

1998-9

**THE PARLIAMENT OF THE COMMONWEALTH OF
AUSTRALIA**

SENATE

**ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION
BILL 1998**

SUPPLEMENTARY EXPLANATORY MEMORANDUM

**Amendments and New Clauses to be Moved on Behalf of
the Government**

**(Circulated by authority of the Minister for the Environment and Heritage,
Senator the Hon. Robert Hill)**

ISBN: 0642 40514X

**ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION
BILL 1998**

**NOTES ON AMENDMENTS AND NEW CLAUSES TO BE
MOVED ON BEHALF OF THE GOVERNMENT**

Clause 1

1. This amendment extends the maximum period between Royal Assent and commencement of the Environment Protection and Biodiversity Conservation Bill 1998 (EPBC Bill) from 6 to 12 months.

Clauses 2, 3 and 4

2. These amendments explicitly recognise the role and interests of indigenous people in protecting the environment and conserving biodiversity.

Clause 5

3. This amendment gives greater prominence to principles of ecologically sustainable development.

Clause 6

4. This amendment removes a subclause providing that the Crown is not liable to prosecution. Such a provision appears in many Acts simply for the sake of clarity. There is a long tradition of Crown immunity from criminal liability and a relevant case law supports that immunity and would require clear displacement of a strong presumption against any intention to render the Crown criminally liable. The subclause is removed to avoid any appearance that this immunity is extended to Commonwealth employees, servants and agents who breach offence provisions of the EPBC Bill.
5. In removing subclause 4(2) it is not the intention to reverse the long-held policy that the Crown itself, as opposed to its emanations in the form of officials, servants and agents, and corporate entities, should not be subject to criminal prosecution.

Clause 7

6. This amendment deletes clause 6 of the EPBC Bill. The EPBC Bill makes specific reference, in appropriate clauses, to Australia's international obligations where they are relevant.

Clause 8

7. This amendment inserts a new subclause into the EPBC Bill which provides that the *Aboriginal Land Rights (Northern Territory) Act 1976* and the *Native Title Act 1993* will not be affected by the EPBC Bill.

Clause 9

8. This amendment provides that the *Aboriginal Land Rights (Northern Territory) Act 1976* does not prevent a person exercising powers of performing functions and duties under the EPBC Bill.

Clauses 10 and 72

9. These amendments remove the capacity for conservation agreements to provide that specified actions do not require approval from the Minister under Part 9. See also clause 317.

Clauses 11, 15, 24, 26, 29, 35, 39, 44 and 49

10. Clause 75 of the EPBC Bill requires the Minister to decide whether an action requires approval for the purposes of Part 3. These amendments clarify that if the Minister decides that approval for the purposes of the relevant section is not required because the action will be taken in a specified manner, then the action is exempt from approval only if it is taken in the specified manner.

Clauses 12, 16, 25, 27, 30, 36, 40, 45, and 50

11. These amendments remove the words “or the giving of an authorisation (however described) of such an action”, which are not needed because it is clear from subclause 524(2) of the EPBC Bill that such an authorisation is not an action.

Clause 13

12. This amendment inserts a new subclause into the EPBC Bill which provides that a Ministerial declaration that a property is a World Heritage property pending nomination for inclusion in the World Heritage list cannot be in force for longer than 12 months.

Clauses 14, 19, 20, 21, 22, 23, 28, 34, 38, 47, 61, 62, 63, 64, 65, 66 and 67.

13. These amendments insert new subclauses into the EPBC Bill which strengthen protection of matters of national environmental significance and Commonwealth areas. The insertion of these clauses will ensure that the Commonwealth has the option of pursuing criminal prosecution or seeking a civil penalty in the event of non-compliance. Under certain conditions it is an offence to take an action that has, will have, or is likely to have a significant impact on a matter of national environmental significance (other than a matter prescribed by regulations made under clause 25 of the EPBC Bill), or on the environment on Commonwealth land, or to take an action on Commonwealth land which has a significant impact on the environment.

14. Maximum penalties are seven years imprisonment or a fine of 420 penalty units or both, except for action on Commonwealth land or affecting the

environment on Commonwealth land, in which case the maximum penalty is two years imprisonment, or a fine of 120 penalty units, or both.

15. Under clause 495 of the EPBC Bill an executive officer of a body corporate convicted of an offence under these provisions may also be guilty of an offence.

Clauses 17, 18

16. These amendments modify the procedures for the Minister to declare that a wetland is a Ramsar wetland by: requiring the Minister to consult relevant States and Territories before making a declaration (unless there is an imminent threat to the wetland), and providing that a declaration cannot be in force for longer than 12 months.

Clauses 31, 32, 33 and 146

17. These amendments make the definition of nuclear installation consistent with the definition used in the *Australian Radiation Protection and Nuclear Safety Act 1998*.

Clause 37

18. This amendment inserts a new subclause into the EPBC Bill which provides that fishing in a State managed fishery outside the Commonwealth marine area does not require approval from the Minister for the purposes of clause 23(2) of the EPBC Bill.

Clause 41

19. This amendment strengthens the requirements for the Commonwealth to consult with States and Territories, and seek to reach agreement before introducing new matters of national environmental significance by regulation.

Clause 42

20. This amendment inserts a new subclause into the EPBC Bill which provides that when a regulation prescribing an action or class or actions is made in order to give effect to an international obligation, the relevant obligation must be specified in the regulation.

Clause 43

21. This amendment removes the Minister's power to specify that an action on Commonwealth land does not require approval under Part 9. This clause is redundant, given the provisions of Division 3 of Part 7 of the EPBC Bill.

Clause 46

22. This amendment removes subclause 26(4) of the EPBC Bill, which is not necessary because clause 158 of the EPBC Bill covers exemptions in the national interest.

Clause 48

23. This amendment changes the heading of Subdivision B. “Actions” is a more accurate description than “activities and decisions”.

