

[Act 1995 No 101]



New South Wales

Threatened Species Conservation Bill 1995 (No 2)

Explanatory note

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

Overview of Bill

The object of this Bill is to provide for the conservation of threatened species, populations and ecological communities of animals and plants.

The Bill provides for:

- the identification, and classification, of the species, populations and ecological communities with which it is concerned, and
- the identification of threatening processes that may threaten the survival of those species, populations and ecological communities.

The Bill also provides for the declaration, and mapping, of habitats that are critical to the survival of those identified threatened species, populations and ecological communities that are classified as endangered.

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

Provision is made for the preparation of recovery plans for threatened species, populations and ecological communities and threat abatement plans to manage key threatening processes.

Other measures are available to facilitate the appropriate assessment, management and regulation of actions that may damage critical or other habitat or otherwise significantly effect threatened species, populations and ecological communities. The Bill makes provision for licences, stop work orders and joint management agreements while the coverage of interim protection orders and conservation agreements under the *National Parks and Wildlife Act 1974* (the *NPW Act*) (as amended by the Bill) is extended for purposes of the conservation of threatened species, populations and ecological communities, and their habitats.

New offences relating to harming (of threatened species, populations and ecological communities, being animals) and picking (of threatened species, populations and ecological communities, being plants), buying, selling or possessing of threatened species or populations (being animals or plants) and damaging of critical and other habitat are created, and are enforceable under, the NPW Act.

These measures are integrated with, and complemented by, amendments made by the Bill to the *Environmental Planning and Assessment Act 1979* (the *EPA Act*). The amendments to the EPA Act require (among other things) that:

- critical habitat be identified in environmental planning instruments, and
- consent authorities and determining authorities must, when considering proposed development or an activity (within the meaning of that Act), assess whether it is likely to significantly affect threatened species, populations and ecological communities, or their habitats, and, if a significant effect is likely, to require the preparation of a species impact statement in accordance with the requirements of the Bill, and
- consent authorities and determining authorities must, when considering proposed development or an activity, have regard to relevant recovery plans and threat abatement plans, and
- a regime for concurrence and consultation between consent authorities and determining authorities and the Minister administering the proposed Act or the Director-General of National Parks and Wildlife be instituted to aid the assessment process.

The Bill repeals the *Endangered Fauna (Interim Protection) Act 1991*, makes consequential amendments to certain other Acts and enacts consequential savings, transitional and other provisions.

Outline of provisions

Part 1 Preliminary

Part 1 (**clauses 1–5**) contains provisions that set out the objects of the proposed Act and define terms used in it. Among the expressions defined are *ecological community*, *habitat*, *population* and *threatening process*. The Part also contains machinery provisions, including provisions dealing with the citation and commencement of the proposed Act.

Part 2 Listing of threatened species, populations and ecological communities and key threatening processes

Part 2 (**clauses 6–37**) provides for the identification, and classification, of the species, populations and ecological communities with which the proposed Act is concerned. It also provides for the identification of key threatening processes that are most likely to jeopardise the survival of those species, populations and ecological communities. To this end, this Part provides for the listing:

- in Schedule 1, of endangered species, endangered populations and ecological communities and species that are presumed to be extinct, and
- in Schedule 2, of vulnerable species, and
- in Schedule 3, of key threatening processes.

The initial lists of threatened species, that is, species that are endangered, presumed extinct or vulnerable, are contained in the proposed Act. Responsibility for inserting lists of endangered populations and endangered ecological communities and threatening processes, and for adding items to, omitting items from or amending items in the lists of threatened species, populations and ecological communities and threatening processes rests with the Scientific Committee established by the proposed Act. The Scientific Committee must however refer a proposed determination for listing to the Minister for review.

Division 1 (**clauses 6–9**) makes provision with respect to Schedules 1–3 that are to contain lists of the species, populations and ecological communities and key threatening processes with which the proposed Act is concerned. Provision is made for the identification on those lists of species that are endangered or vulnerable, and of ecological communities that are endangered, on a national basis (being species or ecological communities that are also listed under the *Endangered Species Protection Act 1992* of the Commonwealth).

