

## Environmental Reform (Consequential Provisions) Bill 1998

1998

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

ENVIRONMENTAL REFORM (CONSEQUENTIAL PROVISIONS) BILL

EXPLANATORY MEMORANDUM

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

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### ENVIRONMENTAL REFORM (CONSEQUENTIAL PROVISIONS) BILL 1998 OUTLINE

The objects of this Bill are to:

\* repeal the five acts to be replaced by the Environment Protection and Biodiversity Conservation Bill 1998. These are; the *Endangered Species Protection Act 1992*; the *Environment Protection (Impact of Proposals) Act 1974*; the *National Parks and Wildlife Conservation Act 1975*; the *Whale Protection Act 1980*; and the *World Heritage Properties Conservation Act 1983*;

\* provide for savings and transitional arrangements for a smooth transition from the processes in place under the old acts, such as various environment assessment and permitting arrangements, to the new schemes established under the Environment Protection and Biodiversity Conservation Bill 1998; and

\* amend Commonwealth legislation that is affected by the repeal of the above mentioned acts or the content of the proposed Environment Protection and Biodiversity Conservation Bill 1998.

The Bill consists of commencement provisions and 8 schedules.

Schedule 1 deals with the future application of the Environment Protection and Biodiversity Conservation Act 1998 to certain activities.

Schedule 2 repeals the *Endangered Species Protection Act 1992*. It provides transitional mechanisms to progress processes that are under way, and save authorisations still in operation at the time of repeal. It also amends other Commonwealth Acts that refer or rely on elements of the *Endangered Species Protection Act 1992*. Similarly Schedule 3 does the same in relation to the *Environment Protection (Impact of Proposals) Act 1974*, Schedule 4 for the *National Parks and Wildlife Conservation Act 1975*, Schedule 5 for the *Whale Protection Act 1980*, and Schedule 6 for the *World Heritage Properties Conservation Act 1983*.

Schedule 7 contains amendments to Commonwealth legislation that are not consequent upon the repeal of the five acts but necessary and desirable to give effect to the schemes established by the Environment Protection and Biodiversity Conservation Bill 1998.

Schedule 8 deals with miscellaneous matters.

### FINANCIAL IMPACT STATEMENT

The Environmental Reform (Consequential Provisions) Bill 1998 will not have any significant financial impact for the Commonwealth. The National Parks and Wildlife fund will cease to exist from the time of repeal of the *National Parks and Wildlife Conservation Act 1975*.

## **REGULATION IMPACT STATEMENT**

A regulation impact statement was included in the explanatory memorandum for the *Environment Protection and Biodiversity Conservation Bill 1998*. A statement is not necessary for this Bill as it does not set up any regulatory mechanisms on its own.

## **ENVIRONMENTAL REFORM (CONSEQUENTIAL PROVISIONS) BILL 1998**

### **FREQUENTLY USED ABBREVIATIONS**

The following terms are used in this explanatory memorandum

` new Act' - *Environment Protection and Biodiversity Conservation Act 1998*

` Species Act' - *Endangered Species Protection Act 1992*

` EPIP Act' - *Environment Protection (Impact of Proposals) Act 1974*

` EPIP administrative - The administrative procedures approved under the procedures' *Environment Protection (Impact of Proposals) Act 1974*

` EPIP regulations' - *Environment Protection (Impact of Proposals) Regulations*

` Parks Act' - *National Parks and Wildlife Conservation Act 1975*

` World Heritage Act' - *World Heritage Properties Conservation Act 1983*

` Director' - Director of National Parks and Wildlife

` NES' - national environmental significance

### **NOTES ON CLAUSES**

#### **Clause 1 - Short title**

1 The clause provides for the Act to be cited as the *Environmental Reform (Consequential Provisions) Act 1998*.

#### **Clause 2 - Commencement**

2 This Act will commence when the new Act commences, except that the amendments to the *Koongarra Project Area Act 1981* will not commence if the boundary alteration described in that Act comes into effect before commencement of the new Act.

3 Subclauses (3) and (4) refer to items in schedule 7 that correct minor drafting errors in the *Hazardous Waste (Regulation of Exports and Imports) Amendment Act 1996* and the *Wildlife Protection (Regulation of Exports and Imports) Amendment Act 1995* respectively. Consequently, these amendments are taken to have commenced when those Acts commenced.

#### **Clause 3 - Schedule(s)**

4 This clause repeals or amends those Acts specified in the schedules to this Bill, as set out in the relevant items, subject only to the commencement provisions in Clause 2.

## **SCHEDULE 1 - APPLICATION OF THE NEW ACT**

### **Item 1 - Definitions**

5 This item defines the use of certain terms in Schedule 1.

6 Under these provisions, any action that already has a proponent designated under the EPIP administrative procedures in relation to it, or in relation to a Commonwealth action that permits, causes, promotes or facilitates it, may be exempt from the requirement for an approval under the new Act. Item 1 (1) and (2) provide definitions for terms used in this schedule to explain the circumstances in which such actions will be exempt. Item 3 of Schedule 3 continues the EPIP Act, administrative procedures and regulations for these exempt actions.

### **Item 2 - When is environmental assessment finalised?**

7 This item clarifies when an environmental assessment carried out under the EPIP Act or the Administrative Procedures is considered finalised.

### **Item 3 - Actions assessed under the EPIP Act before the new Act commences need not be assessed under the new Act**

8 An action which has been assessed under the EPIP Act before the commencement of the new Act does not require approval under Part 3 of the new Act. Similarly, advice need not be sought under Division 4 of Part 11 of the new Act if the action has been assessed under the EPIP Act before the commencement of the new Act. The EPIP Act and Administrative Procedures will continue to apply to such EPIP activity under transitional provisions in Part 2 of Schedule 3.

### **Item 4 - Actions being assessed under the EPIP Act when the new Act commences need not be assessed under the new Act**

9 An approval under Part 3 of the new Act is not required for an action in relation to which the Minister has already decided or directed under the EPIP Act prior to the commencement of the new Act, that an environmental impact statement, a public environment report, or an inquiry should be submitted or conducted. Similarly, advice need not be sought under Division 4 of Part 11 of the new Act if the Minister has already decided or directed under the EPIP Act, that an environmental impact statement, a public environment report, or an inquiry should be submitted or conducted. That decision or direction must have been made prior to commencement of the new Act for this provision to apply.