Clause 51

24. This amendment inserts a new division into the EPBC Bill which provides that a review must be carried out every five years to determine whether additional matters of national environmental significance should be protected by Part 3 of the EPBC Bill. Such additional matters of national environmental significance would trigger the Commonwealth’s environment assessment and approval powers.

25. The amendment sets out the matters which must be considered in the review, and outlines a process for public consultation.

Clauses 52, 53, 54, 55, 76, 92, 93

26. These amendments provide that bilateral agreements may declare that actions do not require approval under Part 9 only if the actions are approved by a State or Territory under an accredited management plan. Management plans must be in force under a law of the State or Territory. In order for an action not to require approval, it must be both approved and taken in accordance with the accredited management plan.

27. The Minister may accredit a management plan only if satisfied that there has been an adequate assessment of the certain and likely impacts of the action approved under the plan on matters of national environmental significance covered by the agreement. The Minister must also be satisfied that any actions approved under the plan will not have an unacceptable or unsustainable impact on matters of national environmental significance.

28. Accredited management plans will be disallowable instruments. The management plan and the State or Territory law must meet criteria prescribed in regulations.

Clauses 56, 57, 58, 59, 60, 69,70 and 71

29. The Minister may make a declaration that actions do not require approval under Part 9 only if the actions are approved by the Commonwealth or a specified Commonwealth agency under an accredited management plan. Management plans must be in force under a law of the Commonwealth.

30. The Minister may accredit a management plan only if satisfied that there has been an adequate assessment of the certain and likely impacts of the action approved under the plan on matters of national environmental significance covered by the agreement. The Minister must also be satisfied that any actions approved under the plan will not have an unacceptable or unsustainable impact on matters of national environmental significance.

31. Accredited management plans will be disallowable instruments. The management plan and the Commonwealth law must meet criteria prescribed in regulations.

Clause 68

32. This amendment inserts a new subdivision into the EPBC Bill which provides pre-requisites for making declarations. These pre-requisites are equivalent to the pre-requisites for entering into bilateral agreements (see clauses 50-56 of the EPBC Bill).

Clause 73

33. This amendment provides a clearer definition of RFA boundaries.

Clauses 74, 98, 104, 118, 132, 150, 158, 159, 168, 169, 170, 171, 179, 205, 206, 207, 208, 230, 231, 232, 251, 252, 253, 267, 274, 275, 276, 318, 319, 330, 439, 462, 463, 464, 493, 495, 496, 497, 503, 506 and 511

34. These amendments correct minor typographical errors, make technical adjustments, or make expression consistent across the EPBC Bill.

Clause 75 and 79

35. These amendments set out requirements for the Minister to publish notice of an intention to develop a draft bilateral agreement, and to publish a draft bilateral agreement for public comment, before entering into a bilateral agreement. The Minister must take account of public comments, and must also consider the role and interests of indigenous people.

36. Bilateral agreements, together with the Minister's reasons for entering into them, must be published as soon as practicable after they are entered into.

Clause 77

37. This amendment provides that a bilateral agreement that accredits State or Territory assessments or approvals under clauses 46 or 47 of the EPBC Bill must contain a clause under which the State or Territory undertakes to ensure that impacts of the action on environmental matters that are not of national significance will be assessed. This clause guarantees that all environmental impacts are assessed before an action is approved.

38. Bilateral agreements must recognise that the Auditor General can carry out a performance audit of the operations of the Commonwealth public sector in relation to the agreement.

Clause 78

39. This amendment inserts a new subclause into the EPBC Bill which provides that bilateral agreements will have no effect in relation to an action in Booderee National Park, Uluru-Kata Tjuta National Park, or Kakadu National Park.

Clauses 80 and 82

40. These amendments will make it mandatory rather than optional to prepare Australian World Heritage Management Principles and Australian Ramsar Management Principles.

Clauses 81, 83, 84, 85, and 86

41. Under the revised scheme established by clauses 52, 53, 54, 55, 76, 92, 93, State and Territory approvals can be accredited through bilaterally accredited management plans. Accordingly, the preconditions for entering into a bilateral agreement are amended so that they also apply to accrediting a management plan.

Clause 87

42. This amendment removes a broad requirement that the Minister be satisfied that the provisions of a bilateral agreement are not inconsistent with Australia's obligations under an international agreement. The EPBC Bill makes specific reference, where appropriate, to Australia's relevant international obligations.

Clauses 88 and 89

43. This amendment ensures that an emergency suspension of a bilateral agreement can have effect for no longer than three months, and the Minister must consult with the appropriate State and Territory Minister(s) as soon as possible after the emergency suspension of a bilateral agreement.

Clause 90

44. This amendment provides that the Minister must, rather than may, revoke the suspension or cancellation of a bilateral agreement if he or she is satisfied that the reason(s) for the suspension or cancellation are no longer valid.

Clause 91

45. This amendment provides that the Minister must, rather than may, cancel or suspend a bilateral agreement if the other party asks him or her to do so under the agreement.

Clause 94

46. This amendment inserts a new clause into the EPBC Bill which provides that if, at the time that a bilateral agreement ceases to have effect, an action did not require approval under Part 9 of the EPBC Bill because it had been approved in accordance with an accredited management plan under the agreement, then the Act continues to operate in relation to that action as if the suspension or cancellation had not occurred.

Clause 95

47. This amendment is consequential to the amendments contained in clauses 112, 113, and 115, which change the title of “specially accredited assessment process” to “accredited assessment process” and provide more details about the nature of such processes.

Clause 96

48. This amendment inserts a new subclause into the EPBC Bill which provides that a person need not refer an action that he or she thinks may be a controlled action to the Minister if the person receives a notice under section 73 that the action has already been referred by a State, Territory, or a Commonwealth agency. This amendment will avoid duplicated referrals.