Division 2 (**clauses 10–15**) deals with eligibility for listing of species, populations and ecological communities that are endangered, species that are presumed extinct, species that are vulnerable and key threatening processes.

Division 3 (**clauses 16–26**) describes the process by which the items may be added to or omitted from lists and by which items in lists may be amended, and makes provision for public participation in that process.

Division 4 (**clauses 27–37**) describes the process by which species may be listed provisionally in Schedule 1, on an emergency basis, before the formal listing process described in Division 3 has been undertaken or completed, and makes provision for public participation in that process. Only species that are likely to be endangered may be provisionally listed.

Offences relating to the harming of threatened species, populations and ecological communities (being animals), the buying, selling or possessing of threatened species or populations (being animals or plants) and the picking of threatened species, populations and ecological communities (being plants) are contained in the NPW Act.

Part 3 Critical habitat of endangered species, populations and ecological communities

Part 3 (**clauses 38–56**) makes the Director-General of National Parks and Wildlife responsible for identifying (where this is possible) habitat that is critical to the survival of endangered species, populations and ecological communities (that is, those species, populations and ecological communities listed for the time being in Schedule 1) and for recommending to the Minister administering the proposed Act that the habitat so identified be declared critical habitat. The Director-General must consult with the Scientific Committee before preparing a recommendation and must have regard to any advice given by the Scientific Committee concerning identification of critical habitat of endangered populations and ecological communities.

Division 1 (**clauses 38–53**) describes the process by which critical habitat is identified by the Director-General and declared by the Minister and makes provision for public participation in that process.

The Division specifies the land that is eligible for declaration as critical habitat. Notice of a recommendation for identification of an area or areas of land as critical habitat must be given to landholders who are affected by the recommendation, public authorities exercising functions in relation to the

land and other specified persons, including mortgagees. Notice must also be published in the press and the Gazette, and any person may make submissions concerning the recommendation. In considering a recommendation, the Minister must have regard (among other matters) to:

- the likely social and economic consequences of a declaration, and
- the likely consequences of a declaration for landholders of, or other persons having an interest in, or on lawful uses of, the land.

If a public authority submits that a recommendation is likely to affect its exercise of functions, the Minister administering the proposed Act is required to consult with the Minister responsible for the public authority before making a decision about the recommendation.

Regulations may be made under, and for the purposes of, the proposed Act to prohibit or restrict the carrying out of specified action, or action of a specified kind, on specified critical habitat.

Division 2 (**clauses 54–56**) deals with the preparation, publication and other dissemination of maps of critical habitat, and the maintenance of a register of critical habitat by the Director-General. The register is to be open for public inspection, free of charge. The register is also to be made available to public authorities.

An offence relating to the damaging of critical habitat is contained in the NPW Act. That Act also makes it an offence for a person to damage the habitat of a threatened species, population or ecological community.

Part 4 Recovery plans for threatened species, populations and ecological communities

Part 4 (**clauses 57–74**) is the first of 4 Parts of the proposed Act that address responses to threats to the survival of threatened species, populations and ecological communities, and their habitats. Part 4 deals with recovery plans for threatened species, populations and ecological communities and makes further provision as to the protection of their critical habitats (if any).

The Director-General of National Parks and Wildlife must prepare recovery plans for endangered species (other than species presumed extinct), populations and ecological communities and may prepare recovery plans for vulnerable species. The object of a recovery plan is to promote the recovery of the threatened species, population or ecological community to which it relates to a position of viability in nature. If critical habitat has been declared for the species, population or ecological community, the plan must include reference to that fact.

Division 1 (**clauses 57–69**) deals with the preparation, contents, publication and adoption of recovery plans.