This item ceases to apply if the environmental impact statement, public environment report or inquiry report is not completed within 2 years of the new Act commencing.

### **Item 5 - Actions covered by agreement for assessment under the EPIP Act need not be assessed under the new Act**

10 At the time of commencement of the new Act, a proponent may have been designated for the action, but no decision made on whether an environmental impact statement, public environment report or an inquiry is required. In this situation, an approval under Part 3 of the new Act is not required if the Minister and proponent agree that the EPIP Act, Administrative Procedures and regulations, should continue to apply in relation to that action.

11 If an agreement is made under this item and the action is to be taken in a State or Territory, the Minister administering part 3 of the new Act must consult the appropriate Minister of that State or Territory.

This item ceases to apply if the environmental impact statement, public environment report or inquiry report is not completed within 2 years of the new Act commencing.

#### **Item 6 - Certification of coverage of impacts by assessment**

12 The Minister may issue a certificate stating that particular actions are actions related to EPIP activities for the purposes of items 4 and 5. Under the provisions of paragraphs 4 (2) (b) and 5 (1) (c), activities do not require approval under the new Bill by virtue of items 4 and 5 only if a certificate has been issued. This item also sets out the circumstances under which the Minister may revoke a certificate. The purpose of this item is to ensure that paragraphs 4 and 5 only apply to actions have been, will be, or are being adequately assessed under the EPIP Act provisions.

#### **Item 7 - Actions exempted from Administrative Procedures need not be assessed under the new Act**

13 If, before the commencement of the new Act, a Commonwealth action has been exempted under the EPIP Administrative Procedures such that neither an environment impact statement, a public environment report, nor an inquiry is required, then that action does not require approval under Part 3 of the new Act, nor need advice be sought under Division 4 of Part 11 of the new Act.

14 The Minister may certify that specified actions are related to the Commonwealth action. These actions also do not require approval under Part 3 of the new Act, nor need advice be sought under Division 4 of Part 11 of the new Act. The purpose of this item is, in effect, to continue in force any exemption that is operative under the EPIP Act when it is replaced by the new Act.

#### **Item 8 - Part 3 of the new Act does not apply to making of regional forest agreements**

15 An approval under the new Act is not required for the negotiation and making of regional forest agreements for areas described in section 41(1) of the new Act at the time of its commencement. The negotiation and making of these regional forest agreements is subject to comprehensive environmental assessment under the EPIP Act and through the regional forest agreement process.

#### **Item 9 - Part 3 of the new Act does not apply to installation of some facilities allowed under Telecommunications Act**

16 An approval under the new Act is not required for a facility installation that is subject to Item 55 of Schedule 3 to the *Telecommunications Act 1997*.

#### **Item 10 - Limit on application of the new Act to acts covered by consents under the World Heritage Act**

17 An approval for the purposes of Subdivision A of Division 1 of Part 3 of the new Act is not required for an action which is permitted under a consent given under section 9 or 10 of the *World Heritage Properties Conservation Act 1983*. The World Heritage Act continues to apply in relation to such actions (see item 62 of Part 2 of Schedule 6).

#### **Items 11 and 12 - Parts 3 and 13 of the new Act do not apply to acts allowed by permit under the Endangered Species Protection Act or the Whale Protection Act**

18 Any act authorised by a permit issued under the *Endangered Species Protection Act 1992* or the *Whale Protection Act 1980*, that is still in force immediately before the commencement of the new Act, does not need an approval or permit under the new Act. Such permits are continued under item 8 of Schedule 2 and item 4 of Schedule 3 until they expire.

#### **Items 13 and 14 - Application of section 316 and section 328 of the new Act**

19 These provisions clarify that the Minister administering the new Act must make management plans for all relevant World Heritage properties and Ramsar wetlands on Commonwealth areas,

regardless of whether they were added to their respective international lists before or after commencement of the new Act.

#### **Item 15 - Application of section 359 of the new Act**

20 This provision clarifies that the preservation of usage rights in relation to land, sea or seabed that becomes part of a Commonwealth reserve, does not apply to usage rights held by the Director immediately before commencement of the new Act. The Director's interests are transferred to the Commonwealth under this Bill.

### **SCHEDULE 2 - ENDANGERED SPECIES PROTECTION ACT 1992: REPEAL ETC.**

#### **Part 1 - Repeal**

##### **Item 1 - The whole of the Act**

21 This item repeals the *Endangered Species Protection Act 1992*.

#### **Part 2 - Saving and transitional provisions**

##### **Item 2 - Definitions**

22 This item defines the use of certain terms in this Part 2 of Schedule 2.

##### **Item 2 - Listing of species, ecological communities and key threatening processes**

23 This provision sets up a transitional mechanism to cover those situations where a person has nominated a species for listing under the Species Act, but the Minister has not added that species to the list or has not made a decision as to whether to add the species to the list at the time of repeal of the Species Act. In essence, such a nomination will be regarded as a nomination under the new Act.

24 Item 3 (2) identifies the appropriate list under the new Act that a particular nomination under the Species Act is to equate with. Item 3 (3) provides the date when the nomination is deemed to have occurred for the purposes of the new Act. Item 3 (4) deems advice given by the Endangered Species Scientific Subcommittee (ESSS) under the Species Act, to be advice from the Threatened Species Scientific Committee (TSSC) under the new Act and item 3 (5) sets out which categories that advice corresponds with under the new Act. Items 3 (6) and (7) provide for the Minister to ask the TSSC to review any advice previously given by the ESSS.

##### **Item 4 - Continuation of recovery plans and threat abatement plans**

25 A recovery or threat abatement plan that is in force when the Species Act is repealed remains valid and has effect as if it had been made under the new Act. These plans will be reviewed at five yearly intervals starting from the date they were approved or adopted under the Species Act.

##### **Item 5 - Continued preparation of recovery plans and threat abatement plans**

26 If at the time of repeal of the Species Act, a draft recovery or threat abatement plan has been prepared in accordance with the consultation requirements of that Act, then the Minister can make a plan based on that already prepared draft plan and does not need to comply with the corresponding requirements of the new Act.

