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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

ENDANGERED SPECIES PROTECTION BILL 1992

ENDANGERED SPECIES PROTECTION (CONSEQUENTIAL AMENDMENTS)
BILL 1992

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for the Arts, Sport,
the Environment and Territories,
The Hon Ros Kelly, MP)



ENDANGERED SPECIES PROTECTION BILL 1992

ENDANGERED SPECIES PROTECTION (CONSEQUENTIAL AMENDMENTS) BILL 1992

GENERAL OUTLINE

The purpose of the *Endangered Species Protection Bill 1992* is to provide a framework for the protection of endangered and vulnerable species and ecological communities by:

- . promoting the recovery of species and ecological communities that are endangered or vulnerable;
- . preventing other species and ecological communities from becoming endangered;
- . reducing conflict in land management through readily understood mechanisms relating to the conservation of species and ecological communities that are endangered;
- . providing for public involvement in, and promoting understanding of, the conservation of such species and ecological communities;
- . encouraging cooperative management for the conservation of such species and ecological communities.

In general the legislation aims to adopt a proactive and co-operative approach wherever possible. In particular it will continue the co-operative approach already in existence between the Commonwealth Government and State and Territory Governments for the recovery and protection of endangered species and ecological communities through the Endangered Species Program.

The *Endangered Species Protection (Consequential Amendments) Bill 1992* contains provisions to ensure that endangered species matters are considered within the impact assessment procedures provided for by the Environment Protection (Impact of Proposals) Act 1974, and also provisions to amend the National Parks and Wildlife Act 1975 to enable the Director of the Australian National Parks and Wildlife Service to carry out duties specified in the Bill.

FINANCIAL IMPACT STATEMENT

Direct administrative costs of the Bill are provided for by existing appropriations for the Endangered Species Program and by additional funding already allocated to feral animal control.

Indirect costs upon proponents of activities requiring government approvals may also result and will vary according to such proposals' possible impact upon a listed species or ecological community and the type of species and ecological community concerned.

Indirect savings may also result through the recovery of species and ecological communities to a secure state, and by making mechanisms for decisions relating to endangered species more visible to developers and land managers and remove some of the uncertainty that currently prevails.

ENDANGERED SPECIES PROTECTION BILL 1992

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1 - Short title

1. The Bill may be cited as the *Endangered Species Protection Act 1992* upon enactment.

Clause 2 - Commencement

2. The Act will commence on a day to be fixed by Proclamation, or, if not proclaimed within a period of 9 months of Royal Assent, on the day after the end of that period.

Clause 3 - Objects of Act

3. Sets out in detail the objects of the Act, which focus on the conservation, management and recovery of a number of different classifications of species, ecological communities and threatening processes.

Clause 4 - Definitions

4. Defines terms used in the Act. The most important definitions are:

'Australia': includes all external Territories.

'Commonwealth agency': includes all Commonwealth Ministers, Departments, statutory and non-statutory bodies and office holders, and Commonwealth-owned companies, except:

courts and tribunals,

the Governments of the Australian Capital Territory (ACT), the Northern Territory (NT) or Norfolk Island (see clause 11), and

bodies in which land is vested under Commonwealth Aboriginal Land Rights legislation.

'Director': means the Director of National Parks and Wildlife, the head of the Australian National Parks and Wildlife Service (ANPWS).

'ecological community': means an integrated assemblage of native species, that (a) inhabits a particular area in nature, and (b) meets the additional criteria specified in the regulations made for the purposes of the definition.

'Government approval': includes a permission, authorization, licence etc. that may be given by a Commonwealth agency.

'habitat': means an area in which an organism or group of organisms lives, or in which an organism or group has lived and has the potential to be reintroduced.

'interim conservation order' - called ICO in this memorandum,
'permanent conservation order' - PCO,
'impact assessment conservation order' - IACO: see Part 5.

'native species' - means all species that are indigenous to Australia, or the Australian coastal sea or sea bed, continental shelf or fishing zone; or species that occasionally or periodically visit Australia, the coastal sea or sea bed or the fishing zone. Because whether some species present in Australia before European settlement are indigenous is uncertain, any species present in Australia before 1400 is treated as a native species.

'principles of ecologically sustainable development' ('ESD') - means, if the regulations specify principles for the purpose of the definition, those principles.

'recovery plan' - RP,
'threat abatement plan' - TAP: see Part 3

'species' - means a group of biological entities that interbreed to produce fertile offspring and share a common gene pool and includes a subspecies as defined in this clause, and a distinct population that the Minister determines in writing to be a species.

'State agency' - means a person or body in relation to a State broadly equivalent to a 'Commonwealth agency' in relation to the Commonwealth.

'threatening process': means a process that threatens, or may threaten, the survival, abundance or evolution of a native species or ecological community, e.g.: predation by foxes.

Clause 5 - Commonwealth areas

5. 'Commonwealth areas' is defined to mean land or waters in one or more of these categories:

(a) land owned or leased by the Commonwealth or a Commonwealth agency, anywhere in Australia (but excluding 'Territory Land' managed by the ACT Government unless leased by the Commonwealth or an agency);

(b) any land in the Jervis Bay Territory (JBT) or any external Territory except Norfolk Island;

(c) the part of the coastal sea that is not vested in the States or the NT under the Offshore Constitutional Settlement, i.e. generally the part beyond the 3 mile limit, but the whole sea adjacent to the JBT and all external Territories;

(d) the sea-bed of, and waters above, the continental shelf;

(e) the fishing zone; and

(f) parks and reserves under the Commonwealth National Parks and Wildlife Conservation Act 1975 ('the NPWC Act').

Clause 6 - Endangered species and ecological communities

6. This clause sets out the circumstances under which a species or community is 'endangered' for the purposes of the Act.

Clause 7 - Vulnerable species

7. This clause sets out the circumstances under which a species is 'vulnerable' for the purposes of the Act.

Clause 8 - Species that are presumed extinct

8. This clause sets out the circumstances under which a species is 'presumed extinct' for the purposes of the Act.

Clause 9 - Interests in Commonwealth areas

9. For the purposes of the Act, a person has an 'interest' in a Commonwealth area (see Part 4) if the person owns, occupies, is in possession of, manages or controls, or has the right under a government approval to conduct a commercial activity in, the area.

Clause 10 - Disallowance of certain instruments

10. A determination by the Minister that a distinct population is a 'species' for the purposes of the Act will be disallowable by either House of Parliament.

Clause 11 - Certain Territories regarded as States

11. The self-governing Territories - ACT, NT and Norfolk Island - are treated as States for the purposes of the Act.

Clause 12 - Act to bind Crown

12. The Act will bind the Crown in all its capacities, but not make the Crown liable to be prosecuted for a criminal offence.

Clause 13 - External Territories

13. The Act extends to all external Territories, although Norfolk Island is generally treated as a State.

PART 2 - LISTING

Clause 14 - Outline of this Part

14. This clause is an outline of Part 3. Division 1 describes the lists of native species, ecological communities and key threatening process on which the Act is based. Division 2 sets out the process for amending the original lists (scheduled to the Bill) and Division 3 requires that the lists be publicized.

Division 1 - Lists of species, etc.

Clause 15 - Lists of native species

15. In Schedule 1 there are 3 lists:

- . Endangered species
- . Vulnerable species
- . Species presumed extinct

Clause 16 - Lists of ecological communities

16. Provides that Schedule 2 contains a list of endangered ecological communities. Because the science of determining threatened ecological communities is not as well advanced as it is for species, the Act does not attempt to list merely 'vulnerable' ecological communities, but only the more easily identified 'endangered' category.

Clause 17 - List of key threatening processes

17. Schedule 3 contains this list.

Division 2 - The listing process

Clause 18 - Minister may amend lists

18. The initial lists of species and key threatening processes are scheduled to the Bill; there is no initial list of ecological communities. The Minister administering the Act will be able to amend the lists by adding or deleting items. The amendment will be by instrument published in the Gazette and in a daily newspaper distributed in each State. The instrument will be disallowable by each House of Parliament, and in the case of deletions from a list will only come into force when the period during which it could have been disallowed has expired. This process is similar to that under which the Schedules to the Wildlife Protection (Regulation of Exports and Imports) Act 1982, which list the species protected by that Act, are amended by Ministerial instrument. Such a power to amend is necessary to deal with situations where urgent action to protect species or communities is needed and urgent recourse to Parliament may not be practicable, e.g. the rediscovery of a species that had been presumed extinct.

Clause 19 - Reasons for amendment of lists

19. Members of the public will be able to apply to the Director for a statement of the reasons why a list has been amended. The Director may make a reasonable charge for providing it.