The Director-General must, in preparing a recovery plan, have regard to the objects of the proposed Act, the likely social and economic consequences of the making of the plan, the most efficient and effective use of available resources for the conservation of threatened species, populations and ecological communities and, consistent with the principles of ecologically sustainable development, minimising any significant adverse social or economic consequences of the making of the plan. The Director-General must also consider the inclusion in a recovery plan of measures to secure public co-operation in the conservation effort.

The Director-General is charged, after consulting with the Scientific Committee, with determining priorities in the preparation of recovery plans, with the highest priority to be given to the preparation of plans for species, populations and ecological communities that are endangered nationally.

Recovery plans must, among other things, identify the persons who are responsible for the implementation of measures included in them. If a public authority is to have this responsibility, the Minister administering the proposed Act must consult with, and obtain the approval of, the Minister responsible for the public authority to inclusion in the plan of the measures to be taken by the public authority before completing preparation of the draft plan.

Notice of the preparation of a draft recovery plan is to be given to affected public authorities and in the press and the Gazette. Any person may make submissions about the draft recovery plan.

The proposed Act provides for the approval of recovery plans by the Minister administering the proposed Act, and for publication of that approval. The Director-General is required to make a copy of a recovery plan available for public inspection, without charge.

Division 2 (**clauses 70–74**) deals with the implementation of recovery plans, and includes procedures for public authorities to report on their implementation of, or on proposed departures from, measures specified to be taken in recovery plans.

A consultative procedure, aimed at resolving difficulties in implementation of recovery plans, is provided.

In accordance with amendments proposed to be made by the proposed Act to the EPA Act, the terms of recovery plans are to be taken into account by consent authorities and determining authorities (within the meaning of that Act) when they are considering development applications under Part 4, or the carrying out, or applications for approval for the carrying out, of activities under Part 5, of that Act.

Part 5 Threat abatement plans to manage key threatening processes

As noted above, Part 2 of the proposed Act (Listing of threatened species, populations and ecological communities and key threatening processes) provides for the identification of key threatening processes by the Scientific Committee. Part 5 (**clauses 75–91**) deals with the preparation, at the discretion of the Director-General of National Parks and Wildlife, and implementation of threat abatement plans. The object of a threat abatement plan is to manage a key threatening process so as to abate, ameliorate or eliminate its adverse affects on threatened species, populations and ecological communities.

Division 1 (**clauses 75–86**) deals with the preparation, contents, publication and adoption of threat abatement plans.

The Director-General must, in preparing a threat abatement plan, have regard to the objects of the proposed Act, the likely social and economic consequences of the making of the plan, the most efficient and effective use of available resources for the conservation of threatened species, populations and ecological communities and, consistent with the principles of ecologically sustainable development, minimising any significant adverse social or economic consequences of the making of the plan. The Director-General must also consider the inclusion in a threat abatement plan of measures to secure public co-operation in the conservation effort.

The Director-General is charged, after consulting with the Scientific Committee, with determining priorities in the preparation of threat abatement plans.

Threat abatement plans must, among other things, identify the persons who are responsible for the implementation of measures included in them. If a public authority is to have this responsibility, the Minister administering the proposed Act must consult with, and obtain the approval of, the Minister responsible for the public authority to inclusion in the plan of the measures to be taken by the public authority before completing preparation of the draft plan.

Notice of the preparation of a draft threat abatement plan is to be given to affected public authorities and in the press and the Gazette. Any person may make submissions about the draft threat abatement plan.

The proposed Act provides for the approval of threat abatement plans by the Minister administering the proposed Act, and for publication of that approval. The Director-General is required to make a copy of a threat abatement plan available for public inspection, without charge.

Division 2 (**clauses 87–91**) deals with the implementation of threat abatement plans, and includes procedures for public authorities to report on their implementation of, or on proposed departures from, measures specified to be taken in threat abatement plans.

A consultative procedure, aimed at resolving difficulties in implementation of threat abatement plans, is provided.