##### **Item 6 - Conservation agreements**

27 This item provides that conservation agreements made under the Species Act continue as if they were made under the new Act.

## **Item 7 - Conservation orders**

28 Conservation orders in force at the time the Species Act is repealed, continue in accordance with their terms as if they were made under the new Act. Accordingly interim conservation orders continue to have effect only for the period specified in that order. Similarly, advice on conservation orders given by the Minister under the Species Act is deemed to be advice given under the new Act.

29 If at the time the Species Act is repealed, a person has requested that the Minister reconsider an order or a decision not to review an order, the Minister is not to take action on that request. This does not prevent a person from requesting reconsideration under the new Act.

30 Impact assessment orders that relate to actions that will continue to be assessed under the EPIP Act and its administrative procedures as a result of items 3, 4, 5 and 8 of Schedule 1 to this Bill, continue to have effect in accordance with the relevant provisions of the Species Act despite its repeal.

## **Item 8 - Permits**

31 Permits issued under the Species Act that are still valid at the time of its repeal continue to have effect according to their terms and until they expire. The Species Act will continue to apply in relation to such permits despite its repeal.

32 If a person has requested reconsideration of a permit application and the Minister has not made a decision in relation to that request when the Species Act is repealed, then the Minister may not act on that request. This does not prevent an applicant from applying for a permit under the new Act.

## **Item 9 - AAT review of advice relating to conservation orders**

33 Section 43(1) of the *Administrative Appeals Tribunal Act 1975* permits the tribunal, for the purposes of reviewing a decision, to exercise the powers and discretions conferred on the decision maker under the relevant Act. This provision extends the operation of section 43(1) so that it applies to the review of a decision to give advice on conservation orders under the Species Act. It also allows the tribunal to exercise the powers and discretions of the Minister administering the new Act or to remit the decision to that Minister for reconsideration.

## **Item 10 - Inventories and surveys**

34 Any surveys and inventories prepared under the Species Act continue and are deemed to be inventories or surveys prepared under the new Act.

## **Part 3 - Consequential amendment of other Acts**

35 Many of the following amendments serve to replace a reference to the Species Act or terms peculiar to that Act, with references to the corresponding sections of the new Act.

### ***Great Barrier Reef Marine Park Act 1975***

#### **Items 1-13**

36 These amendments replace references to the Species Act with appropriate references to the new Act. Item 13 makes it clear that these changes do not affect the validity of plans of management or related agreements under the *Great Barrier Reef Marine Park Act 1975*.

### ***Telecommunications Act 1997***

#### **Items 14-21**

37 These amendments replace references to the Species Act or terms described in the Species Act with references to the new Act or the new definitions and new terms of the new Act. Items 19 and 21 clarify that the amendments apply to applications for facility installation permits made and installations proposed to commence after the new Act commences.

#### **Part 4 - Refunds**

##### **Item 22 - Refund of fees for applicants for permits**

38 If a person has paid the application fee for a permit under the Species Act and a decision on the permit is pending at the time of the commencement of the new Act, the fee must be refunded to the applicant.

### **SCHEDULE 3 - ENVIRONMENT PROTECTION (IMPACT OF PROPOSALS) ACT 1974: REPEAL ETC**

#### **Part 1 - Repeal**

##### **Item 1 - The whole of the Act**

39 This item repeals the *Environment Protection (Impact of Proposals) Act 1974*.

#### **Part 2 - Savings and transitional provisions**

##### **Item 2 - Definitions**

40 This item defines the use of certain terms in this schedule.

##### **Item 3 Continued application of EPIP Act to some EPIP activities**

41 This item continues the operation of the EPIP Act, EPIP regulations and EPIP Administrative Procedures in relation to those actions that are described in Items 3, 4, 5, or 8 of Schedule 1 of this Bill as being exempt from the need for an approval under the new Act.

#### **Part 3 - Consequential amendment of other Acts**

##### ***Aboriginal Land Rights (Northern Territory) Act 1976***

##### **Item 4 - Subsection 11(2)**

42 This item repeals subsection 11(2). The Commission referred to in the subsection has reported, so the operation of the provision is spent.

##### ***Australian Heritage Commission Act 1975***

43 This Bill repeals a number of sections in the *Australian Heritage Commission Act 1975*. These sections relate to mechanisms which are not consistent with the environmental assessment scheme being established under the new Act. The amendments to the *Australian Heritage Commission Act 1975* do not limit the scope of section 30 of the *Australian Heritage Commission Act 1975*. Section 30 of the *Australian Heritage Commission Act 1975* will continue to apply to those Commonwealth actions which triggered it prior to these amendments coming into force.

##### **Items 5 Subsection 3(1) (definition of 'Environment Protection Act')**

44 This item repeals the definition of 'Environment Protection Act' as this is the descriptive term used for the EPIP Act.

### **Items 6-13**

45 These items repeal section 25 of the *Australian Heritage Commission Act 1975* (AHC32), and amend other sections of that Act so that any reference to section 25 is removed. In general terms, section 25 allowed the Minister for Environment and Heritage to direct the Australian Heritage Commission to either enter or not enter a place in the Register of the National Estate.

### **Items 14 and 15**

46 These items repeal sections 28 and 29 of the *Australian Heritage Commission Act 1975*, which deal with giving advice in relation to matters affecting the national estate in the context of the EPIP assessment scheme, which is being repealed.

### **Items 16 and 17**

47 Items 16 and 17 are further amendments that result from the repeal of section 25 of the *Australian Heritage Commission Act 1975* (see item 11). These items remove the need to include directions given by the Minister under section 25 in the annual report (item 16), but only after commencement of the new Act (item 17).

### **Item 18 - Section 44**

48 This item repeals section 44 as it is a provision that clarifies certain matters relevant to the interrelationship between section 11 of the EPIP Act that covers inquiries, and the national estate as established under the *Australian Heritage Commission Act 1975*. The links established by section 44 are not relevant to the scheme and inquiry provisions implemented through the new Act.

## ***Biological Control Act 1984***

### **Items 19-37**

49 These items make necessary amendments to the *Biological Control Act 1984* to remove references to the EPIP Act or commissions of inquiry established under that Act. The new Act sets up a comprehensive scheme for the assessment of any action that is likely to have a significant impact on a matter of NES, or the environment if the action is a Commonwealth action or impacts on Commonwealth land. The links with the *Biological Control Act 1984* are therefore no longer appropriate or necessary.