Clause 20 - Native species etc. that are endangered

20. A native species or ecological community must not be added to the endangered list unless the Minister is satisfied that it is endangered, and must not be deleted from the list unless the Minister is satisfied that it is no longer endangered.

Clause 21 - Native species that are vulnerable

21. Similar to clause 20 as regards the vulnerable list.

Clause 22 - Native species that are presumed extinct

22. Similar to clause 20 as regards the presumed extinct list.

Clause 23 - Key threatening processes

23. Subclauses (1) and (2) are similar to clause 20 as regards key threatening processes.

Subclause (3) provides that a threatening process is eligible to be treated as a key threatening process if it:

- adversely affects two or more listed species or ecological communities, or

- could cause species or communities that are not yet endangered to become endangered, and

- it is feasible, effective and efficient to abate the process by preparing and implementing a nationally co-ordinated threat abatement plan (TAP).

Subclause (4) requires the Minister, before listing a threatening process as a key threatening process, to consult relevant Commonwealth agencies on the feasibility of a TAP to abate the process.

Clause 24 - Minister must consider advice from Scientific Subcommittee

24. Clause 24 requires that, before a native species, ecological community or key threatening process is added to, or deleted from, any list, the Minister must consider advice from the Endangered Species Scientific Subcommittee (see Part 8). The Minister's decision must be made, and any necessary instrument amending a list must be published, within 30 days of receiving the Subcommittee's advice on the matter. In the period of 30 days, or until the instrument is published (whichever is earlier), a Subcommittee member must not disclose the advice or any related information, except for the official purposes of the Subcommittee.

Clause 25 - Rediscovery of native species that were presumed extinct

25. Clause 25 enables the Minister to delete a species from the presumed extinct list, and if necessary add it to the endangered or vulnerable list, if the Director informs the Minister that it has been definitely located in the wild. In this case the Minister may, but need not, obtain advice from the Scientific Subcommittee.

Clause 26 - Minister to consider only nature conservation matters

26. Clause 26 provides that in considering whether to add a species, or delete it from, the endangered, vulnerable or presumed extinct list, or to add an ecological community to or delete it from the endangered list, the Minister must not consider any matter not related to the survival of the species or community.

Clause 27 - Species posing a serious threat to human health

27. Clause 27 empowers the Minister, if satisfied that a native species poses a serious threat to human health, to determine, by disallowable instrument published in the Gazette, that the species is not suitable to be included in any list.

Division 3 - Publication of lists

Clause 28 - Director to make lists available to public

28. Clause 28 provides that the Director must take all reasonable steps to make available to the public, at each ANPWS office and one or more other places in each State, and at a reasonable price, consolidated, up-to-date copies of each list.

PART 3 - RECOVERY PLANS AND THREAT ABATEMENT PLANS

Clause 29 - Outline of this Part

29. This is a summary of Part 3. In Division 1, recovery plans are provided for in clauses 30 and 31, the 'threat abatement plans' in clauses 32 and 33, and the eradication of non-native species under any plan in clause 34. Divisions 2 to 4 (clauses 35 to 48) will provide further details in relation to the preparation, publication and variation of the plans, co-operation with the States, general assistance and reporting requirements.

Division 1- Obligation to prepare, etc., plans

Clause 30 - Recovery plans

30. This clause requires the Commonwealth to prepare and implement a recovery plan for each listed native species (except presumed extinct species) and each listed ecological community in Commonwealth areas (defined in clause 5). If such a species or community is also found outside a Commonwealth area, the Commonwealth must seek the co-operation of the affected States with a view to the joint preparation and implementation of a plan.

Clause 31 - Content of recovery plans

31. Subclause 31(1) requires that the plan must have as its overall objective to provide for research and management actions that will stop the decline of, and make possible the recovery of, the affected species or community, with a view to maximising its chances of long-term survival in nature. Subclause 31(2) provides the details, set out in paragraphs (a) to (g), that must be covered in the plan. Subclause 31(3) requires that in preparing a recovery plan, regard must be had to the objects of the Act, to making effective and efficient use of the resources allocated, and, while consistent with the principles of ESD, to minimising significant adverse social and economic impacts.

Clause 32 - Threat abatement plans

32. Clause 32 requires the Commonwealth to prepare and implement a threat abatement plan in respect of each key threatening process (as specified in Schedule 3) that occurs in Commonwealth areas. Where the process also occurs outside Commonwealth areas, the Commonwealth must seek the co-operation of the affected States with a view to the joint preparation and implementation of a plan.

Clause 33 - Content of threat abatement plans

33. Clause 33 is similar to clause 31 as regards the overall objectives and contents of threat abatement plans.

Clause 34 - Eradication of non-native species

34. This clause provides that where the actions specified under a recovery or threat abatement plan include the eradication of a non-native species (defined in subclause 4(1)) that is endangered in the country in which its native habitat (defined in subclause 4(1)) occurs, the plan must require the Commonwealth to offer to provide stock of that species to that country before the eradication proceeds.

Division 2 - Preparation and variation of plans by the Commonwealth

Clause 35 - Deadlines for preparing plans

35. Clause 35 provides that a plan must be prepared in the period between the time when the endangered or vulnerable species or ecological community, or the key threatening process, became included in a list (the 'listing day') and the time after the listing day specified in the table set out in paragraph (b):

	If in initial lists	If added later
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	(years after listing day)	
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Recovery plan

- endangered species or community	5	3
- vulnerable species	10	5
Threat abatement plan	6	3

Clause 36 - Advisory Committee to advise on scheduling of plans

36. Clause 36 provides that the Endangered Species Advisory Committee (set up under clause 136) will advise the Minister on the times within which, and the order in which, draft plans should be prepared so as to meet the deadlines in clause 35. Subclauses 36(2) and (3) specify the matters that the Committee must take into account when giving advice on the preparation of a draft recovery plan or a draft threat abatement plan.

Clause 37 - Preparation of draft plans

37. This clause authorises the Minister, after considering the Committee's advice, to direct the Director to prepare a draft recovery plan or draft threat abatement plan. The direction must specify the period in which the plan is to be prepared, and the Director must comply with the direction and cause a copy of the direction to be published in the Gazette.

Clause 38 - Consultation on draft plans

38. Subclause 38(1) provides that after preparing a draft plan the Director must ensure that copies of the draft plan may be purchased from each office of the ANPWS and at any other place or places specified in the notice to be given under subclause (2). The Director must also give a copy of the plan and of the notice to the Advisory Committee, as well as causing the notice to be published in the Gazette and in a daily newspaper circulating in the State in which occurs the listed native species or ecological community, or the key threatening process to which the draft plan relates. Regulations made under clause 175 may prescribe further requirements concerning the publication of notices.

39. Subclause 38(2) requires the notice to specify that the draft plan has been prepared, where it may be purchased, that persons may make written submissions to the Director about the draft plan, where such comments are to be lodged and a period in which they are to be lodged. Subclause 38(3) provides that this period must be a minimum of 3 months after the Gazette notice is published.

Clause 39 - Consideration of comments

40. This clause requires the Director to consider all comments received that comply with the requirements of clause 38. The Director may revise the draft plan, taking into account any of the comments, and must prepare a report ('the Director's report') on these comments and their consideration.

Clause 40 - Approval by the Minister

41. Once the processes referred to in clauses 35 to 39 have been completed, clause 40 requires the Director to submit the draft plan and the Director's report to the Minister for approval. The Minister is given power make a written request to the Director to make a revision, stating reasons for the request. The Director is required to consider the request and statement of reasons, make such amendments as the Director considers appropriate, and submit the revised plan back to the Minister for approval. The plan then comes into force either on the day specified by the Minister in the approval, or, if no such day is specified, on the day on which the Minister approves the plan.

Clause 41 - Director to make plans available to the public

42. Subclause 41(1) requires the Director, as soon as practicable after the Minister approves the plan, to ensure that it is readily available at each of office of the ANPWS and at one or more other places in each State. The Director must also give notice of the plan's approval to each person whose comments the Director considered. Otherwise the requirements concerning publishing are identical to the those concerning draft plans (see paragraph 38, above). Subclause 41(2) requires the notice to state that the Minister has approved the plan and to specify the places where it may be purchased.

Clause 42 - Variation of plans

43. This clause entitles the Director at any time to review a plan and consider whether a variation is necessary. Such a review must take place at least once every five years. If the Minister gives a notice to the Director requesting variation of a plan and setting out reasons for the request, the Director must consider it.