In accordance with amendments proposed to be made by the proposed Act to the EPA Act, the terms of threat abatement plans are to be taken into account by consent authorities and determining authorities (within the meaning of that Act) when they are considering development applications under Part 4, or the carrying out, or applications for approval for the carrying out, of activities under Part 5, of that Act.

Part 6 Licensing

Part 6 (**clauses 92–113**) deals with the licensing by the Director-General of actions that are likely:

- to harm threatened species, populations or ecological communities (in so far as animals are concerned) or to result in the picking of threatened species, populations or ecological communities (in so far as plants are concerned), or
- to damage critical habitat or other habitat of those species, populations or ecological communities.

Harm and *pick* are defined in the NPW Act.

A person does not commit an offence under Part 8A of the NPW Act of harming or picking threatened species, populations or ecological communities or damaging a critical habitat or the habitat of threatened species, populations or ecological communities if the action taken by the person is essential for the carrying out of

- (a) development in accordance with a development consent within the meaning of the EPA Act, or
- (b) an activity, whether by a determining authority or pursuant to an approval of a determining authority, within the meaning of Part 5 of that Act if the determining authority has complied with that Part.

Accordingly, a licence under the proposed Act is not required for the taking of action that is so authorised under the EPA Act. However, amendments made by the proposed Act to the EPA Act ensure that the same tests are applied (with the involvement of the Minister administering this Act or the Director-General of National Parks and Wildlife) to assess the consequences of development or an activity under that Act before a decision concerning it is made as are applied by the Director-General under the proposed Act in determining whether a licence should be granted under Part 6.

The Part also contains provisions about species impact statements. These statements are employed to measure the significance of the effect of actions on threatened species, populations or ecological communities, or their habitats. A species impact statement must be lodged with an application for a licence under this Part if the Director-General determines that the action proposed is likely to significantly affect threatened species, populations or ecological communities, or their habitats. A similar requirement applies when a development application is lodged, or an activity proposed, under the EPA Act over critical habitat or that is likely to significantly affect threatened species, populations or ecological communities, or their habitats.

Division 1 (**clauses 92–108**) deals with the grant of licences, including the making of applications, fees, determinations as to whether actions proposed will significantly affect threatened species, populations or ecological communities, or their habitats, publication of applications and the making of submissions concerning them, matters that the Director-General must take into account before granting licences, licence conditions, cancellation of licences and appeals.

Specific provision is made as to the matters that the Director-General must take into account when deciding whether an action is likely to have a significant effect on threatened species, populations or ecological communities, or their habitats, and when, accordingly, an applicant should be required to prepare a species impact statement. These matters mirror those contained in proposed section 5A of the EPA Act that consent authorities and determining authorities must apply in determining likely significant effect on threatened species, populations and ecological communities, and their habitats, and whether, therefore, species impact statements should be prepared for the purposes of making appropriate decisions under Parts 4 and 5 of that Act.

Similarly, both this Part and the proposed amendments to the EPA Act, contain complementary provisions dealing with matters that the Director-General must take into account when deciding whether to grant, or to refuse to grant, a licence under the proposed Act and with matters that the Director-General (or the Minister administering the proposed Act, if standing in place of the Director-General) must take into account when acting as a concurrence authority, or consulting with consent authorities or determining authorities or the Minister administering the EPA Act, under that Act in relation to development or activities affecting critical habitat or threatened species, populations or ecological communities, or their habitats.

If the Director-General determines under Part 6 of the proposed Act that there is likely to be a significant effect on threatened species, populations or ecological communities, or their habitats, the Director-General must require the licence applicant to prepare a species impact statement. If the Director-General determines that a significant effect is not likely, no licence under the proposed Act is required and the Director-General must give the applicant a certificate to this effect. However, if the action proposed by the applicant may affect protected fauna or protected native plants (within the meaning of the NPW Act), the applicant may require a licence under that Act before taking the action proposed.

If an action that is likely to affect threatened species, populations or ecological communities, or their habitats as well as protected fauna or protected native plants, a licence granted under the proposed Act may authorise the harming of the protected fauna or the picking of the protected native plants without the necessity for the applicant to apply for, and obtain, a separate licence for this purpose under the NPW Act.