## ***Environment Protection (Sea Dumping) Act 1981***

### **Item 38 - Subsections 19(2), (3), (4) and (4A)**

50 When the Minister administering the *Environment Protection (Sea Dumping) Act 1981* receives an application for a permit, he or she must decide within 90 days whether to grant or refuse the application, except if Subdivision A of Division 4 of Part 11 of the *Environment Protection and Biodiversity Conservation Act 1998* applies in relation to granting the permit.

51 If Subdivision A of Division 4 of Part 11 of the new Act applies in relation to granting the permit the Minister must make a decision by whichever day is the later of: 30 days after receiving advice given under section 163 of that Act or 90 days after receiving the application. Subdivision A of Division 4 of Part 11 of the new Act does not apply to permits allowed by dint of subsections 19 (5) and 19 (5A) of the *Environment Protection (Sea Dumping) Act 1981*, which relate to emergencies posing an unacceptable risk to human health.

### **Item 39 - Paragraph 24 (2) (a)**

52 The *Environment Protection (Sea Dumping) Act 1981* is amended so that environmental assessments are carried out under the new Act rather than under the EPIP Act.



#### **Item 40 - Application**

53 The amendments to the *Environment Protection (Sea Dumping) Act 1981* in this schedule apply only to permit applications made after the commencement of the new Act.

#### ***Hazardous Waste (Regulation of Exports and Imports) Act 1989***

#### **Item 41 - Section 6**

54 This item repeals section 6 which clarifies when 'action' is taken to have commenced and finished under the EPIP Act, for the purposes of the *Hazardous Wastes (Regulation of Exports and Imports) Act 1989*. This section becomes redundant with the repeal of the EPIP Act.

#### **Item 42 - Section 11**

55 This amendment replaces a reference to the EPIP Act with a reference to the new Act.

#### **Items 43, 44, and 45**

56 When actions for which Basel permits are sought require assessment under Subdivision A of Division 4 of Part 11 of the new Act, the Minister must decide either to grant or refuse the permit within 30 days of receiving advice under that Act. The same applies to applications to vary a Basel permit.

57 The amendments to the *Hazardous Wastes (Regulation of Exports and Imports) Act 1989* in this schedule apply only to permit applications made after the commencement of the new Act.

#### ***Lands Acquisition Act 1989***

#### **Item 46 - Subsection (4)**

58 This item repeals the subsection as it is no longer relevant.

#### **Item 47 - Section 42**

59 This amendment has the effect of preserving subsection 42(1)(a). The other subsections, which deal with the application of the repealed EPIP Act, are not consistent with the scheme of the new Act and are repealed. Where necessary, the Government is able to assess the environmental aspects of a proposed acquisition by having appropriate regulations made pursuant to section 160 (2)(d) of the new Act.

#### ***Resource Assessment Commission Act 1989***

#### **Item 48 - Section 56**

60 This item replaces a reference to the EPIP Act with a reference to the new Act.

#### ***Sea Installations Act 1987***

#### **Items 49, 50, 51, and 53**

61 When actions for which a permit is sought require assessment under Subdivision A of Division 4 of Part 11 of the new Act, the Minister must decide either to grant or refuse the permit within 30 days of receiving advice under that Act. The same applies to applications to vary a permit, renew a permit or for a certificate of exemption.

#### **Item 52 - Division 5 of Part III**

62 This Division is repealed, since it is no longer relevant. All necessary environmental assessments will be triggered and carried out under the new Act.

#### **Item 54 - Schedule**

63 A redundant reference to the EPIP Act is removed.

#### **Item 55 - Application**

64 The amendments made by Schedule 3 to the *Sea Installations Act 1987* will not have effect until the commencement of the new Act.

#### ***Telecommunications Act 1997***

#### **Item 56 - Clause 2 of Schedule 3**

65 This amendment replaces a reference to the EPIP Act with a reference to the new Act.

#### **Item 57 - subclause 28(1) of Schedule 3**

66 In performing a function conferred on it by Division 6 of Part 1 of Schedule 3 of the *Telecommunications Act 1997*, the ACA is currently exempt from the EPIP Administrative Procedures. This item effectively continues that exemption by providing an exemption for the same activities from Chapters 2 and 4 and Divisions 1 to 4 of Part 13 of the new Act.

#### ***Wildlife Protection (Regulation of Exports and Imports) Act 1982***

#### **Item 58 - Subsections 24(2) and (3)**

67 The Minister must either grant or refuse a permit within 90 days, except if Subdivision A of Division 4 of Part 11 of the new Act applies in relation to granting the permit, in which case the Minister must make a decision within 30 days of receiving advice given under that subsection.

#### **Item 59 - Application**

68 The amendments made by this Schedule to the Wildlife Protection Act apply only to permit applications made after the new Act commences.

### **SCHEDULE 4 - NATIONAL PARKS AND WILDLIFE CONSERVATION ACT 1975: REPEAL ETC.**

#### **Part 1 - Repeal**

69 This item repeals the *National Parks and Wildlife Conservation Act 1975*.

#### **Part 2 - Savings and transitional provisions**

#### **Item 2 - Definitions**

70 This item defines terms used in Part 2 of this Schedule.

#### **Item 3 - Continuation of parks and reserves**

71 This provision preserves existing parks and reserves proclaimed under the Parks Act and deems them to be Commonwealth reserves under the new Act.

#### **Item 4 - Continuation of plans of management**

72 This provision saves plans of management for existing parks and reserves, which have been made and are in operation under the Parks Act, and deems them to be management plans under the new Act. It also specifies that the maximum life a continued plan can have is seven years from commencement of the new Act. This accords with the maximum lifespan of management plans under the new Act.

#### **Item 5 - Continuation of preparation of plans**

73 This provision aims to minimise the duplication of work and process when a management plan is being prepared at the time of repeal of the Parks Act. It sets up a transitional mechanism that translates steps taken under the Parks Act into corresponding steps under the new Act. If a management plan for a reserve has been prepared under this transitional process, then subsequent plans for that reserve must be prepared in accordance with the process established under the new Act.