44. Under subclause 42(4) the Director may vary the plan if he or she considers that a variation is necessary, or that a variation requested by the Minister is appropriate. Subclause (5) applies the requirements of clauses 38 to 41 (see paragraphs 38 to 42, above) to any variations made under this clause.

Division 3 - Preparation and variation of plans by States etc.

Clause 43 - Commonwealth assistance for the preparation of draft plans

45. Clause 43 gives the Minister a discretionary power to provide a State or State agency (as defined in subclause 4(1)) financial or other assistance in the preparation of a draft recovery plan or draft threat abatement plan for relevant matters not occurring in Commonwealth areas. The decision whether to give assistance and the extent of it is subject to clause 44.

Clause 44 - Advisory Committee to advise on assistance

46. In exercising the discretionary power under the previous clause, this clause requires the Minister to seek the Committee's advice on the times and order in which assistance should be granted, and subject to what conditions (if any). Under subclauses 44(2) and (3), the Committee must take into account the same matters as specified under subclauses 36(2) and (3) (see paragraph 36, above).

Clause 45 - Adoption of draft plans

47. Subclause 45(1) authorises the Minister to make a written declaration that a specified draft plan prepared by a State or State agency is adopted as a recovery plan or threat abatement plan. If such a plan is varied by a State or State agency, subclause 45(2) provides that the Minister may declare by instrument in writing that such a plan is to be taken as varied accordingly. A declaration under this clause is subject to compliance by the draft plan, or the plan as varied, with the requirements of clause 31 or 33 (whichever is relevant) (subclause 45(3)), and advice from the Advisory Committee (subclause 45(4)).

Clause 46 - Director to publicise adoption of draft plans

48. This clause requires the Director, as soon as practicable after a declaration has been made by the Minister under clause 45, to ensure that copies of the plan in question, or that plan as varied, are readily available for purchase at each office of the ANPWS and at one or more places in each State. The Director must also cause a notice of the declaration to be published in the Gazette and in a daily newspaper circulating in each State in which occurs the listed native species or ecological community, or key threatening process, to which the plan applies. The regulations may specify other requirements. The notice must include a copy of the declaration and specify the places where copies of the plan, or the plan as varied, may be purchased.

Division 4 - General

Clause 47 - Commonwealth assistance for the implementation of plans

49. This clause gives the Commonwealth a broad discretion to provide a person with financial or any other type of assistance for the implementation of a plan prepared under this Part.

Clause 48 - Reports on the preparation and implementation of plans

50. Clause 48 requires the Director to include in each annual report prepared under section 52 of the NPWC Act a report on the implementation of plans during the financial year to which the annual report relates and the preparation of draft plans during that year. Section 52 of the NPWC Act is being amended by the *Endangered Species Protection (Consequential Amendments) Bill 1992* to include this report.

PART 4 - CONSERVATION AGREEMENTS

Clause 49 - Outline of this Part

51. This clause provides that this Part will be concerned with conservation agreements between the Commonwealth and persons having interests in Commonwealth areas, and the effect and publication of such conservation agreements.

Clause 50 - Director may enter into conservation agreements

53. This clause permits the Director, on behalf of the Commonwealth, to enter into an agreement with a person who has an interest in a Commonwealth area (clause 9, above, contains a definition of 'interest in a Commonwealth area') for the conservation and management of any listed native species or listed ecological communities, or their habitats, occurring in such area.

Clause 51 - Content of conservation agreements

53. This clause provides that the agreement may control or prohibit, in the relevant area, activities that may disturb species, ecological communities, habitats or potential habitats that the agreement seeks to conserve. The agreement may require any person bound by the agreement not to obstruct access to the Director in respect of matters and places relevant to the agreement, and to provide the Director with relevant information for the purposes of the agreement.

54. The agreement may also provide for the Commonwealth, subject to appropriation of funds by the Parliament, to give financial or other assistance to a person who is bound by the agreement to assist that person in fulfilling his or her obligations under the agreement.

Clause 52 - Conservation agreements to be legally binding

55. This clause ensures that agreements made under this Part are legally binding on the Commonwealth and the person with whom the Commonwealth entered into the agreement, including a successor to the whole or any part of the interest that person had in the Commonwealth area the subject of the agreement.

Clause 53 - Publication of conservation agreements

56. Clause 53 requires the Director to ensure that as soon as practicable after the agreement is entered into that copies of the agreement may be purchased, at a reasonable price, from each office of the ANPWS and at one or more other places in each State, and also cause a notice of the agreement to be published in the Gazette and in any other way as may be specified in the regulations. The notice must state that the agreement has been entered into and specify the places where copies of the agreement may be purchased.

Clause 54 - List of conservation agreements

57. This clause requires the Director to maintain a list of all conservation agreements that are currently in operation and ensure that copies of the list are readily available for purchase at each of the offices of the ANPWS and at one or more other places in each State.

PART 5 - CONSERVATION ORDERS

Clause 55 - Outline of this Part

58. This clause provides a summary of this Part.

Division 1 - Interim conservation orders

Clause 56 - Minister may make interim conservation orders

59. This clause empowers the Minister to make these orders ['ICOs'] by instrument in writing, prohibiting or restricting specified activities, or requiring specific action, on or in all or specified Commonwealth areas by any person, or specified persons ('persons' includes Commonwealth agencies).

Clause 57 - Limitations on the power to make interim conservation orders

60. This clause limits the power to make an ICO in two ways:

(a) An ICO cannot be made at a time when an IACO with immediate effect could be made instead: that is, after the Impact of Proposals Act has been 'triggered' and while the procedures under that Act (other than any review of environmental impacts, after initial assessment) are continuing - see clause 82.

(b) If an ICO would control an activity or proposed activity that primarily has a commercial purpose (*commercial activity*), a special procedure applies, in order to ensure that Ministers or Commonwealth agencies more directly responsible for the commercial activity have an opportunity to consider the matter and, if possible, impose the controls using their own existing powers outside the ESP Act. The commercial purpose may be that of the person carrying out the activity, or of some other person involved, e.g. the activity is the giving of a government approval which the applicant seeks primarily for a commercial purpose.

The procedure for these *commercial activity* cases is:

1) The Minister administering the ESP Act ('Environment Minister') must notify each other Minister ('Action Minister') whose area of responsibility includes a matter that would be affected by the ICO, of the prohibitions, restrictions or requirements in the proposed ICO.

2) If any such Action Minister or other Commonwealth agency has the power to prohibit etc. the activity to the same extent as the ICO would, and with effect within 24 hours of when the Action Minister is notified, the Minister or agency may either

- exercise the power to prohibit etc. the activity to the same extent as the ICO would, or
- exercise the power to prohibit etc. to a lesser extent than the ICO would, or
- decide not to exercise the power.

In each case the Action Minister may, within the 24 hours, exercise the power, or decide not to exercise it, and notify the Environment Minister of this. If such a notice is given, the Environment Minister may not make the proposed ICO; if notice is not given, it may be made.

Clause 58 - Grounds for making interim conservation orders

61. This clause empowers the Minister to make ICOs if the Minister believes on reasonable grounds that this is necessary to prevent a listed native species or listed ecological community, from becoming further threatened with extinction, or the recovery of such species or ecological community from being impeded, or to ensure there are no serious adverse effects on the successful implementation of a recovery or threat abatement plan, or to ensure that a listed native species or ecological community, or features of the habitat of such a species that are significant to the survival of the species, are not adversely affected before an assessment of the need for further action is made.

Clause 59 - Consideration of the social and economic impact of interim conservation orders

62. When making these orders, this clause requires the Minister to ensure, so far as is practicable, that significant adverse economic and social impacts of such orders are, consistently with the principles of ESD, minimised, while at the same time ensuring that they remain consistent with the objectives of the Act and with the grounds on the basis of which the orders were made.

Clause 60 - Procedure for making interim conservation orders

63. This clause requires the Minister to consult with the Director, and entitles the Minister to consider the advice of the Advisory Committee, prior to making an ICO, but does not require the Minister to give notice of intention to make the order to a person who will be affected by the order, although the Minister may do so.

Clause 61 - Duration of interim conservation orders

64. An ICO comes into force on the day specified in the order, otherwise on the day the order is made. An order remains in force for 28 days if it controls a *commercial* activity, and for 6 months in other cases, but in each case can be revoked earlier by the Minister, and a 28-day ICO can be renewed by the Minister for further 28-day periods if necessary.

Clause 62 - Publication of interim assessment orders

65. This clause requires the Minister to inform the Director as soon as practicable that an order has been made. The Director is responsible for causing to be published, as soon as practicable after being so informed by the Minister, in the Gazette and in a daily newspaper circulating in each State in which the relevant Commonwealth area is located (and in any other way as may be specified in the regulations), a copy of the order. The Director is also required to take reasonable steps to ensure that each person, who the Director knows would be affected by the order, will be given a copy of the relevant order. Subclause (3) ensures that an order is not invalid because of a failure to comply with this clause.