Clause 97

49. This amendment will allow an extension of time where the Minister requests that a proposal be referred, but only if the person referring the action agrees. An extension may be necessary in order for the person to gather the information that must accompany a referral.

Clause 99

50. This amendment will allow a Commonwealth agency to refer a proposed action to the Minister whether or not the agency thinks the action may be a controlled action. This will enable a Commonwealth agency to clarify that a proposed action is not a controlled action in the same way as a person under subclause 68(2) of the EPBC Bill.

Clause 100

51. This amendment provides that the Minister must inform a person as soon as practicable that the referral received from a State, Territory, or Commonwealth agency has been received. The Minister must also invite the person to provide relevant information on whether the action is controlled.

Clauses 101, 102

52. These amendments require the Minister to publish referrals on the Internet and invite public comments within a period of 10 business days on whether the action is a controlled action. The Minister must consider any comments received.

Clause 103

53. This amendment deletes a subclause which is redundant because of the new scheme established by clauses 52, 53, 54, 55, 76, 92, 93 and clauses 56, 57, 58, 59, 60, 69 and 70. Under the new scheme, bilateral agreements and declarations can not declare that an action does not require approval by reference to the fact that it was taken in a specified manner.

Clause 105

54. This amendment provides that the substantial new information or change in circumstances on the basis of which the Minister changes a decision about whether an action requires approval must relate to the impacts of the action on a matter protected by Part 3 of the EPBC Bill.

Clause 106

55. This amendment is consequential to the new scheme created by amendments effected by clauses 52, 53, 54, 55, 76, 92, 93.

Clause 107

56. This amendment provides that if the Minister reconsiders a decision under clause 75 of the EPBC Bill and decides that a particular provision of Part 3 is a controlling provision, an earlier decision that the provision is not a controlling provision does not allow the action to be taken.

Clauses 108, 112, 113, 115, 119 and 134

57. These amendments replace references to “specially accredited processes” with references to “accredited assessment processes” and stipulate that assessment processes can only be accredited under this clause if the Minister is satisfied that: the assessments are carried out under Commonwealth, State or Territory law; both the law and the assessment process meet the standards set out in any regulations; the impacts of the action will be adequately assessed; and a report which contains enough information for the Minister to make an informed decision about whether to approve the action will be provided.

Clauses 109 and 110

58. These amendments insert explanatory notes.

Clause 111

59. This amendment provides prerequisites for making a declaration relating to environmental assessment; the new prerequisites are consistent with the prerequisites for entering into a bilateral agreement relating to environmental assessment.

Clause 114, and 116

60. The Minister may publish guidelines setting out criteria for deciding which approach must be used to assess the relevant impacts of an action.

Clause 117

61. This amendment replaces the title for clause 90 with a more accurate title.

Clauses 120, 121, 122, and 123

62. This amendment makes it mandatory (rather than at the Minister's discretion) that where the Minister decides that a controlled action must be assessed on the basis of preliminary documentation, the proponent must invite public comments on the proposal and the documentation. The information that must be published is to be specified in the direction from the Minister.

Clause 124, 127 and 130

63. These amendments clarify the circumstances under which the Secretary may decide not to provide all or part of an assessment report to a person who asks for it. The grounds for such a decision are the security of the Commonwealth, providing advice to the Minister, or commercial in confidence. The Secretary can only decide that information is commercial in confidence if a person can demonstrate this fact in accordance with specified criteria.

Clause 125, 128

64. These amendments set a time limit of 20 days for the Minister to prepare written guidelines for a public environment report or an environmental impact statement.

Clause 126, 129, 131

65. These amendments expand the range of actions for which an assessment by public environment report, environmental impact statement, or inquiry may include additional matters at the request of a State or Territory to include actions whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.

Clause 133

66. This amendment provides that in cases where the Commonwealth does not assess all of an action's impacts on the environment, the Minister must not approve the taking of an action unless he or she has received a notice certifying that the relevant State or Territory has assessed the action's impacts on environmental matters that were not assessed by the Commonwealth.

67. When such information is required, the period within which the Minister must decide whether to approve the taking of the action does not begin until the information from the relevant State or Territory has been received.

Clause 135

68. This amendment ensures that the Minister may only approve the taking of an action if he or she has received an assessment report relating to the

action. This will prevent an action being approved without being properly assessed.

Clause 136

69. This amendment inserts a new subclause which provides that the Minister must not approve the taking of an action unless he or she receives notice that the environmental impacts of the action on environmental matters that are not of national environmental significance have been assessed by the State or Territory in which it is proposed the action be taken. The notice must also specify how the impacts were assessed.

70. The purpose of this provision is to ensure that all of the certain and likely environmental impacts of a proposed action are assessed by either the Commonwealth or the relevant State or Territory. Accordingly, the requirement for notice does not apply where the action is a nuclear action, taken in a Commonwealth marine area, taken on Commonwealth land, or taken by the Commonwealth or a Commonwealth corporation. In these cases assessment by the Commonwealth under the EPBC Bill will include all environmental impacts.

71. If the Minister decides not to approve the taking of an action, he or she must inform the proponent of that decision.

Clause 137

72. This amendment makes it clear that a plan for conserving habitat of a threatened or migratory species or threatened ecological community is a specific example of a plan for managing the impacts of an approved action.

Clauses 138 and 139

73. This amendment provides that in deciding whether to attach a condition to an approval, the Minister must consider information provided by the proponent. However, failure to consider the relevant information does not invalidate the Minister's decision. The purpose of this amendment is to ensure that the proponent has an opportunity to comment on what conditions would be appropriate and effective.

Clauses 140, 141, 142, 143, 144, and 145

74. These amendments are consequential to other amendments.

Clause 147

75. This amendment removes a broad requirement for the Minister to be satisfied that decisions about actions prescribed by regulations made under clause 25 of the EPBC Bill are not inconsistent with Australia's international obligations. The EPBC Bill makes specific reference, where appropriate, to Australia's relevant international obligations.