#### **Item 6 - Continuation of Boards for parks and reserves**

74 This provision continues the management boards established under the Parks Act. A modification is made so that the existing boards for Kakadu and Uluru-Kata Tjuṯa National Parks will include an additional Board member nominated by the Northern Territory government, in accordance with the provisions of the new Act. The aim of adding a Northern Territory Government representative to the Boards is to deepen the Northern Territory Government's understanding of the Parks and the service and infrastructure needs of the Aboriginal people within the Parks. A Territory representative will also bring knowledge of values in abutting Territory parks and improve coordination with the management of these parks. There is no intention to diminish the power of Aboriginal communities in joint management and the Aboriginal majority on the Boards will be preserved. The proposed changes do not represent any devolution of management responsibility from the Australian Government to the Northern Territory Government. On-ground joint management will not be affected.

#### **Item 7 - Continuation of town plans**

75 This item continues town plans made under the Parks Act, that exist at the time of its repeal. The town plan for Jabiru is continued by this provision.

#### **Item 8 - Transfer of Director's assets and liabilities to Commonwealth**

76 This item provides for the transfer of assets and liabilities from the Director to the Commonwealth, and the substitution of the Commonwealth in place of the Director in any documents or legal proceedings to which the Director is party. It terminates interests held by the Director from the Commonwealth, and extinguishes liabilities between the Commonwealth and Director. The changes implemented by this item will not affect on-ground joint management arrangement in Kakadu and Uluru-Kata Tjuṯa National Parks.

#### **Item 9 - Continued appointment of wardens, rangers and wildlife inspectors**

77 This item continues the appointment of wardens, rangers and wildlife inspectors under the Parks Act, as appointments under the new Act. Identity cards are similarly continued, as are revocations of instruments of appointments.

#### **Item 10 - Saving of regulations applied as by-laws for Aboriginal land in Jervis Bay Territory**

78 This item saves regulations made under the Parks Act that have been applied as by-laws under the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986* prior to commencement of the new Act. The repeal of the Parks Act does not affect the validity of those by-laws.

#### **Item 11 - Transitional provision - approved wildlife programs**

79 This item continues wildlife programs made under regulation 58 of the *National Parks and Wildlife Conservation Regulations* before the commencement of the new Act, as wildlife conservation plans under the new Act. Relevant recovery or wildlife conservation plans made under the new Act will override plans continued under this item.

### **Part 3 - Consequential amendment of other Acts**

80 The following amendments replace references to the Parks Act, or terms peculiar to that Act, with references to the corresponding sections or terms of the new Act.

#### ***Aboriginal Land Grant (Jervis Bay Territory) Act 1986***

##### **Items 12, 14, 15, 17, and 18**

81 These items replace references in the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986* to Jervis Bay National Park with the new name of Booderee National Park and define it accordingly. Similarly, where appropriate, Jervis Bay Botanic Gardens is substituted with Booderee Botanic Gardens. The reference to Jervis Bay Botanic Gardens in subsection 9A(1) is deleted (see item 15) because all the land in the Gardens has already been granted to the Wreck Bay Council. The subsection is therefore spent so far as it relates to granting land in the Botanic Gardens area.

82 Item 17 clarifies that the change of name to Booderee National Park, and removal of the reference to the Botanic Gardens, does not affect the validity of any declaration made under subsection 9A before these amendments take effect.

##### **Item 13 - Subsection 2(1) (definition of Director)**

83 This item repeals the definition of Director in subsection 2(1) as this position is abolished with the repeal of the Parks Act.

##### **Items 16, 19, 20 and 22**

84 The powers and functions vested in the Director of the National Parks and Wildlife Service under the the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986* are vested in the Commonwealth. These items make the necessary changes. Consequently, the Commonwealth becomes the appropriate body to enter into an agreement with the Wreck Bay Council for a lease back arrangement to be established when land is granted to that council. Similarly, the Commonwealth is the body to whom the Wreck Bay Council is to grant the lease.

##### **Items 21 and 23 - Application**

85 These items clarify that any agreement or lease in existence under sections 38A or 38B of the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986* at the time of repeal, do not need to be remade. Item 8 of Schedule 4 transfers the Director's assets and liabilities to the Commonwealth.

##### **Item 24 - Section 38C**

86 This amendment replaces a reference to the Director with a reference to the Commonwealth, and a reference to Jervis Bay National Park and Jervis Bay Botanic Gardens with a reference to Booderee National Park.

##### **Items 25 and 26 - Subsection 52A(3) and saving of by-laws applying regulations**

87 By-laws under the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986* which apply a regulation under the Parks Act continue to be in force despite the changes made by this Schedule to subsection 52A(3) of the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986*.

#### ***Aboriginal Land Rights (Northern Territory) Act 1976***

## **Items 27 - 30**

88 These items repeal the definitions of a number of terms that will no longer exist or be relevant when the Parks Act is repealed.

## **Items 31 and 32 - Subsections 10(4) and 11(1A)**

89 These items repeal the subsections 10(4) and 11(1A). They become redundant as item 8 transfers to the Commonwealth all assets and liabilities held by the Director.

## **Item 33 Subsections 12(2A), (2B), (2C), (2D) and (2E)**

90 The application of these subsections continues to be relevant for only some of the land described under them. This item therefore repeals the relevant subsections and substitutes new subsections which continue the requirement for deeds of grant to be subject to specific agreement and lease back undertakings, but only for the land described in those subsections that could still be subject to a deed of grant. It removes references to parcels of land already dealt with in accordance with the section. The item also substitutes the Commonwealth for the Director as the appropriate body to enter into any such agreements or lease arrangements.

## **Item 34 - Saving**

91 This item clarifies that the amendments effected in item ALRNT45 do not affect any agreements mentioned in subsection 12(B) or 12(C) of the *Aboriginal Land Rights (Northern Territory) Act 1976* that existed before the commencement of the new Act.

## **Item 35 - Section 12A**

92 This item replaces references to the Director with references to the Commonwealth and deals with the right of the Commonwealth to occupy any relevant land for Commonwealth reserve purposes, for that period between delivery of a deed of grant, and the granting of a lease to the Commonwealth.