Clause 63 - Application for reconsideration of interim conservation orders

66. This clause entitles a person other than a Commonwealth agency who is affected by an ICO to apply in writing to the Minister to reconsider it, within 28 days after it is published, or after the person is directly notified of it. The Minister can extend this period.

Clause 64 - Reconsideration of interim conservation orders

67. The Minister must seek the Director's advice on the application for reconsideration, and decide within one month of the application to confirm, vary or revoke the ICO. The criteria set out in clause 58 control any decision to vary or revoke, and the decision must be conveyed to the applicant in writing and published as under clause 62.

Clause 65 - Director to attempt to enter into conservation agreements

68. An ICO is not to remain in force if the environmental protection that it gives could be given by a conservation agreement under Part 4. The Director, if satisfied that an agreement would be adequate, must attempt to negotiate one, and the ICO must be revoked if this is done.

Clause 66 - Assistance for complying with interim conservation orders

69. Clause 66 empowers the Director to assist a person (other than a Commonwealth agency) to comply with an ICO, with money, goods, labour or other services to meet the reasonable and direct costs of complying. Such assistance is taken into account in determining compensation for any acquisition of property under clause 171.

Division 2 - Permanent conservation orders

Clause 67 - Minister may make permanent conservation orders

70. This clause empowers the Minister to make these orders ['PCOs'] by instrument in writing, prohibiting or restricting specified activities, or requiring specific action, on or in all or specified Commonwealth areas by any person, or specified persons ('persons' includes Commonwealth agencies).

Clause 68 - Grounds for making permanent conservation orders

71. This clause empowers the Minister to make PCOs if the Minister believes on reasonable grounds that this is necessary to prevent a listed native species or listed ecological community, from becoming further threatened with extinction, or the recovery of such species or ecological community from being impeded, or to ensure there are no serious adverse effects on the successful implementation of a recovery or threat abatement plan, or to ensure that a listed native species or ecological community, or features of the habitat of such a species that are significant to the survival of the species, are not adversely affected before an assessment of the need for further action is made.

Clause 69 - Economic and social considerations

72. In considering whether to make a PCO, the Minister must be satisfied that such action for the conservation of the species or community in question is justified, having regard to economic and social considerations that are consistent with the principles of ESD.

Clause 70 - Procedure for making permanent conservation orders

73. This clause requires the Minister to consult the Director, and to have regard to any advice from the Advisory Committee, prior to making a PCO.

Clause 71 - Duration of permanent conservation orders

74. An PCO comes into force on the day specified in the order, otherwise on the day the order is made. A PCO remains in force until it is revoked by the Minister. A PCO may be made after an ICO has been made, but does not come into force until after the ICO expires, and will not come into force if the Minister decides meanwhile to revoke the ICO.

Clause 72 - Reviews of permanent conservation orders

75. This clause requires that a PCO must be reviewed at least every 5 years after it is made. The Minister must seek the Director's advice on its continuation, and must confirm, vary or revoke the PCO as a result.

Clause 73 - Publication of permanent conservation orders

76. This clause requires the Minister to inform the Director as soon as practicable that an order has been made. The Director is responsible for causing to be published, as soon as practicable after being so informed by the Minister, in the Gazette and in a daily newspaper circulating in each State in which the relevant Commonwealth area is located (and in any other way as may be specified in the regulations), a copy of the order. The Director is also required to take reasonable steps to ensure that each person who the Director knows would be affected by the order will be given a copy of it. Subclause (3) ensures that an order is not invalid because of a failure to comply with this clause.

Clause 74 - Application for reconsideration of permanent conservation orders

77. This clause entitles a person other than a Commonwealth agency who is affected by an PCO to apply in writing to the Minister to reconsider it, within 28 days after it is published, or after the person is directly notified of it. The Minister can extend this period.

Clause 75 - Reconsideration of permanent conservation orders and decisions on review

78. The Minister must seek the Director's advice on the application for reconsideration, and decide within one month of the application to confirm, vary or revoke the PCO. The criteria set out in clause 68 control any decision to vary or revoke, and the decision must be conveyed to the applicant in writing and published as under clause 73.

Clause 76 - Assistance in complying with permanent conservation orders

79. Clause 76 empowers the Director to assist a person (other than a Commonwealth agency) to comply with an PCO, with money, goods, labour or other services to meet the reasonable and direct costs of complying. Such assistance is taken into account in determining compensation for any acquisition of property under clause 171.

Division 3 - Impact assessment conservation orders

Clause 77 - Application of this Division

80. Clause 77 provides that this Division will apply to a Commonwealth agency (as defined in subclause 4(1), see paragraph 4, above) that is proposing to take an action that will affect the environment to a significant extent for the purposes of the Environment Protection (Impact of Proposals) Act 1974 (see comments on amendments to that Act in Notes on Clauses for the Endangered Species Protection (Consequential Amendments) Bill 1992, below), and to any other person who is proposing to carry out an activity that requires a government approval under a law of the Commonwealth or a Territory.

Clause 78 - Minister may make impact assessment conservation orders

81. This clause empowers the Minister to make these orders ['IACOs'] by instrument in writing, either:

- prohibiting or restricting specified activities by, or requiring specific action by, a Commonwealth agency, or prohibiting or restricting the activities specified in clause 77, or

- prohibiting or restricting activities by a person seeking governmental approval for activities specified in that clause, where the activities are proposed to take place before the Impact Act assessment period has expired, and would if they proceed frustrate the purpose of the Impact Act.

Clause 79 - Grounds for making impact assessment conservation orders

82. This clause empowers the Minister to make IACOs if the Minister believes on reasonable grounds that this is necessary to prevent a listed native species or listed ecological community, from becoming further threatened with extinction, or the recovery of such species or ecological community from being impeded, or to ensure there are no serious adverse effects on the successful implementation of a recovery or threat abatement plan, or to ensure that a listed native species or ecological community, or features of the habitat of such a species that are significant to the survival of the species, are not adversely affected before an assessment of the need for further action is made.

Clause 80 - Consideration of the social and economic impact
of impact assessment conservation orders

83. When making these orders, this clause requires the Minister to ensure, so far as is practicable, that significant adverse economic and social impacts of such orders are, consistently with the principles of ESD, minimised, while ensuring that they remain consistent with the objectives of the Act and with the grounds on the basis of which the orders were made.

Clause 81 - Procedure for making impact assessment
conservation orders

84. This clause requires the Minister to consult with the Director, and consider the advice of the Advisory Committee prior to making an IACO, but does not require the Minister to give notice of intention to make the order to a person who will be affected by the order, although the Minister may do so if he or she decides to.

Clause 82 - Duration of impact assessment conservation orders

85. This clause specifies that, subject to subclause (2) (which deals with orders that are affected by subclause 77(a) - see paragraph 80, above) an order comes into force on the day specified in the order, otherwise on the day the order is made.

Clause 83 - Publication of impact assessment orders

86. This clause requires the Minister to inform the Director as soon as practicable that an order has been made. The Director is responsible for causing to be published, as soon as practicable after being so informed by the Minister, in the Gazette and in a daily newspaper circulating in each State in which the relevant Commonwealth area is located (and in any other way as may be specified in the regulations), a copy of the order. The Director is also required to take reasonable steps to ensure that each Commonwealth agency, which the Director knows would be affected by the order, to be given a copy of the relevant order. Subclause (3) ensures that an order is not invalid because of a failure to comply with this clause.

PART 6 - OBLIGATIONS TO PROTECT SPECIES, ETC.

Clause 84 - Outline of this Part

87. Clause 84 provides a summary of Part 6. Obligations are imposed on persons, particularly Commonwealth agencies, to protect listed species and listed ecological communities, and to ensure the effectiveness of protective measures adopted under Parts 3 and 5. The remainder of the clause then summarises the provisions of Divisions 1 to 5, which comprise this Part.

Division 1 - Obligations on persons generally

Clause 85 - Compliance with conservation orders

88. This clause imposes a penalty of up to \$50,000 on a person who knowingly or recklessly contravenes an interim conservation order, a permanent conservation order or an impact assessment conservation order made under paragraph 78(1)(c). (The maximum penalty is \$250,000 for a body corporate, see s. 4B, Crimes Act 1914). The person may seek the Minister's advice under subclause 103(4) if he or she wishes to ensure that the proposed action does not result in such a contravention, and will be taken to not have contravened the order if he or she acts in accordance with the advice.