Division 2 (**clauses 109–113**) deals with the form and content of species impact statements and the notification of the Director-General's requirements as to their preparation. It also makes provision for the accreditation of persons to prepare assessments of species impact statements.

Part 7 Other conservation measures

Part 7 (**clauses 114–126**) deals with certain other measures that may be taken to conserve threatened species, populations and ecological communities, and their habitats. These involve the making of stop work orders by the Director-General or the making of joint management agreements between the Director-General and other public authorities to manage or regulate actions on land that may jeopardise the survival of threatened species, populations or ecological communities, or their habitats.

Measures available under the NPW Act, involving the making of interim protection orders by the Minister or the entering into of conservation agreements by the Minister with land owners, may also be employed for the conservation of threatened species, populations or ecological communities, or their habitats (in consequence of the amendment of that Act by the proposed Act).

Division 1 (**clauses 114–120**) deals with the making of stop work orders by the Director-General, appeals, consultations about modification of detrimental action and recommendations for the making of interim protection orders under the NPW Act.

The Director-General may, if of the opinion that action being, or about to be, carried out that is likely to harm threatened species, populations or ecological communities or damage critical or other habitat, order that the action and any other action (other than any action specified in the order) cease in, or in the vicinity of, the habitat concerned for a period of 40 days. An order may be extended for a further period or periods of 40 days. (A reference to action being carried out includes a reference to action that should be, but is not being, carried out.) Power to make a stop work order does not extend to the prevention of action authorised by or under a licence granted under the proposed Act or the NPW Act, the sanction of an appropriate planning determination or under the *Bush Fires Act 1949* or the *State Emergency and Rescue Management Act 1989* if reasonably necessary to avoid a threat to life or property.

No prior notice of the intention to make a stop work order need be given. A person against whom an order is made may appeal to the Minister against the making of the order. The Director-General is also required to consult with the person to ascertain whether any suitable modification of the action is possible.

Division 2 (**clauses 121–126**) deals with the preparation, contents and publication of joint management agreements, and provides for review of joint management agreements, and the performance of parties to them, by the Scientific Committee.

Joint management agreements are agreements entered into by the Director-General with one or more public authorities to manage, control, regulate or restrict an action that is jeopardising the survival of threatened species, populations or ecological communities. Joint management agreements must, among other things, identify the action that is the subject of the agreement, the objective of the agreement, the measures to be adopted to achieve the objective and the parties responsible for implementing the measures.

Part 8 Scientific Committee

Part 8 (**clauses 127–136**) establishes the Scientific Committee as a body corporate, and describes its functions and membership. Provision is made as to procedure of, and the manner of service of documents on, the Scientific Committee. The Part provides that the Scientific Committee is not subject to Ministerial control or direction. However, the Minister administering the proposed Act is responsible for the appointment of the Chairperson and Deputy Chairperson of the Scientific Committee from among its members.

Part 9 Miscellaneous

Part 9 (**clauses 137–151**) makes provision for a number of miscellaneous matters relating to the operation of the Act. These include:

- a statement that the Act binds the Crown
- a requirement for the Director-General to report on the operation of the Act in the Director-General's annual report to Parliament
- a statement that the Act is not intended to affect native title rights and interests
- a provision providing that the Director-General may decline to disclose the location of critical habitat (or proposed critical habitat) other than to specified persons if the Director-General is of the opinion that disclosure would be likely to expose the critical habitat (or proposed critical habitat) to a significant risk and that withholding of the location is in the public interest, and if affected landholders have requested, or are agreeable to, the withholding of the location
- a provision enabling third parties to bring proceedings in the Land and Environment Court for orders remedying or restraining breaches of the Act
- provisions as to the form and service of notices and other documents under the proposed Act
- a provision repealing the *Endangered Fauna (Interim Protection) Act 1991* and certain Acts amending that Act
- a provision concerning review of the operation of the Act as soon as possible after the period of 2 years after the date of assent to the proposed Act.