Clause 148

76. This amendment inserts a new clause which provides that under certain circumstances it is an offence to breach conditions of an approval. The maximum penalty is 2 years imprisonment, or a fine of 120 penalty units, or both.

77. Under some circumstances the Crown may have the option of civil or criminal proceedings against a person who breaches the conditions of an approval. Clause 466 inserts provisions into the EPBC Bill containing rules that must be followed in such circumstance.

78. Clause 474 inserts provisions into the EPBC Bill which allow an executive officer of a corporation to be convicted of an offence under that clause.

Clause 149

79. This amendment inserts an explanatory note.

Clause 151

80. This amendment provides an additional basis upon which the Minister may decide to revoke an approval. The approval may be revoked if the impact that the action has had, will have or is likely to have on a matter protected by Part 3 of the EPBC Bill was not properly identified as a result of a negligent or deliberate act or omission by the designated proponent of the action.

Clause 152

81. This amendment inserts a new clause which creates a process for the possible reinstatement of a suspended or revoked approval.

Clause 153

82. This amendment inserts a new clause which provides that a person with an approval to take an action may transfer that approval to another person, but only with the Minister's consent. In deciding whether to consent to the transfer, the Minister may consider the transferee's history in relation to environmental matters and the transferee's capacity to comply with any conditions attached to the approval.

Clause 154

83. This amendment inserts a new subclause which provides that if a policy, plan or program which will be implemented outside a Commonwealth area is subject to strategic assessment, impacts on matters which are not of national environmental significance may be assessed, but only at the request of the relevant State or Territory.

Clause 155

84. This amendment provides that an agreement to conduct a strategic assessment of a policy, plan or program must include public consultation on draft terms of reference and finalisation of terms of reference taking comments into account.

Clause 156, 160

85. These amendments are consequential to the amendment made by clause 154.

Clause 157

86. This amendment provides that an agreement for a strategic assessment must provide for a period of at least 28 days for the public to comment on a draft report on the assessed impacts.

Clause 161

87. This amendment inserts an explanatory note.

Clause 162

88. This amendment inserts a new subclause which provides that the Minister must inform relevant State or Territory Ministers that an agreement to carry out a strategic assessment has been reached, and generally what actions are to be assessed.

Clauses 163

89. This amendment is consequential to those made by clause 38, which introduce offence provisions relating to actions which have, will have or are likely to have a significant impact on the Commonwealth marine environment.

Clause 164

90. This amendment clarifies what the Minister must do if he or she endorses a plan or policy as a result of an agreement under Division 2 of Part 10 of the EPBC Bill which deals with assessment of Commonwealth managed fisheries.

Clause 165

91. This amendment inserts an explanatory note.

Clause 166

92. This amendment clarifies that the Environment Minister's advice must be sought before the Commonwealth enters into a contract, agreement or arrangement to implement a foreign aid project.

Clause 167

93. This amendment inserts a new subclause which provides that the regulations may specify when the Environment Minister's advice about a decision must be sought by reference to the possible environmental impacts of the actions which flow from the decision.

Clause 172

94. This amendment makes it mandatory to assess under Part 8 of the EPBC Bill an application for a permit relating to a cetacean. The rules for applying the provisions of Part 8 to such an application are amended to be consistent with those where the Minister's advice must be sought under clause 160 of the EPBC Bill.

Clause 173

95. This amendment is consequential to the amendments effected by clauses 120, 121, 122, and 124.

Clause 174

96. This amendment inserts a new division which provides that the Secretary must publish a notice on the Internet each week containing specified information about assessments under Parts 7 and 8 of the EPBC Bill, and about bilateral agreements.

Clause 175

97. This amendment requires the Minister to consult with the public when preparing a bioregional plan for a bioregion that is within a Commonwealth area.

Clause 176

98. This amendment stipulates that the Minister must (rather than may) have regard to bioregional plans in making a decision under the Act to which a plan is relevant.

Clause 177

99. This amendment recognises that there are ecological communities contained in Schedule 2 of the *Endangered Species Protection Act 1992*.

Clause 178

100. This amendment inserts a new subclause which provides that if a State or Territory or the Australian and New Zealand Environment and Conservation Council lists an ecological community as critically endangered, endangered or vulnerable under a list identified in the regulations, then the Minister must decide whether that ecological community should be listed under clause 181 of the EPBC Bill.

Clauses 180 and 181

101. These amendments remove the requirement that key threatening processes can be listed only if preparing and implementing a threat abatement plan is a feasible, effective and efficient way to abate the process. Under the amended Bill, a key threatening process is listed if it satisfies the relevant scientific test. A plan is prepared only if it is a feasible, effective and efficient way to abate the process. Clause 284 inserts into the EPBC Bill provisions requiring the Minister to decide whether to prepare a threat abatement plan for a listed key threatening process.

Clause 182

102. This amendment requires the Scientific Committee to provide, within 12 months, advice to the Minister on whether to list a key threatening process.

Clause 183

103. This amendment requires the Minister to forward to the Scientific Committee, within ten days, nominations for inclusion on the list of threatened species, threatened ecological communities or key threatening processes.

Clause 184

104. This amendment specifies the only circumstances under which the Minister may reject nominations for listing without referring them to the Scientific Committee.

Clauses 185, 186, 187, 188, 189, 190, 191, 192, and 198

105. These amendments provide for the offences relating to killing, injuring, taking etc listed threatened species (except conservation dependent species) and listed ecological communities including through the application of strict liability .

106. Where the offence is one of strict liability, the offence carries a maximum penalty of a fine of 500 penalty points. In the case of a corporation, the maximum fine is 2500 penalty points (see subsection 4B(3) of the *Crimes Act 1914*).