Clause 86 - Taking etc. listed native species

89. Subclauses 86(1) and (2) impose a penalty of up to \$50,000 (body corporate up to \$250,000) on a person who knowingly or recklessly takes, trades, keeps or moves any member of a listed native species that is in or on, or that has been taken in or on, a Commonwealth area. Subclause 86(3) imposes a penalty of up to \$10,000 (body corporate \$50,000) where a person fails to notify the Director of the details of an inadvertent taking of a listed native species in or on a Commonwealth area.

90. Subclause 86(4) exempts from this clause acts done in accordance with a permit issued under clause 88, or in accordance with a governmental approval under the Acts listed, or as specified in a recovery or threat abatement plan for the purpose of its implementation, or if done by a Commonwealth or State agency where reasonably necessary for law enforcement. Subclause 86(5) defines 'keep', 'take', 'trade' and 'member of a listed native species' (includes all or part of the dead body) for the purposes of this clause.

Division 2 - Permits for taking, etc., listed native species

Clause 87 - Application for permits

91. This clause entitles a person, either for himself or herself, or on behalf of another or others or a specified group, to apply to the Director for a permit to be issued under clause 88. The application is to be made in the form, and accompanied by fees, to be specified in regulations made under clause 175. The prescribed fee must not be so high as to amount to taxation.

Clause 88 - Director may issue permits

92. The Director may issue a written permit to a person who applied for a permit, or to the persons or group described in the application. Any act done by such a person that is specified in the permit will be taken not to be a breach of clause 86. The Director must not issue a permit unless satisfied that the act or acts specified in the permit will significantly contribute to the conservation of listed native species; or will not appreciably reduce the survival or recovery in nature of the native species concerned; and is not inconsistent with a current recovery plan for the species.

93. The Director may also issue a permit if satisfied that the acts specified in the permit are of particular significance to Aboriginal or Torres Strait Islander tradition (as defined in subclause (4)) and will not appreciably reduce the survival or recovery in nature of the listed native species concerned; or that the acts are necessary to control pathogens, but will be conducted in such a way as as far as practicable, to minimise any impact on the listed native species concerned.

Clause 89 - Public consultation

94. This clause requires the Director to publish in the Gazette a notice inviting applications from persons or bodies who wish to be registered to receive advice on applications under clause 87, and to register that person or body for the time specified in the notice. Any person so registered is entitled to receive from the Director notice of an application made under clause 87 as soon as practicable after its receipt. The notice must specify that the application was made, give details of the applicant, invite written submissions to the Director about whether a permit should be issued, and specify a place where, and date by which (at least 5 days ahead), such submissions should be lodged. In making a decision the Director is required to consider all written submissions made by persons under this clause.

Clause 90 - Deadline for making a decision

95. This clause requires the Director to make a decision as to whether or not to issue a permit, and to notify the applicant of the decision, within 90 days of receiving the application. If the Director has not informed the applicant of a decision within that 90-day period, the Director will be deemed to have made a decision to refuse the application.

Clause 91 - Cancellation of permits

96. This clause gives the Director the power to cancel a permit, by notice in writing given to the holder of the permit, if that person is convicted of an offence against clause 86, or the Wildlife Protection (Regulation of Exports and Imports) Act 1982, or provisions of the Crimes Act 1914 that relate to attempts, etc. to commit any of these offences; or if the Director is satisfied that the grounds on which the permit was issued no longer apply, and no other grounds on which it could have been issued apply.

Clause 92 - Notification of rights to reconsideration

97. Under subclause 92(1), a notice informing of a decision to issue, refuse to issue, or to cancel a permit must contain a statement informing the applicant of the right to apply to the Minister within 28 days after receiving the notice for a reconsideration of the decision, and of a right to appeal to the Administrative Appeals Tribunal ('AAT') if dissatisfied with the Minister's decision (including the right to a statement of reasons for the decision under section 28 of the Administrative Appeals Tribunal Act 1975). Subclause 92(2) ensures that failure to comply with the requirements specified in subclause (1) does not invalidate the decision itself.

Clause 93 - Application for reconsideration

98. A person given a notice of a decision by the Director may apply to the Minister to reconsider the decision. The application must be in writing and made within 28 days after the applicant the notice, unless the Minister extends the time limit.

Clause 94 - Reconsideration of decisions

99. Under subclause 94(1) the Minister is required to reconsider applications made under clause 93. It outlines the Minister's discretion in respect of decisions to issue a permit or to refuse to issue a permit (Minister may confirm or

vary the decision, imposing his or her terms), or to cancel a permit (Minister may confirm or revoke the decision). When reconsidering a decision, subclause 94(2) requires the Minister to take into account the grounds set out in subclause 88(3) for issuing a permit. Where a decision was made to issue a permit, subclause 94(3) prohibits the Minister from making a variation that is less favourable to the applicant, unless the Minister is satisfied that, given a change in circumstances since the permit was issued, this is necessary.

100. Subclause 94(4) requires the Director, as soon as practicable after being informed, to notify the applicant in writing of the result of the reconsideration, and if a decision to issue, or refusing to issue, a permit is varied, to issue a permit or fresh permit, as required. Subclause 94(5) contains a right of appeal to the AAT as in the case of clause 92 (see paragraph 97, above) and subclause 94(6) ensures that a decision is not invalid because of failure to comply with the requirements of a notice issued under the previous subclause. Subclause 94(7) provides that if the applicant is not notified of the result of the reconsideration within 28 days after the Minister received the application, the Minister will be deemed to have confirmed the decision on the application.

Clause 95 - Review by the Administrative Appeals Tribunal

101. Under this clause, where the Minister has confirmed or varied a decision under subclause 93(1) (see paragraph 98, above) application may be made to the AAT to review a decision to issue, refuse to issue or cancel a permit.

Clause 96 - Surrender of permits

102. Under this clause, the holder of a permit may at any time surrender it by returning it to the Director, accompanied by a written notice of surrender. Unless the permit has been cancelled earlier, the surrender takes effect from the end of the day specified in the notice. If no such day is specified, the surrender takes effect at the end of the day on which the notice is given.

Clause 97 - Publication of permit details, etc.

103. This clause requires the Director to give written details of permits that have been issued and applications for permits that have been refused to any person who requests them.

Division 3 - Additional obligations of Commonwealth agencies

Clause 98 - Compliance with recovery plans and threat abatement plans

Clause 99 - Compliance with impact assessment conservation orders

104. These clauses provide that, subject to clause 100 (see next paragraph), a Commonwealth agency (as defined in subclause 4(1)) must not take any action that contravenes a recovery or threat abatement plan, or an impact assessment conservation order.

Clause 100 - Effect of Minister's advice on proposed actions, etc.

105. This clause provides that a Commonwealth agency is not acting in breach of clauses 98 or 99 if it acts in accordance with the advice given to it by the Minister under subclause 103(4) that the action would not be a breach of clauses 98 or 99.

Clause 101 - Commonwealth agencies to have regard to certain State laws

106. This clause requires the Commonwealth agency to have regard to the desirability of complying with the law of a State relating to the protection of native species or ecological communities, or the habitats of such species or communities, in cases where that law would normally not apply to that agency solely because it is a Commonwealth agency not bound by State laws.

Division 4- Consideration by the Minister of proposed actions, etc.

Clause 102 - Commonwealth agencies to seek advice on proposed actions, etc.

107. Subclause 102(1) provides that where a Commonwealth agency (excluding the Minister) believes that action it is proposing to take may be action to which clauses 98 or 99 apply, the agency must give written notice to the Minister of the proposed action and of the reasons why it believes that clauses 98 or 99 may apply. Subclause 102(2) requires the agency not to take the action until it has received the Minister's advice under subclause 103(4).

Clause 103 - Minister to consider proposed actions etc.

108. This clause provides that where the Minister has referred to him or her or is notified of a proposed action (clause 102 or 85), or otherwise learns of it, the Minister must refer the action with any submissions made about it to the Director, consider the Director's advice, and give advice about the consistency of the proposed action with the Act.

Clause 104 - Contents of notices of advice

109. The notice under clause 103 must state whether the Minister thinks the proposed action would contravene a recovery plan, threat abatement plan or conservation order. If the notice is given to a person other than a Commonwealth agency, it must include notice that the person may apply to the AAT for review of the Minister's decision to give the advice, if dissatisfied with it. The contents of the notice are as set out in paragraph 97, above.

Clause 105 - Review by Administrative Appeals Tribunal

110. This clause confers on the AAT jurisdiction to review the Minister's decision to give advice under clause 103, but a Commonwealth agency may not seek review.