The Part also authorises the making of regulations, and contains formal provisions giving effect to the Schedules amending other Acts and inserting savings, transitional and other provisions.

Schedule 1 Endangered species, populations and ecological communities

Part 1 lists endangered species.

Part 2 makes provision for the list of endangered populations.

Part 3 makes provision for the list of endangered ecological communities.

Part 4 lists species that are presumed extinct.

Schedule 2 Vulnerable species

Schedule 2 lists vulnerable species.

Schedule 3 Key threatening processes

Schedule 3 makes provision for the list of key threatening processes.

Schedule 4 Amendment of the National Parks and Wildlife Act 1974

Certain of the amendments to this Act have been referred to above.

Various definitions are revised or omitted, and certain new definitions are inserted to accord with definitions contained in the proposed Act. The concept of *take* (in relation to fauna) has been replaced with that of *harm*, this expression being extended to cover threatened species, populations and ecological communities, but does not include harming by the changing of habitat. (Specific offences relating to damage to critical and other habitat are proposed to be included in the Act). A revised definition of *pick* is inserted. Numerous consequential amendments arise because of these changes.

The definition of *endangered fauna* is omitted. A definition of *threatened interstate fauna* is included to cover fauna, to be listed on a revised Schedule 12 to the Act, that is not threatened in New South Wales but is threatened elsewhere in Australia. Various offences relating to threatened interstate fauna (for example, under sections 99, 100, 101 and 103) are created.

Various amendments are made to include references to the proposed Act (and, where appropriate, the *Wilderness Act 1987*) in provisions dealing with the administration of the National Parks and Wildlife Service and similar matters.

A provision dealing with the purpose and contents of conservation agreements (section 69C) is revised so that such agreements may be entered into for the purpose of conserving threatened species, populations and ecological communities, and their habitats.

Provisions dealing with stop work orders (sections 91AA–91FF in Division 1 of Part 6A) are revised to accord with those in the proposed Act. Stop work orders under the NPW Act may now be made only by the Director-General (rather than by either the Minister or the Director-General) but an appeal against an order made by the Director-General may be made to the Minister.

The provisions dealing with the making of interim protection orders (sections 91A–91D in Division 2 of Part 6A) are also revised to accommodate the making of orders in respect of critical habitat and threatened species, populations and ecological communities, and their habitats. These provisions are also revised by extending, from 12 months to 2 years, the period during which an interim protection order may operate and by permitting the making of more than one order in respect of land owned by the same owner.

Offence provisions relating to fauna (other than new offences arising under the proposed Act) have been revised, among other things, to omit references to endangered fauna and marine mammals and to include references to threatened interstate fauna (see amendments to sections 98–101, 103 and 110–112).. The offence of approaching a marine mammal closer than a prescribed distance (previously section 99 (1) (c)) has been relocated as proposed section 112G.

The new offences relating to the harming or picking of threatened species, populations and ecological communities, buying, selling or possessing threatened species or populations and damaging critical habitat and habitat of threatened species, populations and ecological communities are contained in a new Part, Part 8A (proposed sections 118A–118E). Proposed section 118E enables a court, on finding an offence relating to the damaging of habitat proven, to order an accused, in addition to or in substitution for the payment of any pecuniary penalty for the offence, to mitigate the damage or to restore the habitat concerned.

A provision dealing with rights to enter property (section 164) is extended to enable critical habitat to be identified and mapped under the proposed Act, to enable the Director-General (or the Minister, where appropriate) to perform their functions as concurrence authorities or on being consulted for the purposes of planning matters under the EPA Act, and generally to enable compliance with the requirements of the proposed Act.

Amendments are also made concerning proceedings for offences, restraint of breaches of the Act, evidentiary provisions and matters of a savings, transitional and consequential nature.