107. Where the offence is not one of strict liability (although strict liability applies to some elements of the offence). The maximum penalty is 2 years imprisonment, a fine of 1000 penalty points, or both. In the case of a corporation, the maximum fine is 5000 penalty points (see subsection 4B(3) of the *Crimes Act 1914*).

Clause 193

108. This amendment clarifies that the permits referred to are those issued under section 201.

Clause 194

109. This amendment is consequential to the amendment effected by clause 280.

Clause 195

110. This amendment is consequential to the amendment effected by clause 20.

Clause 196

111. This amendment is consequential to the amendments effected by clauses 20 and 60.

Clause 197

112. This amendment is consequential to the amendment effected by clause 20.

Clause 199

113. This amendment is consequential to the amendment effected by clause 20.

Clauses 200 and 201

114. These amendments are consequential to the amendments effected by clauses 185, 186, 187, and 189.

Clauses 202 and 204

115. These amendments create a process for public consultation on the issue of permits in relation to listed threatened species and ecological communities. The Minister must create and maintain a register of interested parties (see clause 278), and give written notice inviting these parties to comment on each permit application.

Clause 203

116. This amendment is consequential to the amendments effected by clauses 185, 186, 188, 189, and 210.

Clause 209

117. This amendment inserts a new clause which provides that applications may be made to the Administrative Appeals Tribunal seeking a review of decisions about permits.

Clause 210

118. This amendment inserts a new subdivision which provides that the Minister must create a register which may include critical habitat for listed threatened species and listed threatened ecological communities. The regulations will set out the process for identifying critical habitat and the factors to be taken into account in deciding whether to list critical habitat.
119. Under certain circumstances, it is an offence to damage critical habitat. It is important to note that this clause does not limit the operation of Divisions 2,3, or 4 of Part 13 of the EPBC Bill. That is, damage to habitat (whether critical or not) may constitute a “take” of a species or result in injury to the species for the purposes of other provisions of Divisions 2, 3 or 4.
120. If a Commonwealth agency sells or leases land that contains critical habitat, it must ensure that the contract includes a covenant the effect of which is to protect the critical habitat.

Clauses 211, 212, 213, 214, 215, and 216

121. These amendments provide for the offences relating to killing, injuring, taking etc listed migratory species including through the application of strict liability.
122. Where the offence is one of strict liability, the offence carries a maximum penalty of a fine of 500 penalty points. In the case of a corporation, the maximum fine is 2500 penalty points (see subsection 4B(3) of the *Crimes Act 1914*).
123. Where the offence is not one of strict liability (although strict liability applies to some elements of the offence). The maximum penalty is 2 years imprisonment, a fine of 1000 penalty points, or both. In the case of a corporation, the maximum fine is 5000 penalty points (see subsection 4B(3) of the *Crimes Act 1914*).

Clause 217

124. This amendment replaces the heading with a more accurate heading.

Clause 218

125. This amendment is consequential to amendments effected by clauses 211, 212, 213, 214 and 215.

Clause 219

126. This amendment clarifies that the permits referred to are those issued under section 216.

Clauses 220, 222, and 224

127. These amendments are consequential to amendments effected by clause 26.

Clause 221

128. This amendment is consequential to amendments effected by clauses 26 and 60.

Clause 223

129. This amendment is consequential to amendments effected by clauses 211, 212, 213, 214 and 215.

Clauses 225 and 226

130. These amendments are consequential to the amendments effected by clauses 211, 212, 213, 214 and 215.

Clauses 227 and 229

131. These amendments create a process for public consultation on the issue of permits in relation to listed migratory species. The Minister must create and maintain a register of interested parties (see clause 278), and give written notice inviting these parties to comment on each permit application.

Clause 228

132. This amendment is consequential to the amendments effected by clauses 211, 212, 213, 214 and 215.

Clause 233

133. This amendment inserts a new clause which provides that applications may be made to the Administrative Appeals Tribunal seeking a review of decisions about permits.

Clauses 234, 235, 236, 237, and 238

134. These amendments provide for the offences relating to killing, injuring, taking etc cetaceans, including through the application of strict liability .

135. Where the offence is one of strict liability, the offence carries a maximum penalty of a fine of 500 penalty points. In the case of a corporation, the maximum fine is 2500 penalty points (see subsection 4B(3) of the *Crimes Act 1914*).

136. Where the offence is not one of strict liability (although strict liability applies to some elements of the offence). The maximum penalty is 2 years imprisonment, a fine of 1000 penalty points, or both. In the case of a corporation, the maximum fine is 5000 penalty points (see subsection 4B(3) of the *Crimes Act 1914*).

Clause 239

137. This amendment is consequential to the amendments effected by clauses 234, 235 and 236.

Clause 240

138. This amendment replaces the heading with a more accurate heading.

Clause 241

139. This amendment is consequential to amendments effected by clauses 234, 235, 236, and 237.

Clauses 242 and 245

140. These amendments clarify that the permits referred to are those issued under section 238.

Clauses 243 and 244

141. These amendments are consequential to the amendments effected by clauses 234, 235, 236, and 237.

Clause 246 and 249

142. These amendments insert explanatory notes.

Clauses 247 and 250

143. These amendments create a process for public consultation on the issue of permits in relation to cetaceans. The Minister must create and maintain a register of interested parties (see clause 278), and give written notice inviting these parties to comment on each permit application.

Clause 248

144. This amendment is consequential to the amendments effected by clauses 234, 235, 236, and 237.

Clause 254

145. This amendment inserts a new clause which allows applications to be made to the Administrative Appeals Tribunal seeking review of decisions about permits.

Clause 255

146. This amendment appends the common names of listed marine species, and updates the taxonomy.

Clauses 256, 257, 258, 259, 260, and 261

147. These amendments provide for the offences relating to killing, injuring, taking etc listed marine species, including through the application of strict liability.

148. Where the offence is one of strict liability, the offence carries a maximum penalty of a fine of 500 penalty points. In the case of a corporation, the maximum fine is 2500 penalty points (see subsection 4B(3) of the *Crimes Act 1914*).