## **Item 36 - Transitional provision**

93 This item transfers to the Commonwealth any right the Director has immediately prior to commencement, to occupy land under section 12A.

## **Items 37 - 39**

94 These items replace references to the Director with references to the Commonwealth or the Minister responsible for administering Division 4 of Part 15 of the new Act, whichever is appropriate.

## **Item 40 - Paragraph 12B(2)(b)**

95 This item replaces a reference to the Director with a reference to both the Minister, and the Secretary of the Department responsible for administering Division 4 of Part 15 of the new Act. This is due to the possibility that they could both have specific functions and obligations under an agreement determined by the Arbitrator.

## **Items 41 and 42 - Subsections 12B(3), (4) and Section 12C**

96 This item replaces references to the Director with references to the Commonwealth as the formal party to an agreement.

## **Item 43 - Transitional provision**

97 This item converts any existing agreement relevant to section 12, that exists between the Land Council and the Director, into an agreement between the Land Council and the Commonwealth.

#### **Item 44 - Section 40**

98 This item deletes a reference to 'Aboriginal land in a conservation zone'. This is because the term has no application under the new Act.

#### **Item 45 - Subsections 50(1A) and (1B)**

99 This item repeals subsections 50(1A) and (1B). The repeal of the Parks Act and the vesting of the Director's interests in the Commonwealth effected by this Bill, will mean that the land the subsections refer to will automatically be unalienated Crown land as defined in the *Aboriginal Land Rights (Northern Territory) Act 1976*, and therefore does not need to be specifically identified as such.

#### **Items 46 and 47 - Subsection 73(1)**

100 These items substitute references to the Parks Act with a reference to Division 4 of Part 15 of the new Act.

#### ***Antarctic Treaty (Environment Protection) Act 1980***

#### **Items 48 and 49 - Subsections 7(2) and 7(3)**

101 This item replaces references to the Parks Act and the regulations made under that Act with corresponding references to the new Act and regulations made under the new Act.

#### ***Australian Heritage Commission Act 1975***

#### **Item 50 - Section 8**

102 Where the Australian Heritage Commission was obliged to consult with the Director in performing its functions, it must now consult with the Minister administering Division 4 of Part 15 of the new Act.

#### ***Environment Protection (Alligator Rivers Region) Act 1978***

#### **Items 51, 53 and 56 - Subsection 3(1)**

103 These items modify the definitions of various terms to take account of the repeal of the Parks Act. Relevant corresponding sections of the new Act have been substituted. A new definition is inserted for 'Environment Secretary' as this person will replace the functions of the Director under the *Environment Protection (Alligator Rivers Region) Act 1978*. (See, for example, items 58 and 59). The Environment Secretary for the purposes of the *Environment Protection (Alligator Rivers Region) Act 1978* is the Secretary of the Department administering Division 4 of Part 15 of the new Act.

#### **Item 52 - Subsection 3(1) (definition of conservation zone)**

104 This item modifies the use of this term in the *Environment Protection (Alligator Rivers Region) Act 1978* so that it becomes an historical term describing a particular land area. This modification is necessary because the conservation zones referred to in that Act no longer exist, having been incorporated into Kakadu National Park.

#### **Items 54 and 55 - Subsection 3(1) (definition of prescribed instrument)**

105 These items correct minor drafting errors.

#### **Item 56 - Section 34**

This item replaces a reference to the *National Parks and Wildlife Conservation Act 1975* with a reference to the new Act.

#### **Items 57 and 64 - Subsection 5A(2) and subsection 24A(2)**

106 Item 57 repeals subsection 5A(2), and inserts new subsections (2) and (3). The repealed subsection 5A(2) provides that the Supervising Scientist continues to have certain functions in relation to any area excised from a conservation zone unless directed otherwise by the Minister. Areas can no longer be excised from conservation zones as they no longer exist. As mentioned above, the term 'conservation zone' is now used in this Act purely to describe a particular land area (see item 52). Therefore this subsection does not have any effect in its current form. Item 57 amends the subsection so that it is clear that the Supervising Scientist will always have those functions in relation to those conservation zone areas unless the Minister directs otherwise for all or part of any such area.

107 Item 64 does the same in relation to functions conferred on the Alligators Rivers Research Institute under section 24A.

#### **Items 58 - 63, and 65 - Paragraph 18(1)(b), Paragraph 18 (1A)(b), Subsection 21(3), Subsection 21(6), Subsection 22C(4)(b), Subsection 24A(2), and Paragraph 33(a)**

108 These items make the necessary substitutions to give effect to the Environment Secretary taking over the duties, powers, and functions of the Director under the *Environment Protection (Alligator Rivers Region) Act 1978*.

#### **Item 66 - Section 34**

109 The Supervising Scientist continues to be under an obligation to perform his or her functions in accordance with a relevant management or town plan, but this is updated to refer to a plan operating under the new Act rather than the Parks Act.

#### ***Environment Protection (Northern Territory Supreme Court) Act 1978***

#### **Items 67 - 69, and 72 - Section 3**

110 These items modify the definitions of various terms to take account of the repeal of the Parks Act. Relevant corresponding sections of the new Act have been substituted. A new definition is inserted for 'Environment Secretary' as this person will replace the Director in relation to powers conferred due to the operation of the *Environment Protection (Northern Territory Supreme Court) Act 1978*. (See, for example, item 63). The Environment Secretary for the purposes of the *Environment Protection (Northern Territory Supreme Court) Act 1978* is the Secretary to the Department administering Division 4 of Part 15 of the new Act.

#### **Items 70 and 71 - Subsection 3(1) (definition of prescribed instrument)**

111 These items correct minor drafting errors.

#### **Items 73 and 75 - Subsections 4(1) and (3) and Section 6**

112 These items make the necessary substitutions to give effect to the Environment Secretary taking over the duties, powers, and functions of the Director for the purposes of the *Environment Protection (Northern Territory Supreme Court) Act 1978*.

#### **Items 74 - Subsection 4(3)**

113 This item replaces a reference to the Parks Act and terms relevant to that Act, with the new Act and corresponding terminology.