Division 5 - Repair of damage to species etc.

Clause 106 - Repair of damage

111. This clause entitles the Director to take steps to repair etc. damage caused by an act or omission that the Director suspects was a criminal offence against the Bill, or a breach of a recovery plan, threat abatement plan, conservation order or conservation agreement. Actions to repair etc. are confined to within Commonwealth areas unless action outside an area would affect the area. Any other rights the Director or the Commonwealth may have as regards the damage are not affected.

Clause 107 - Liability for expenses incurred by the Commonwealth

112. This clause entitles the Commonwealth and the Director, to be paid a sum equal to the expenses incurred (under section 106 or otherwise) in rectifying an act or omission that was an offence against the Bill, by the person(s) convicted of the offence. The liability extends only to as much of the expenses incurred as was reasonable in the circumstances. 'Rectifying' includes repairing or removing any result of an act, or mitigating or preventing any resulting damage.

Clause 108 - Ancillary offences

113. This clause applies clause 107 to cases where a person has been convicted under the Crimes Act 1914 of an attempt to commit an offence under the Bill, or other 'ancillary offences' relating to those in the Bill.

Clause 109 - Court may order convicted persons to pay amounts

114. This clause empowers the court that has convicted a person of an offence against the Act to order the person to pay an amount due under clause 107.

Clause 110 - Enforcement of orders for payment

115. This clause makes an order under clause 110 in favour of the Commonwealth or the Director enforceable as a judgment of a civil court.

Clause 111 - Further orders relating to the same act or omission

116. This clause ensures that as many orders under clause 109 may be made as are necessary to make all expenses recoverable.

PART 7 - ADMINISTRATION AND ENFORCEMENT

Clause 112 - Outline of this Part

117. Clause 112 provides a summary of this Part, which deals with the administrative responsibilities of the ANPWS, gives officers (as defined in clause 117) powers to enforce the Act and specifies the powers of the Federal Court to grant injunctions to restrain contraventions of the Act.

Division 1 - Administration

Clause 113 - General administration of Act

118. Under this clause the Director is given powers of administration for the purposes of this Act.

Clause 114 - Additional functions of Director

119. Section 16 of the NPWC Act specifies the functions of the Director for the purposes of that Act. Clause 114 makes it clear that the ESP Act confers additional functions on the Director.

Clause 115 - Delegation

120. This clause authorises the Director to delegate any or all of his or her powers to a member of staff of the ANPWS. The delegation must be made in writing and is subject to any directions of the Minister.

Clause 116 - Consultations with the Great Barrier Reef Marine Park Authority

121. Clause 116 prohibits the Director from performing any functions or exercising any powers under this Act in any part of the Great Barrier Reef Marine Park, without first consulting the Great Barrier Reef Marine Park Authority.

Division 2 - Powers of officers

Clause 117 - Interpretation

122. This clause provides interpretations of terms used in Division 2. An 'officer' means a warden under the National Parks and Wildlife Conservation Act or an inspector under the Great Barrier Reef Marine Park Act; members of the Australian Federal Police or of the police forces of the Territories are ex officio wardens under the NPWC Act.

Clause 118 - Extent of powers

123. Subclause 118(1) extends the powers conferred by this Division to anywhere within or outside Australia in respect of Australian nationals, and Australian aircraft and Australian vessels (as defined in clause 117), including all members of crew of such vessels or aircraft. Subclause 118(2) also extends these powers to any aircraft or vessel (as defined in clause 117) anywhere in Australia; on or in the Australian coastal sea; on, or in the waters above, the continental shelf of Australia (as defined in subclause 118(3)); or on or in the Australian fishing zone (subject to subclause 118(4)). For definitions of 'Australia', 'coastal sea', 'continental shelf of Australia' and 'Australian fishing zone', see subclause 4(1). Subclause 118(5) provides that nothing in subclauses 118(2), (3) or (4) affects the operation of clause 127.

Clause 119 - Arrest without warrant

124. This clause gives officers (as defined under clause 117) powers of arrest without warrant where the officer has reasonable grounds to believe that the person has committed an offence against this Act and that proceedings by way of summons would not be effective. Where the officer is not a member of the police force who is wearing a uniform, the officer must provide written evidence to the person that the officer is a member of the police force, or, in any other case, an identity card (as defined in clause 117).

Clause 120 - Confiscation and forfeiture

125. Subclauses (1) to (5) - vehicles, aircraft, vessels or articles: where a court has convicted a person for an offence under this Act, the court may order the forfeiture to the Commonwealth of any vehicle (as defined in clause 117), aircraft, vessel or article (as defined in clause 117) in any way involved in the commission of that offence. The court may consider such matters as the hardship such an order would cause, the use that the item seized may be, or may be intended to be, put to, and the gravity of the offence. An officer has the power of seizure and may retain the item so seized for 60 days or until the relevant court proceedings are completed. The Director is also empowered to release the relevant item to the owner or person from whose possession it was seized, either unconditionally or on such conditions as the Director decides are appropriate.

126. Subclauses (6) to (8) - animals and plants: an officer is also entitled to seize any animal or plant (both defined in clause 117) that the officer reasonably believes to have been taken or killed in contravention of, or been used or otherwise involved in the commission of an offence against, this Act. The Director is empowered to retain, sell or otherwise dispose of any animal or plant so seized. If the animal or plant was not killed or taken in breach of this Act, any person who has suffered loss or damage because of the seizure is entitled to compensation that is reasonable under the circumstances.

Clause 121 - Searches of vehicles, aircraft and vessels

127. This clause empowers an officer to stop and detain a vehicle or vessel, or detain an aircraft, as the case requires where the officer has reasonable grounds to believe that it has been involved in a breach of this Act and that may afford evidence in respect of such a breach. This includes the power to break open any compartment, container or other receptacle in or on any item so seized. The same requirements of identification of an officer apply as specified in clause 119 (see paragraph 124, above).

Clause 122 - Searches of land and premises

128. This clause authorises an officer to enter and search any land or premises where the officer has reasonable grounds to believe that there is on the land or premises something that has been involved in a breach of this Act and that may afford evidence of such a breach. This includes the power to break open and search a cupboard, drawer, chest, trunk, box, package or other receptacle, whether a fixture or not, that may contain an item the officer reasonably believes to be relevant. The exercise of this power is subject to the consent of the owner or occupier, or to a warrant issued under clause 123, which the officer must produce for inspection by the owner or occupier. The same requirements of identification as referred to in the previous paragraph apply.

Clause 123 - Warrants for searches of land or premises

129. Under this clause, if the officer can lay an information on oath before a magistrate, supported by verbal or affidavit evidence, that the officer suspects on reasonable grounds that there may be in or on the relevant land or premises anything that may have been involved in a breach of this Act, the magistrate is empowered to issue a search warrant to that officer, including details of any assistance and use of force as is necessary and reasonable for the purposes of clause 122. The warrant must specify the purpose for which it was issued, the nature of the offence, timing of entry, description of the kind of things to be seized, as well as a date of expiry of not more than 7 days after the day of issue. If in the course of the search something else is found that could be relevant in respect of a breach of this Act, the officer may seize that thing if the officer believes on reasonable grounds that it could be lost, concealed or destroyed.

Clause 124 - Warrants may be granted by telephone, etc.

130. This clause sets out the circumstances and conditions under which an officer may apply to a magistrate for a warrant under the previous clause by telephone, telex, fax or other electronic means. The magistrate is required to issue the warrant if satisfied that under the circumstances there are reasonable grounds for issuing the warrant. The officer is required to send to the magistrate the form of warrant completed by the officer, supported by an information sworn by the officer, which the magistrate must then attach to the warrant signed by the magistrate, which must be able to be produced in evidence. Failure to produce the warrant in the required way will give rise to a presumption that the entry, search, seizure or other exercise of power was not authorised by such a warrant.

Clause 125 - Retention of things seized

131. Under this clause the officer is entitled to retain a thing seized under paragraphs 121(2)(d) or 122(2)(d) until 60 days after the day of seizure or until completion of the relevant proceedings. The Director is also empowered to release that thing unconditionally, or on such conditions as the Director may deem appropriate.

Clause 126 - Officers may require certain information

132. This clause empowers an officer acting under clauses 121 or 122 to require a person found in or on a vehicle, aircraft or vessel, or on the land or premises, to state that person's full name and address. Where an officer has detained or searched a vessel under clause 121, the officer may also require the person in charge of that vessel to give the officer information concerning the vessel, its crew and any person on board the vessel that the officer requests. The same identification requirements as for clause 119 apply.