Schedule 8B (dealing with the procedures and conditions of the Scientific Committee under the Act) has been repealed as it is proposed that that Committee be abolished and replaced by the Scientific Committee established under the proposed Act.

Schedule 12 (Endangered Fauna) is amended by the repeal of all of the lists of endangered species currently included in it. The matter in these lists has been transferred to Schedules 1 and 2 to the proposed Act. Similarly, Schedule 13 (Protected Native Plants) has been amended so as to delete reference to threatened species that are now included on Schedule 1 or 2 to the proposed Act and to appropriately revise its contents.

Schedule 5 Amendment of the Environmental Planning and Assessment Act 1979

Certain of the amendments to this Act have been referred to above.

Certain definitions are provided to accord with those in the proposed Act.

The objects of the EPA Act (section 5) are revised to make it clear that the protection and conservation of threatened species, populations and ecological communities is within the compass of the EPA Act.

Proposed section 5A is inserted (in place of the current section 4A, which is repealed) to set out the test to be applied by consent authorities and determining authorities in determining whether there is likely to be a significant effect on threatened species, populations and ecological communities, and their habitats.

Provisions are included to make it clear that environmental planning instruments may make provision for protection and conservation of native plants and animals, including threatened species, populations and ecological communities, and their habitats, and to require environmental planning instruments to make provision as to critical habitat (proposed section 26 (e1) and (2)).

Proposed section 34A requires the Director of Planning to consult with the Director-General of National Parks and Wildlife before preparing a draft State environmental planning policy, an environmental study or draft regional environmental plan and councils to consult with the Director-General of National Parks and Wildlife before preparing an environmental study or draft local environmental plan if, in either case, critical habitats or threatened species, populations and ecological communities, and their habitats, will or may be affected by the draft policy, environmental study or draft plan.

Requirements for consent authorities and determining authorities to have regard to the register of critical habitat kept by the Director-General of National Parks and Wildlife under the proposed Act are included (proposed sections 76A and 110C).

A requirement is proposed to be inserted requiring provision, with a development application, of a species impact statement prepared in accordance with the proposed Act if the development concerned is on land that is critical habitat or if it is likely to significantly affect threatened species, populations or ecological communities, or their habitats (proposed section 77 (3) (d1)). (*Species impact statement* is defined, by the proposed Act, to include an environmental impact statement, prepared under the EPA Act, that contains a species impact statement.)

Consent authorities under Part 4 of the Act are required to obtain the concurrence of the Director-General of National Parks and Wildlife to the grant of development consent to development that is on land that is critical habitat or that is likely to significantly affect an endangered species, population or ecological community, or its habitat, and to consult with the Director-General if a vulnerable species, or its habitat, is involved. However, the Minister administering the proposed Act may, if the Minister wishes, act in place of the Director-General of National Parks and Wildlife for the purposes of the concurrence or consultation process. If a Minister is the consent authority, the requirement for the concurrence is replaced with a requirement that the Minister consult with the Minister administering the proposed Act (proposed section 77A).

If the Minister administering the EPA Act considers, in light of the matters referred to in section 101 of the EPA Act, that it is appropriate, the Minister may, in place of the procedure described in proposed section 77A, determine a development application in accordance with section 101 and without the concurrence or consultation envisaged under proposed section 77A.

However, in that event, the Minister must consult with the Minister administering the proposed Act if the land concerned is critical habitat or if the development is likely to have a significant effect on an endangered species, population or ecological community, or its habitat (proposed section 77B).

Proposed section 77C sets out the matters that the Director-General of National Parks and Wildlife (or the Minister administering the proposed Act, if acting in place of the Director-General) must consider when acting as a concurrence authority under proposed section 77A. Proposed section 77D sets out the matters that the Director-General of National Parks and Wildlife (or the Minister administering the proposed Act, if acting in place of the Director-General) must consider for the purposes of consultations under proposed section 77A.