149. Where the offence is not one of strict liability (although strict liability applies to some elements of the offence). The maximum penalty is 2 years imprisonment, a fine of 1000 penalty points, or both. In the case of a corporation, the maximum fine is 5000 penalty points (see subsection 4B(3) of the *Crimes Act 1914*).

Clause 262

150. This amendment replaces the heading with a more accurate heading.

Clause 263

151. This amendment is consequential to amendments effected by clauses 256, 257, 258, 259 and 260.

Clause 264

152. This amendment clarifies that the permits referred to are those issued under section 258.

Clause 265

153. This amendment is consequential to amendments effected by clauses 38 and 47.

Clause 266

154. This amendment is consequential to amendments effected by clauses 38 and 60.

Clause 268

155. This amendment replaces a heading with a more accurate heading.

Clauses 269 and 270

156. These amendments are consequential to the amendments effected by clauses 256, 257, 258, 259 and 260.

Clauses 271 and 273

157. These amendments create a process for public consultation on the issue of permits in relation to listed marine species. The Minister must create and maintain a register of interested parties (see clause 278), and give written notice inviting these parties to comment on each permit application.

Clause 272

158. This amendment is consequential to the amendment effected by clauses 256, 257, 258, 259, and 260.

Clause 277

159. This amendment inserts a new clause which provides that applications may be made to the Administrative Appeals Tribunal seeking decisions about permits.

Clause 278

160. This amendment inserts a new division which provides that a register for consultation about permit applications in relation to listed threatened species, listed threatened ecological communities, listed migratory species, listed marine species and cetaceans must be kept. This register will be used to invite comment on permit applications, as set out in clauses 202, 227, 247, and 271.

Clause 279

161. This amendment replaces clause 267 of the EPBC Bill with a simplified outline of the Division. Clause 267 of the EPBC Bill is replaced by new provisions. See clauses 280 and 282.

Clause 280

162. The Minister must use his or her powers to ensure that a recovery plan is always in force for a listed threatened species (other than extinct or conservation dependent species) and a listed threatened ecological community once the initial recovery plan for that species or community has come into force. Clause 273 of the EPBC Bill sets out the timetable for establishing the initial plans.

163. The Minister is empowered to make a recovery plan for any listed threatened species or community, or to adopt a State or Territory plan.

164. Where a listed threatened species or ecological community occurs wholly or partly outside a Commonwealth area, the Minister must seek to make a recovery plan for that species or community jointly with the relevant States(s) and/or Territory(ies). If this is not reasonably practical, the Commonwealth may make a recovery plan without State or Territory cooperation.

Clause 281

165. This amendment augments the list of matters that a recovery plan must address.

Clause 282

166. This amendment deletes a provision which is redundant (because wildlife conservation plans cannot be made for listed migratory species, listed marine species, or cetaceans which are also listed threatened species).

Clause 283

167. This amendment requires the Minister, when making a recovery plan, to have regard to the role and interests of indigenous people in conserving Australia's biodiversity.

Clause 284

168. This amendment inserts a new clause providing that the Minister must decide to have a threat abatement plan for a listed key threatening process if he or she believes that such a course of action is a feasible, effective and efficient way to abate the threatening process. If the Minister decides to have a plan, the amendment effected by clause 291 requires that the plan be made and in force within 3 years.

169. The Minister must consider whether to have a threat abatement plan within 90 days of the key threatening process being listed. If the Minister decides not to have a plan for that threatening process, the decision must be reviewed at least every five years. When making a decision, the Minister must request and consider advice from the Scientific Committee and provide reasonable opportunity for any affected Commonwealth agency, State or Territory, or State or Territory agency to comment. Decisions and reasons must be published.

170. The Minister may also decide that a plan is no longer feasible, effective and efficient. This decision will lead to a plan being revoked (see clause 296) or in a new plan not being made when a plan expires.

Clause 285

171. This amendment sets out the process for preparing a threat abatement plan if the Minister decides to have one.

172. The Minister is empowered to make a threat abatement plan for any listed key threatening process, or to adopt a State or Territory plan.

173. Where a listed key threatening process occurs wholly or partly outside a Commonwealth area, the Minister must seek to make a recovery plan for that species or community jointly with the relevant States(s) and/or Territory(ies). If this is not reasonably practical, the Commonwealth may make a threat abatement plan without State or Territory cooperation.

Clause 286

174. This amendment requires that when making a threat abatement plan the Minister must have regard to the role and interests of indigenous people in conserving Australia's biodiversity.

Clause 287

175. This amendment puts a more accurate heading in place.

Clause 288

176. This amendment inserts a new subclause providing that a recovery plan or a threat abatement plan comes into force on the day on which it is made or adopted, or on a later day specified by the Minister.

Clause 289

177. This amendment provides that the timelines for preparing initial recovery plans also apply to those plans coming into force.

Clause 290

178. This amendment inserts a sub-heading.

Clause 291

179. This amendment provides that a recovery plan for a listed threatened species or ecological community that occurs only in a Commonwealth area must be made as soon as practicable after the species or community is listed.

180. This amendment also provides that once the Minister decides to have a threat abatement plan for a listed key threatening process, the plan must be made within 3 years, and the Minister must ensure that a plan is in place for as long as he or she considers the plan a feasible, effective and efficient way to abate the threatening process.

Clauses 292, 293, 294, 295, and 297

181. These amendments are consequential to amendments effected by clauses 279 and 280.

Clause 296

182. This amendment inserts a new subclause empowering the Minister to revoke a threat abatement plan if he or she considers that it is no longer a feasible effective and efficient way to abate the threatening process.

Clauses 298, 299, and 300

183. These amendments provide that the Minister may prepare a wildlife conservation plan for a conservation dependent species. Note that a recovery plan may not be prepared for a conservation dependent species.