Clause 127 - Power to pursue persons and vessels

133. This clause provides for the circumstances under which an officer may exercise the power of search conferred under clause 121 in relation to foreign vessels (as defined in clause 117) and foreign nationals, where the officer, or another officer, has pursued that person or vessel from a place within one of the areas referred to in subclause 118(2) and that pursuit was not terminated or interrupted. This power may not be exercised in the territorial sea of another country.

Clause 128 - Obstruction of officers, etc.

134. Under this clause, a person may be imprisoned for six months for refusing or failing to comply with a requirement made by, or stating a false name and address or giving a false name to, an officer exercising his or her powers lawfully under clause 126.

Division 3 - Injunctions

Clause 129 - Injunctions granted on the application of the Director

135. This clause provides that the Director may apply to the Federal Court for an injunction restraining a person from engaging in conduct, or requiring the person to do something, where a person (except a Commonwealth agency) is engaging, or proposing to engage, in any conduct in contravention of this Act. The Court may also grant an injunction, on the application by the Director, requiring a person (except a Commonwealth agency) to do something where a failure to do that thing would be a contravention of this Act.

Clause 130 - Injunctions granted on the application of interested persons

136. Under this clause, similar relief as provided for in the previous clause may be granted by the Court on the application of an interested person (as defined in subclauses 130(3) and (4)) in respect of conduct by the Minister or the Director that contravenes the Act (other than Part 2, concerning listing, and Division 2 of Part 5, concerning PCOs).

Clause 131 - Interim injunctions

137. Where an application for an injunction has been made under clauses 129 or 130, this clause entitles the Court to grant an interim injunction restraining a person or Commonwealth from engaging in the conduct referred to in those clauses. Applications under this clause in respect of clause 129 applications are exempted from undertakings as to damages; no such exemption is granted in the case of applications under clause 130.

Clause 132 - Discharge, etc. of injunctions

138. This clause gives the Court the power to discharge or vary an injunction granted under this Division.

Clause 133 - Certain limits on granting injunctions not to apply

139. Subclause 133(1) entitles the Court to grant an injunction restraining a person or Commonwealth agency from engaging in conduct of a particular kind, even where it appears to the Court that it is not certain that that person or agency will engage, or continue to engage, in that conduct, or that the conduct involves imminent danger of harm to any person. Subclause 133(2) entitles the Court to grant an injunction requiring a person or Commonwealth agency to do something even where it appears to the Court that it is not certain that that person or agency will otherwise fail or refuse to do the required thing, or that the failure or refusal to do such a thing will be harmful to any person.

Clause 134 - Other powers of the court unaffected

140. Clause 134 specifies that the powers conferred on the Court in this Division are in addition of any other powers of the Court conferred by this Act or any other legislative provision. They are not in any way intended to derogate from any other powers of the Court.

PART 8 - THE ENDANGERED SPECIES ADVISORY COMMITTEE AND THE
ENDANGERED SPECIES SCIENTIFIC SUBCOMMITTEE

Clause 135 - Outline of this Part

141. This clause is a summary of Part 8. Division 1 sets out the establishment and functions the Endangered Species Advisory Committee. Division 2 is about membership and Division 3 about meetings of the Committee. Division 4 deals with the Endangered Species Scientific Subcommittee. Division 5 is about review of the Act by the Committee and assistance to the Committee and the Subcommittee.

Division 1 - Establishment and functions of the Endangered
Species Advisory Committee

Clause 136 - Establishment

Clause 137 - Functions

142. Clause 136 establishes the Committee. Clause 137 states that its functions are to advise the Minister on measures that the Commonwealth should take to comply with its obligations under this Act, to advise the Minister on the timing and order of draft recovery and threat abatement plans under clause 36, to comment on such plans given to it under clause 38, to give the Minister other advice as provided for under this Act, to review and report on the operation of this Act (see clause 163, below), and to perform such other functions as are conferred on it by this, or any other, Act.

Division 2 - Membership of the Advisory Committee

Clause 138 - Constitution

143. This clause provides that the Minister may determine the number of members, but there must be at least ten. A vacancy or vacancies in membership, including the fact that there are no members who are appointed to represent the bodies or communities referred to in subclause 139(2), will not affect the ability of the Committee to perform its functions, but clause 150 requires a majority of members, or 6 members, whichever is the greater, to form a quorum for the purposes of a meeting.

Clause 139 - Appointment of members

144. Subclause 139(1) requires the Minister to appoint members. Subclause 139(2) requires the Minister to include in the membership of the Committee persons who are appointed to represent the Australian and New Zealand Environment and Conservation Council ('ANZECC'), conservation authorities that are not authorities of the Commonwealth or of any State or Territory, and the scientific (both marine and terrestrial), rural and business community. The Minister is required to

ensure that as far as practicable, at least five members possess relevant scientific qualifications and are appointed to represent the scientific community without being representatives of the other categories in subclause (2). The Minister is also required to ensure that the majority of members are not employed by the Commonwealth or Commonwealth agencies.

Clause 140 - Chairperson

145. This clause requires the Minister to appoint as Chairperson one of the members who possess scientific qualifications and who is not employed by the Commonwealth or a Commonwealth agency. The Chairperson will hold that office until the expiry of his or her membership; or earlier upon cessation of, or resignation from, membership. A person is eligible for reappointment as Chairperson.

Clause 141 - Terms of office

146. This clause provides that members are appointed on a part-time basis for a period of up to three years, as specified in the instrument of appointment. A member is eligible for reappointment.

Clause 142 - Terms and conditions of appointment

147. This clause entitles the Minister to determine in writing on what terms and conditions, if any, members hold office.

Clause 143 - Remuneration and allowances

148. This clause entitles members to be paid such remuneration as is determined by the Remuneration Tribunal. If no determination has been made, the amount must be prescribed in regulations made under clause 175. This clause is subject to the provisions of the Remuneration Tribunal Act 1973.

Clause 144 - Leave of absence

149. This clause provides that leave from duty for the Chairperson is granted by the Minister, and for the other members, by the Chairperson.

Clause 145 - Resignation.

150. A member may resign by written notice to the Minister.

Clause 146 - Outside employment

151. A member must not engage in paid employment that, in the Minister's opinion, conflicts with the proper performance of the member's functions.

Clause 147 - Termination of appointment

152. This clause empowers the Minister to terminate the appointment of a member for misbehaviour, physical or mental incapacity, or if the member becomes bankrupt, acts in breach of clause 144, subclause 153(3) or clause 155, or is absent from 3 consecutive meetings of the Committee (unless leave of absence is granted under clause 144), or becomes engaged in any paid employment that, in the Minister's opinion, conflicts with the proper performance of the member's functions. Where the member was appointed to represent one or more of the bodies or communities referred to in subclause 139(2), and because of a change in employment, residence or any other circumstances, ceases to be, in the Minister's opinion, an appropriate representative of such a body or community, the Minister is also empowered to terminate that member's appointment.

Division 3 - Meetings of the Advisory Committee

Clause 148 - Convening meetings

153. This clause requires the Committee to hold a sufficient number of meetings to ensure it is able to perform its functions efficiently, and must meet at least once every 12 months. The Chairperson has a discretion to convene a meeting at any time and must convene a meeting if requested to do so in writing by five or more members. The Minister also has the discretion to convene a meeting of the Committee at any time.

Clause 149 - Presiding at meetings

154. This clause provides for the Chairperson to preside at all meetings. If he or she is not present, the members present are required to elect one of their number to preside.

Clause 150 - Quorum

155. In order to form a quorum, this clause requires a majority of members, or 6 members, whichever is the greater, to be present.

Clause 151 - Voting at meetings

156. This clause provides that questions arising at a meeting are to be decided by a simple majority of votes of members present and voting. The presiding member has the deliberative and, if necessary, the casting vote.

Clause 152 - Conduct of meetings

157. This clause gives the Committee discretion to determine the procedure to be adopted at its meetings, but must comply with the provisions of Division 3.

Clause 153 - Resolution without meetings

158. This clause entitles a majority of the members to sign a document or documents containing a resolution, which will be deemed to have been resolved in the affirmative as of the date that the document, or the last of the documents, was signed by a majority of members. Where there is a conflict of interest, a member must not vote and the member does not count in determining how many votes constitute a majority.

Clause 154 - Records relating to meetings

159. This clause requires minutes to be kept of all meetings and resolutions made under the previous clause.

Clause 155 - Disclosure of interests

160. This clause requires a member to disclose a direct or indirect financial interest the member may in a matter being, or about to be, considered at a meeting. This disclosure must be recorded in the minutes of the meeting, and the member must not be present during any deliberation or determination of, or voting on, that matter, unless the Committee or Minister determine otherwise.

