was submitted by a person to a consent authority, or to any other person on whose behalf it was prepared, before the commencement of that Act.	8 9 10 11 12
<b>34 Phasing-in of offence</b>	13
(1) Sections 138 and 138S, as inserted by the <i>Threatened Species Conservation Amendment (Ecological Consultants Accreditation Scheme) Act 2010</i> , do not take effect until the date that is 6 months after the date regulations made under section 138A (Eligibility for accreditation) take effect.	14 15 16 17 18
(2) A person does not commit an offence against section 138S if the person duly applies for accreditation before the date that section 138A takes effect and the act or omission constituting the offence occurs before the application is finally determined by the Director-General.	19 20 21 22 23
(3) The Minister is to ensure that the making of a regulation under section 138A is recommended to the Governor within 6 months after the date of assent to the <i>Threatened Species Conservation Amendment (Ecological Consultants Accreditation Scheme) Act 2010</i> .	24 25 26 27 28