### ***Great Barrier Reef Marine Park Act 1975***

#### **Items 76 - 87 - Subsection 3(1)**

114 These items repeal definitions that relate to the Parks Act.

#### **Item 79 - Section 39**

115 This item replaces a reference to section 7 of the Parks Act with the equivalent section of the new Act.

#### **Item 80 - Subsection 42(2)**

116 This item deletes a reference to the Director.

### ***Koongarra Project Area Act 1981***

#### **Items 81 - 83 - Subsections 3(1), (2), (3), and (4)**

117 The *Koongarra Project Area Act 1981* describes a boundary variation to Kakadu National Park that is to come into effect, on a date fixed by proclamation, only if a particular agreement between certain parties has been reached. These items effect technical amendments only. These items amend the Act so as to replace references to the Parks Act with a reference to item 3 in Schedule 4 to this Bill (the item that continues proclamations made under the Parks Act as proclamations made under the new Act), and other appropriate references to the new Act. The *Koongarra Project Area Act 1981* has not yet been proclaimed.

### ***Lands Acquisitions Act 1989***

#### **Items 84 - 88 - subsections 124(7) and (9)**

118 These items repeal definitions and make amendments that result from the repeal of the Parks Act and the overtaking of events since the making of these sections. The conservation zone areas referred to in subsection 124(7) were all incorporated into Kakadu stage 3, therefore paragraph (b) (ii) of that section no longer has any application.

#### **Item 89 - Transitional provision**

119 This item makes it clear that despite the amendments to section 124, any regulations made for the purposes of that section, and made prior to the commencement of these amendments, remain valid.

### ***Natural Heritage Trust of Australia Act 1997***

#### **Item 90 - Paragraph 45(1)(b)**

120 This item deletes paragraph 45(1)(b) that allowed the Minister to delegate powers to the Director; it has become redundant with the repeal of the Parks Act.

### ***Telecommunications Act 1997***

#### **Item 91 - Subclause 28(3) of Schedule 3**

121 This item deletes subclause 28(3) of schedule 3, that requires the Australian Communications Authority (ACA) to consult the Director before issuing a permit for an installation that has the potential to impact on specified environmentally sensitive matters. Under subclause 28(2) of Schedule 3, the Secretary to the Department that administers the new Act must be consulted



before any facility installation permit is issued. A replacement for the Director is not needed as the duties, powers, and functions will be exercised by the Secretary to the Department.

#### **Item 92 - Subclause 55(11) of Schedule 3**

122 The requirement for the ACA to consult the Director is removed, as the Director will cease to exist as a separate statutory authority.

#### ***Wildlife Protection (Regulation of Exports and Imports) Act 1982***

#### **Items 93, 94, 96, and 97 - Subsection 4(1), Subsection 18(1), Paragraph 18(2)(d), and Paragraph 76A(1)(a)**

123 These items delete references to the Director or the Australian National Parks and Wildlife Service as these will cease to exist with the repeal of the Parks Act. These bodies are replaced with the Secretary to the Department that administers the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*, and the Department that administers Chapter 5 of the new Act, respectively.

#### **Item 95 - Saving**

124 A person appointed as a Designated Authority under subsection 18(2) of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*, and who held office at the commencement of the new Act, will continue to hold office at the pleasure of the Minister administering the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*.

### **SCHEDULE 5 - WHALE PROTECTION ACT 1980: REPEAL, ETC**

#### **Part 1 - Repeal**

##### **Item 1 - The whole of the Act**

125 This item repeals the *Whale Protection Act 1980*.

#### **Part 2 - Saving and transitional provisions**

##### **Item 2 - Definitions**

126 This item defines certain words used in Schedule 5.

##### **Item 3 - Continued operation of permits**

127 This item provides that permits issued under the *Whale Protection Act 1980* that are current when the new Act comes into force will continue to be valid until the date of expiry shown on the permit and subject to the conditions specified in the permit, but permits may not be transferred. The provisions of the Whale Act and instruments made under it will continue to apply in relation to these permits.

##### **Item 4 - Continued appointment of inspectors**

128 The intention of this provision is that any inspectors appointed under the *Whale Protection Act 1980* will continue to be inspectors under the new Act, with authority, powers etc as if they were appointed under the new Act. Inspector identity cards will continue to be valid.

#### **Part 3 - Consequential amendment of other Acts**

##### ***Antarctic Marine Living Resources Conservation Act 1981***

## **Item 5 - Section 12**

129 This item adds a new paragraph to Section 12, which allows the Minister to cancel a permit issued under the *Antarctic Marine Living Resources Conservation Act 1981* if the permit holder has been convicted of certain offences under the new Act.

## **Part 4 - Refunds**

### **Item 6 - Refund of fees relating to permits**

130 If a person has paid the application fee for a permit under the *Whale Protection Act 1980*, and a decision on the permit is pending at the time of commencement of the new Act, the fee must be refunded to the applicant.

## **SCHEDULE 6 - WORLD HERITAGE PROPERTIES CONSERVATION ACT 1983: REPEAL ETC.**

### **Part 1 - Repeal**

#### **Item 1 - The whole of the Act**

131 This item repeals the *World Heritage Properties Conservation Act 1983*.

### **Part 2 - Saving and transitional provisions**

#### **Item 2 - Definitions**

132 This item defines certain words used in Schedule 6.

#### **Item 3 - Continued application of the World Heritage Act and related instruments**

133 The World Heritage Act, as well as the proclamations, regulations, and consents made under it and prior to commencement of the new Act, continue to apply to relevant properties and sites. New consents can be given under the World Heritage Act, while continuing proclamations and continuing consents may be varied or revoked. No new proclamations and regulations can be made following the commencement of the new Act.

#### **Item 4 - Continued appointment of inspectors**

134 This item provides that an inspector appointed under the World Heritage Act continues to be an inspector for the purposes of the new Act. Their authority, powers etc will be as if they were appointed under the new Act. Similarly, identity cards are continued.

### **Part 3 - Consequential amendment of other Acts**

#### ***Telecommunications Act 1997***

#### **Items 5 - 8 - Subparagraph 27(7)(c)(i), Subparagraph 55(2)(b)(i) of Schedule 3, and application of the amendments**

135 Items 5 and 7 substitute the references to identified properties as defined under the World Heritage Act with declared World Heritage properties as defined in the new Act. As these definitions differ slightly, Items 6 and 8 clarify that these amendments only take effect in relation to applications for facility installation permits and installations made or proposed to commence after commencement of the new Act.