Clause 156 - Persons may be invited to attend meetings

161. Under this clause the Committee is entitled to invite a person to attend a meeting as an observer, or to advise or inform the Committee on any matter.

Division 4 - The Endangered Species Scientific Subcommittee

Clause 157 - Establishment

Clause 158 - Functions

162. Clause 157 establishes the Subcommittee. Clause 158 states that the functions of the Committee are to advise the Minister within 12 months after this Act has commenced, and thereafter at least once every 12 months, of any amendments (if any) that should be made to the lists (as defined under subclause 4(1)), of criteria that should be used in deciding whether a list should be amended, and of additional criteria that should be specified in the definition of "ecological community" in subclause 4(1). In advising the Minister on any amendments to the lists or on the listing criteria, the Subcommittee must consider any changes to the lists of species adopted by ANZECC.

Clause 159 - Constitution

Clause 160 - Chairperson of Scientific Subcommittee

163. Clause 159 specifies that those members of the Advisory Committee appointed under subclause 139(3) shall comprise the Subcommittee, and that the performance of its functions by the Subcommittee is not affected by the number of its members being below 5. Clause 160 provides that the Chairperson of the Committee is also the Chairperson of the Subcommittee.

Clause 161 - Terms of office

164. The terms and conditions of a member of the Subcommittee are identical to those of a member of the Committee, subject to the provisions of clause 162.

Clause 162 - Meetings of the Scientific Subcommittee

165. This clause applies the provision of Division 3 to the Subcommittee, with exceptions that the Chairperson must convene a meeting on receipt of a written request from only 3 members of the Subcommittee, not 5 as provided under paragraph 148(3)(b), and the quorum of the Subcommittee is 3 members.

Division 5 - Miscellaneous

Clause 163 - Review of operation of Act

166. Under this clause, the Advisory Committee is required to submit to the Minister a written report on a review of the operation of this Act and the extent to which the objects as set out in clause 3 have been achieved, within 5 years of the commencement of the Act, and thereafter at least once every 5 years. The Minister must have a copy of each such report tabled in both Houses of Parliament within 15 sitting days after the day on which it is received by the Minister.

Clause 164 - Assistance to the Committees

167. This clause requires the ANPWS to provide the Committee and Subcommittee with the requisite administrative and financial assistance.

PART 9 - MISCELLANEOUS

Clause 165 - Inventories of listed native species

168. As regards Commonwealth areas that are land, this clause requires the Director to prepare, or cause to be prepared in accordance with procedures approved by the Director, inventories that identify, and state the abundance of, listed native species and listed ecological communities, present in Commonwealth areas, with each inventory to cover such Commonwealth areas as the Director determines. A Commonwealth area must be covered by an inventory within 10 years of commencement of the Act, or within ten years of becoming a Commonwealth area, whichever is the later. The Director may vary the inventory or cause it to be varied in accordance with procedures approved by him or her.

169. The Director must ensure a copy of the inventory is given to the Commonwealth agency that owns, occupies or has any other interest in the Commonwealth area covered by the inventory. That agency is required to provide all reasonable assistance in connection with the preparation of an inventory for the purposes of this clause.

Clause 166 - Surveys of marine species etc.

170. This clause requires surveys of the range of marine species that are listed native species and of marine ecological communities that are listed ecological communities in respect of Commonwealth areas that are not land, under terms and conditions identical with those outlined in respect of clause 165 in the two preceding paragraphs.

Clause 167 - Obligations under this Act unaffected by lack of inventories or surveys

171. This clause provides that none of the obligations that this Act imposes in respect of Commonwealth areas are affected by the lack of an inventory or survey prepared under clauses 165 or 166.

Clause 168 - Waiver of obligations imposed by this Act

172. The Governor-General may declare by written instrument that it is in the national interest to waive an obligation imposed by the Act to the extent and under the circumstances specified in the instrument. Such an instrument is liable to disallowance by either House of Parliament, subject to section 46A of the Acts Interpretation Act 1901. The instrument takes effect on the first day on which it is no longer liable to be disallowed, or to be taken to have been disallowed, under section 46A.

Clause 169 - Effect of failure to meet time limits

173. This clause ensures that anything done by the Commonwealth, the Minister or the Director under this Act is not invalid merely because it was not done within the period required by the Act. However, this is not to be interpreted as removing or reducing the obligation under this Act to do a thing within the specified period.

Clause 170 - This Act to be subject to international obligations

174. This clause provides that this Act has effect subject to Australia's obligations under international law and any agreements between Australia and another country to which Australia is a party.

Clause 171 - Compensation

175. The purpose of the Act is not to enable the Commonwealth to acquire interests in property, but this clause ensures that where the operation of this Act does result in the acquisition of property from a person other than on just terms (as defined in paragraph 51(31) of the Commonwealth Constitution), the person is entitled to reasonable compensation. If the Commonwealth and the person cannot agree on the amount of compensation, the person may apply to the Federal Court for a determination. This clause also excludes the Lands Acquisition Act 1989 from any such inadvertent acquisition of property.

Clause 172 - Raising funds

176. This clause extends the powers of the Director under paragraph 17(1)(e) of the NPWC Act to establish and maintain an organisation and a fund, the purpose of which will be to attract financial support from the public for the recovery and conservation of listed native species and listed ecological communities.

Clause 173 - International assistance

177. Subject to directions given by the Minister, this clause empowers the Director to provide financial assistance to overseas governments and organisations for the purpose of assisting the recovery and conservation in those countries of non-native species included in lists established under agreements specified in Schedule 4. The Minister is required to have regard to any relevant advice provided by the Advisory Committee, and must consult the Minister responsible for overseas development assistance.

Clause 174 - Giving effect to international agreements

178. This clause empowers the Governor-General to make regulations giving effect to agreements under Schedule 4 in relation to agreements relating to the recovery or conservation of listed native species or listed ecological communities. The regulations must not come into force for Australia until the agreement enters into force for Australia.

Clause 175 - Regulations

179. This clause empowers the Governor-General to make regulations that the Act requires or permits to be prescribed, or that are necessary or convenient to be prescribed for the purposes of carrying out or giving effect to the Act.

SCHEDULES

180. The Schedules to the Bill are:

1. Listed Species
2. Listed Ecological Communities
3. Key Threatening Processes
4. Agreements between Australia and Other Countries

**ENDANGERED SPECIES PROTECTION
(CONSEQUENTIAL AMENDMENTS) BILL 1992**

NOTES ON CLAUSES

Clause 1 - Short title

1. The Bill may be cited as the *Endangered Species Protection (Consequential Amendments) Act 1992* upon enactment.

Clause 2 - Commencement

2. This Act will commence on the same day on which the *Endangered Species Protection Act 1992* ('the ESP Act') commences.

Clause 3 - Consequential amendments of Acts

3. To give effect to the ESP Act, this Act makes a number of consequential amendments to other Acts as specified in the Schedule.

The Schedule

Amendments to the *Environment Protection (Impact of Proposals) Act 1974*

4. A new section 5A is inserted into this Act, the effect of which is to bring into the scope of section 5 (which deals with 'matters affecting the environment') a matter that could to a significant extent threaten with extinction, or significantly impede the recovery of, a listed native species or a listed ecological community, as defined in the ESP Act. This will of itself, disregarding other environmental impacts of the action, lead to the 'triggering' of the Impact Act by the 'action Minister' or authority, when such a case arises, unless the proposed action is expressly permitted under a recovery or threat abatement plan under the ESP Act.

Amendments to the *National Parks and Wildlife Conservation Act 1975*

5. New paragraph 16(1)(ha) is inserted into the NPWC Act to ensure that the Director appointed under that Act is empowered to exercise the functions imposed on the Director under the ESP Act.

6. Paragraph 42(6)(b) is amended to ensure that plants are included in the items that a warden appointed under the NPWC Act (who is also an officer for the purposes of the ESP Act) may seize under section 42 of the Act.

7. Subparagraph 44B(4)(a)(iv) omits the word 'granting' and substitutes 'issuing' in order to make that provision (which deals with the issuing of warrants by telephone or other electronic means) consistent with the parallel provision in clause 124 of the ESP Act.

8. The word 'substantially' is omitted from subsection 44E(2), to make it consistent with the parallel provision in the ESP Act (clause 127: the power of an officer to pursue persons and vessels).

9. New subsection 52(1A) is inserted to ensure that the report required to be prepared by the Director under clause 48 of the ESP Act is included in the annual report prepared by the Director under section 52 of the NPWC Act.

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