Clause 301

184. This amendment deletes a subclause rendered redundant by the amendment effected by clause 311.

Clauses 302, 303, 304, and 305

185. These amendments are consequential to the amendments effected by clauses 298, 299 and 300

Clause 306

186. This amendment requires that, when making a wildlife conservation plan, the Minister must have regard to the role and interests of indigenous people in conserving Australia's biodiversity.

Clauses 307 and 308

187. This amendment clarifies that the Scientific Committee may advise the Minister on its own initiative to make a wildlife conservation plan.

Clauses 309 and 310

188. These amendments are consequential to the amendments effected by clauses 298, 299 and 300.

Clause 311

189. This amendment clarifies that recovery plans, threat abatement plans and wildlife conservation plans do not exclude or limit the concurrent operation of a law of a State or Territory.

Clause 312

190. This amendment provides that regulations may be made in relation to non-native species (invasive species) that may pose a threat to biodiversity.

Clause 313

191. This amendment clarifies that regulations may prohibit or regulate actions affecting a member of a native species in a Commonwealth area.

Clause 314

192. This amendment provides that the Minister may exempt a person from the application of a specified provision of Part 13 of the EPBC Bill in relation to a specified action. The Minister may grant such an exemption only in the national interest.

Clause 315

193. This amendment inserts an explanatory note.

Clause 316

194. This amendment provides that a conservation agreement must not cover all or part of a Commonwealth reserve. In addition, the Minister may enter into a conservation agreement with indigenous people or bodies acting on their behalf. In doing so the Minister must take account of specified articles of the Biodiversity Convention and objective 1.8.2 of the National Strategy for the Conservation of Australia's Biodiversity.

Clause 317

195. Conservation agreement may not specify that certain actions do not require the Minister's approval under Part 9 of the EPBC Bill.

Clause 320

196. This amendment clarifies the circumstances under which the Minister may decide not to publish all or part of a conservation agreement. The grounds for such a decision are that disclosure of the information may result in harm being done to components of biodiversity, or commercial in confidence. The Minister can only decide that information is commercial in confidence if a person can demonstrate certain things, which are set out in sub-clause 309(5) of the amended EPBC Bill.

Clauses 321, 322, 323, 324, 325, 326, 327, 328, 329, 331, 332, 333, 334, 335, 336, 344, 345, 363, and 400.

197. These amendments will make it mandatory rather than optional to prepare Australian World Heritage Management Principles, Australian Ramsar Management Principles, Australian Biosphere Reserve Management Principles, and Australian IUCN Management Principles. These amendments either effect these changes or are consequential to them.

Clauses 337, 338, 339, 340, 341, 342, 343, 346, 348, 349, 350, 351, 352, 353, 355, 357, 358, 359, 362, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 381, 382, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 418, 419, 420, 421, 422, 423, 424, 425, 426, 431, 432, 433, 434, 435, 436, 437, 438, 440, 441, 442, and 443, 447 and 448

198. Clause 481 inserts provisions to create the statutory office of Director of National Parks. These clauses make consequential changes, which recognise the fact that the responsibility for managing Commonwealth reserves will lie with the Director rather than the Secretary.

Clause 347

199. This amendment makes clause 349 of the EPBC Bill consistent with the amended clause 354 of the EPBC (see notes on clause 356).

Clause 354

200. This amendment requires the Minister to consider a report prepared by the Secretary under clause 351 of the EPBC before the Governor General makes a proclamation which changes the purpose for which a reserve in the Kakadu region is declared.

Clause 356

201. This amendment expands the range of activities which may not be carried out in a Commonwealth reserve except in accordance with a

management plan. It also provides for a civil penalty of 500 penalty units for an individual and 5000 penalty units for a body corporate. This amendment is a better reflection of the needs of contemporary Park management.

Clauses 360, 361, and 385

202. These amendments provide that clauses in the EPBC Bill dealing with activities in Commonwealth reserves are subject to the *Antarctic Treaty (Environment Protection) Act 1980*. The words deleted by these items are redundant.

Clause 363

203. This amendment provides that the Director may set charges for the use of services or facilities provided in, or in connection with, a conservation zone.

Clauses 376, 377, 378, and 379

204. These amendment provide that usage rights in relation to land and seabed will not be affected by the provisions of Division 4 of Part 15 of the Bill.

Clause 380

205. Provisions of Division 4 of Part 15 of the EPBC Bill, and regulations made under them, do not prevent indigenous people from continuing lawful use of a Commonwealth reserve for hunting, foodgathering, or ceremonial and religious purposes, except where regulations are made to conserve biodiversity and explicitly state that traditional uses are affected.

Clauses 383 and 384

206. These amendments make clause 360 of the EPBC Bill consistent with the amended clause 354 of the EPBC (see notes on clause 356).

Clause 416 and 417

207. These amendment set a time limit of 60 days for the Minister to consider a plan of management for a Commonwealth reserve and provide that he or she must (rather than may) either approve the plan or return it to the Director with suggestions. (See notes on clauses 324A etc on the re-establishment of the statutory office of the Director.)

Clause 427

208. This amendment inserts an explanatory note.

Clause 428

209. This amendment inserts a new clause confirming that a person may be reappointed to a Board for a Commonwealth Reserve.

Clause 429

210. The Minister may terminate a person's appointment to the Board for a Commonwealth reserve for conduct that is against the interests of the Board as a whole, but not if that person is a nominee of the traditional owners.

Clause 430

211. This amendment confirms that a meeting of a Board for a Commonwealth reserve consisting wholly of indigenous people's land can only begin and continue while a majority of members present are nominees of the traditional owners.

Clause 444

212. Subclause 377(5) of the EPBC Bill provides that the Minister must appoint to the Board of a Commonwealth reserve in a State or Territory a person nominated by that State or Territory. This amendment provides that, in the case of a person nominated by the Northern Territory, the members of the Board nominated by the traditional owners must consent to the appointment. However, the appointment may be made if the Commonwealth Ombudsman is satisfied that consent is unreasonably withheld.