#### ***Wet Tropics of Queensland World Heritage Area Conservation Act 1994***

## **Item 9 - Section 9**

136 This item substitutes a reference to the World Heritage Act with the new Act. As a result, the *Wet Tropics of Queensland World Heritage Area Conservation Act 1994* does not affect the operation of the new Act. The Item also provides that the *Wet Tropics of Queensland World Heritage Area Conservation Act 1994* does not affect the operation of the World Heritage Act as it is continued under Part 2 of Schedule 6 of this Bill.

## **SCHEDULE 7 - OTHER AMENDMENTS**

### ***Aboriginal Land Grants (Jervis Bay Territory) Act 1986***

#### **Items 1 and 2 - Subsection 2(1)**

137 These items repeal the definition for Jervis Bay Botanic Gardens and effectively rename the area it refers to as the Booderee Botanic Gardens.

#### **Item 3 - Subsection 53(2)**

138 This item replaces subsection 53(2) with a new subsection which sets out the procedures that the Minister must follow before making recommendations to the Governor General.

#### **Item 4 - Transitional - regulations**

139 Regulations described in subsection 53(2) that are in force before commencement of this Act continue in force after commencement. The preserved regulations may be amended.

### ***Airports Act 1996***

#### **Items 5 and 6 - After subsection 94(6) and 95(3)**

140 Item 5 inserts subsections 94(6A) and 95(3). The effect of these provisions is that if a major development plan or a proposed variation to a plan is being developed in accordance with the *Airports Act 1996*, and it is likely to have a significant impact on the environment, then under the new Act, advice from the Environment Minister must be sought. That advice must be considered before the plan can be approved. If such advice is sought then the amendments contained in these items stop the 90 day decision making time limit until that advice is given. The new Act imposes time limits on the giving of that advice and therefore the stopping of time will not cause decision making time to be extended indefinitely.

### ***Environment Protection (Alligator Rivers Region) Act 1978***

#### **Items 7 and 8 - Subsection 3(1)**

141 These items bring definitions in the *Environment Protection (Alligator Rivers Region) Act 1978* into line with definitions in the new Act.

### ***Environment Protection (Northern Territory Supreme Court) Act 1978***

#### **Items 9 and 10 - Section 3**

142 These items bring definitions in the *Environment Protection (Northern Territory Supreme Court) Act 1978* into line with definitions in the new Act.

### ***Great Barrier Reef Marine Park Act 1975***

#### **Item 11 - Subsections 31(4) and (5)**

143 This item amends these subsections to set out the procedures that the Minister must follow before making recommendations to the Governor General.

#### **Item 12 - Transitional - Proclamations**

144 A proclamation made under section 31 of the *Great Barrier Reef Marine Park Act 1975* that is in force at the commencement of this Act continues to have effect after commencement.

#### **Items 13 and 14 - Paragraph 39Y(b) and Saving**

145 This item extends the objects of plans of management to cover the conservation management of all categories of threatened species as provided for by part 13 of the new Act. Item 14 affirms that this amendment does not affect the validity of existing plans of management.

#### **Item 15 - Paragraph 48(2)(a)**

146 This item amends the paragraph so that it uses gender neutral terminology.

#### ***Hazardous Waste (Regulation of Exports and Imports) Amendment Act 1996***

#### **Item 16 - Item 100 of Schedule 1**

147 This item corrects a minor drafting error.

#### ***Ozone Protection Act 1989***

#### **Items 17 and 18 - at the end of section 17 and Application**

148 If Subdivision A of Division 4 of Part 11 of the *Environment Protection and Biodiversity Conservation Act 1998* applies to the granting of a licence, and the licence is not granted within 30 days of advice being received under that Subdivision, then the licence is deemed to have been refused at the end of 30 days after advice was received. This amendment applies in relation to applications for licences made after the commencement of the new Act.

#### ***Resource Assessment Commission Act 1989***

#### **Items 19 and 20 - subsection 3(1)**

149 These amendments bring definitions in the *Resource Assessment Commission Act 1989* into line with definitions in the new Act.

#### ***Telecommunications Act 1997***

#### **Items 21 and 22 - Clause 2 of Schedule 3**

150 These items include terms and definitions as defined in the new Act.

#### **Items 23 and 24 - Subclauses 17(4), (7), and (8) of Schedule 3**

151 These items amend the notification requirements of item 17 so that inspection related activities that may impact on the environment, and in particular matters of NES, fall within the category of activities that require longer notification.

#### **Item 25 - Application**

152 The amendments to item 17 of Schedule 3 only apply to activities intended to start at least 10 business days after commencement of the new Act.

**Items 26 and 27 - At the end of paragraph 27(7)(a) and after subparagraph 27(7)(c)(i) of Schedule 3**

153 These paragraphs are added to subclause 27(7) to ensure all relevant matters of NES dealt with in the new Act are included in the list of things the ACA must have regard to when determining the potential impact of an installation on the environment.

**Item 28 - Application**

154 The amendments to subclause 27(7) by items 26 and 27 of this Schedule will only apply to applications for facility installation permits made after the commencement of the new Act. It is logical that amendments that reflect the new Commonwealth regime only commence when the instrument that puts that regime in place commences.

**Items 29 and 30 - At the end of paragraph 55(2)(a) and after subparagraph 55(2)(b)(i) of Schedule 3**

155 Similarly as for subclause 27(7), these amendments to subclause 55(2) are to ensure that all NES matters are included in the list of conditions that require the carrier to give notice of the proposed activity to the Secretary of the Department administering the new Act so that the relevant consultation processes can be implemented.

**Item 31 - Application**

156 The amendments of subclause 55(2) only apply to installations proposed to commence after the commencement of the new Act.

***Wildlife Protection (Regulation of Exports and Imports) Amendment Act 1995***

**Item 32 - Item 16 of schedule 16**

158 This amendment makes a minor drafting correction.

**SCHEDULE 8 - MISCELLANEOUS**

**Item 1 - Regulation making power**

159 This item allows regulations to be made under this Act.

**Item 2 - Compensation for acquisition of property**

160 This item obliges the Commonwealth to pay a person reasonable compensation if the operation of this Act results in an acquisition of property.