Section 90 is amended to require consent authorities, in determining development applications, to take into consideration the following:

- the effect of the development on critical habitat
- whether there is likely to be a significant effect on threatened species, populations or ecological communities, or their habitats
- any relevant recovery plan or threat abatement plan
- the effect of the development on any other protected fauna or protected native plants within the meaning of the NPW Act.

It is proposed that Part 5 of the EPA Act be amended to require determining authorities to take the same matters into account when considering the likely effect of an activity on the environment or, in the case of recovery plans and threat abatement plans, when considering species impact statements (proposed sections 111 (4) and 112A).

A requirement is proposed requiring provision of a species impact statement before a determining authority carries out, or grants approval in relation to the carrying out of, an activity that is on land that is critical habitat or is likely to significantly affect threatened species, populations or ecological communities, or their habitats (proposed section 112 (1B)).

A Minister who is a determining authority under Part 5 is required to consult with the Minister administering the proposed Act before carrying out, or granting an approval for the carrying out of, an activity on land that is critical habitat or that is likely to significantly affect threatened species, populations or ecological communities, or their habitats (proposed section 112B).

Determining authorities (other than Ministers) are required to obtain the concurrence of the Director-General of National Parks and Wildlife before carrying out, or granting an approval for the carrying out of, an activity on land that is critical habitat or that is likely to significantly affect an endangered species, population or ecological community, or is habitat, and to consult with the Director-General if a vulnerable species, or its habitat, is involved. However, the Minister administering the proposed Act may, if the Minister wishes, act in place of the Director-General of National Parks and Wildlife for the purposes of the concurrence or consultation process (proposed section 112C).

Proposed section 112D sets out the matters that the Director-General of National Parks and Wildlife (or the Minister administering the proposed Act, if acting in place of the Director-General) must consider when acting as a concurrence authority, and proposed section 112E sets out the matters that the Minister and the Director-General of National Parks and Wildlife (or the Minister administering the proposed Act, if acting in place of the Director-General) must consider for the purposes of consultations under proposed sections 112B and 112C.

Amendments are also made concerning restraint of breaches of the EPA Act and matters of a savings, transitional and consequential nature.

Schedule 6 Amendment of other Acts and regulations

Consequential amendments are made to various Acts and regulations. Amendments to certain of the Acts are highlighted below.

The *Dividing Fences Act 1991* is amended to provide that no order may be made for the fencing work on land that is critical habitat without the consent of the Director-General of National Parks and Wildlife.

Amendments are made to the *Land and Environment Court Act 1979* to enable that Court to exercise jurisdiction in relation to appeals concerning licences and third party enforcement proceedings under the proposed Act.

The *Local Government Act 1993* is amended by the insertion of a note drawing attention to the obligation of councils to implement those measures contained in recovery plans and threat abatement plans, prepared under the proposed Act, for which councils are responsible.

The *Non-Indigenous Animals Act 1987* is amended to make it clear that that Act does not affect the operation of the proposed Act.

The *Rural Lands Protection Act 1989* is amended, among other matters, to provide that an order to declare a species of insects to be a noxious species under that Act cannot be made without the concurrence of the Director-General of National Parks and Wildlife if the species happens to be a threatened species under the proposed Act.

The *Soil Conservation Act 1938* is amended to provide that the Commissioner of the Soil Conservation Service may prepare maps identifying, as protected land, critical habitat, or land containing threatened species, populations or ecological communities, or their habitats. The Commissioner may also impose conditions on an authority to destroy timber on protected land if the authorised action is likely to have an adverse effect on critical habitat, or land containing threatened species, populations or ecological communities, or their habitats.

The *Timber Industry (Interim Protection) Act 1992* is amended to reflect the changes made by the proposed Act to the regime for dealing with threatened species.

Schedule 7 Savings, transitional and other provisions

Schedule 7 enables the making of regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

Provisions dealing with the dissolution of the Scientific Committee under the NPW Act, the extension of certain licences under section 120 of that Act, the treatment of those licences for the purposes of the proposed Act and savings with respect to planning matters and stop work orders are also inserted.