Clause 445

213. This amendment inserts a new division providing that the Governor General may proclaim a Commonwealth area outside a Commonwealth reserve to be a conservation zone. The intention of this provision is to protect biodiversity, other natural features and heritage in Commonwealth areas while the area is assessed for inclusion in a Commonwealth reserve.

214. Activities in conservation zones may be controlled by regulation. Regulation making powers for conservation zones are set out in proposed new sections 390E and 390G.

215. Prior usage rights in conservation zones continue to have effect but may be renewed or extended only with the Minister's consent and subject to any conditions determined by the Minister.

Clause 446

216. This amendment is consequential to the amendments effected by clauses 180, 181, and 301.

Clause 447

217. This amendment provides that a person who is appointed as an authorised person under clause 393(3) of the EPBC Bill may not exercise powers and functions under the Act or regulations in a Commonwealth reserve of conservation zone. This amendment prevents the Secretary

from delegating powers that properly belong to the Director. Note that clauses 448 and 482 allow the Director to delegate powers to employees of a Commonwealth department.

Clause 448

218. These amendments will allow employees of a Commonwealth Department or authority to exercise the functions and powers of wardens and rangers.

Clauses 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, and 459

219. These amendments augment the enforcement powers of authorised persons under the EPBC Bill.

Clause 460

220. This amendment extends the circumstances under which the Minister may require an environmental audit to include cases where he or she believes or suspects on reasonable grounds that the impacts of an authorised action are greater than anticipated when the action was assessed.

Clause 461

221. This amendment makes subclause 466(3) of the EPBC Bill consistent with subclause 466(4) of the EPBC Bill by referring to listed threatened species and ecological communities.

Clause 465

222. This amendment inserts a heading.

Clause 466

223. This amendment sets out rules that must be observed in cases where the same action is potentially a breach of both civil and offence (criminal) provisions of the EPBC Bill.

Clauses 467, 471, 472, and 473

224. These amendments are consequential the amendment effected by clause 473, which removes a defence for providing false or misleading information.

Clauses 468, 469, and 470

225. This amendment will make it an offence, punishable by a fine of up to 30 penalty units, to negligently provide false or misleading information in response to a requirement or request under Part 7,8,9 or 13 of the EPBC Bill.

Clause 474

226. This amendment provides that under certain circumstances the executive officer of a body corporate may be guilty of an offence if the

body corporate commits an offence against Part 3 or clause 142 of the EPBC Bill.

Clause 475

227. This amendment is consequential to amendments effected by clause 148.

Clause 476

228. This amendment inserts a new division providing immunity from prosecution to authorised officers performing their duties, and persons requested to assist in the exercise or purported exercise of the authorised officer's duties, provided they act in good faith.

Clause 477

229. This amendment clarifies that the Scientific Committee may advise the Minister at its own initiative.

Clause 478

230. This amendment requires that the Biological Diversity Advisory Committee include a member appointed to represent indigenous peoples.

Clause 479 and 480

231. This amendment inserts a new division establishing and setting out the functions of an Indigenous Advisory Committee.

Clause 481

232. This amendment continues the statutory office of the Director of National Parks and Wildlife, that existed under the *National Parks and Wildlife Conservation Act 1975*, under the EPBC Bill as the Director of National Parks.

233. This amendment also sets out the functions and powers of the Director, and requirements as to how they must be exercised.

234. This amendment also sets out the constitution of the Director, how the director is to be appointed, and the terms and conditions of appointment.

235. The Australian National Parks and Wildlife Fund also continues in existence under the EPBC, under the name of the Australian National Parks Fund, and continues to be vested in the Director. The amendment sets out rules for the use and administration of the Fund.

Clause 482

236. This amendment provides that the Director may delegate any or all of his or her powers or functions under the EPBC Bill to another person.

Clause 483

237. This amendment inserts a heading.

Clause 484

238. This amendment provides that the Secretary is not required to cover the operation of Divisions 4 and 5 of Part 15 of the EPBC Bill (which deal with managing Commonwealth reserves) in his or her annual report on the operation of the Act).

Clause 485

239. This amendment inserts a new clause providing that Commonwealth bodies will be required to report annually on how their activities accord with the principles of ecologically sustainable development. The Auditor General may conduct a performance audit on compliance with these requirements.

Clause 486

240. This amendment inserts a new division requiring the Minister to produce a State of the Environment Report every five years, with the first report due by 31 December 2001.

Clause 487

241. This amendment allows regulations to be made under the EPBC Bill to give effect to the Framework Convention on Climate Change.

Clause 488

242. This amendment inserts a new clause requiring that the operation of the Act be independently reviewed at least every ten years to ensure that its objectives are being met.

Clause 489

243. This amendment inserts a new clause providing that an action that has been specifically authorised by an approval under a law of the Commonwealth, a State or a Territory before the commencement of the EPBC Bill does not require approval under the EPBC Bill, provided no further approvals are necessary in order for the action to be taken lawfully. This amendment allows for actions which have obtained approval under relevant laws before commencement of the EPBC Bill, but are not covered by the transitional provisions of the Environment Reform (Consequential Provisions) Bill 1998.

Clause 490

244. This amendment clarified that providing funding is not an action. However, an action for which funding is provided will require approval if it triggers a provision of Part 3 of the EPBC Bill.

Clause 491

245. This amendment inserts a new clause providing that regulations may set out matters to be considered in determining whether the impact an

action has, will have, or is likely to have, on a matter protected by Part 3 is significant.

Clauses 492, 494, 498, 499, 500, 501, 502, 504, 505, 507, 508, 509, and 510
246. These amendments make amendments to definitions which are consequential to amendments affected by this Bill.