

Flora and Fauna Guarantee Bill

EXPLANATORY MEMORANDUM

PART 1—PRELIMINARY

Clause 1 states the purpose of the Act.

Clause 2 provides for the commencement of the Act.

Clause 3 contains definitions.

Clause 4 states the objectives of the Act.

Clause 5 provides for certain flora and fauna to be excluded from the Act and sets out the process for exclusion.

Clause 6 provides that the Act is to bind the Crown.

PART 2—ADMINISTRATION

Clause 7 establishes the functions of the Director-General of Conservation, Forests and Lands with respect to this Act. It also provides for the Director-General to require other Government Departments to consult in specific circumstances.

Clause 8 establishes the functions and constitution of the Scientific Advisory Committee.

PART 3—LISTING

Clause 9 establishes schedules to the Act. These contain the lists of threatened flora, fauna and communities and the potentially threatening processes decided by the Minister on the recommendation of the Scientific Advisory Committee.

Clause 10 identifies the criteria for determining eligibility.

Clause 11 provides that any person may nominate an item to be placed on or removed from the lists.

Clause 12 establishes the Committee's responsibility to consider nominations and ability to reject specific ones.

Clause 13 sets out the requirements and process for obtaining public comment and the responsibility of the Committee to consider comments made.

Clause 14 requires the Committee to make a final recommendation to the Minister, giving reasons; these must be advertised.

Clause 15 provides for the Minister's decision and that the decision and reasons for it must be advertised.

PART 4—MANAGEMENT PROCESSES

Division 1—Flora and Fauna Guarantee Strategy

Clause 16 establishes the Director-General's responsibility to prepare a Flora and Fauna Guarantee Strategy, and its general topics.

Clause 17 provides the process for making and amending the Strategy, including seeking and considering public comment.

Division 2—Action Statements and Critical Habitats

Clause 18 establishes the Director-General's responsibility to prepare an Action Statement for each listed item.

Clause 19 provides that the Director-General may determine an area to be critical to the survival of flora or fauna or a community. It provides for the publication or confidentiality of this information.

Division 3—Flora and Fauna Management Plans

Clause 20 establishes that the Director-General may prepare a management plan, following the required process, including public participation.

Clause 21 provides for the amendment and revocation of a management plan, including the necessary process.

Clause 22 provides for the contents of management plans.

Clause 23 requires the Director-General to review each management plan within the time specified.

Division 4—Public Authority Management Agreements

Clause 24 provides for the Director-General to enter into agreements with public authorities.

PART 5—CONSERVATION AND CONTROL MEASURES

Division 1—Interim Conservation Orders

Clause 25 establishes the limitations and pre-requisites for the application of an Interim Conservation Order.

Clause 26 establishes the powers of Interim Conservation Orders.

Clause 27 requires the Director-General to give notice of and advertise the making of an Interim Conservation Order.

Clause 28 provides for public submissions and require the Director-General to consider all submissions.

Clause 29 requires the Director-General to consult with all people who received notice and with other relevant people, prior to recommending to the Minister on whether to extend the Interim Conservation Order.

Clause 30 provides for the Minister's decision after considering specific matters and for the Director-General to give public notice of that decision.

Clause 31 provides that the time limitation on an extended (called confirmed) Interim Conservation Order is 2 years.

Clause 32 enables the Minister to amend a confirmed Interim Conservation Order and for notice of this to be made.

Clause 33 provides for the validity of an Interim Conservation Order despite defects in procedure.

Clause 34 establishes the power for activities which take place outside the area of the Interim Conservation Order to be controlled with respect to their impact upon the critical habitat. It establishes the process for the exercise of this power; the responsibility of the

Director-General to consult, and the responsibility of the Director-General to give notice of any resulting amendment the Minister may make to the Interim Conservation Order.

Clause 35 provides for the Director-General to issue a notice to comply with an Interim Conservation Order and for penalties for non-compliance.

Clause 36 establishes the responsibility of the Director-General to notify other administrators of the terms of each Interim Conservation Order.

Clause 37 establishes the power under an Interim Conservation Order for the Minister to suspend licences, permits and authorities insofar as they allow a critical habitat to be detrimentally affected.

Clause 38 provides that where there is a conflict, an Interim Conservation Order will prevail over a planning scheme.

Clause 39 provides for permits of the Director-General to be required under an Interim Conservation Order; it establishes the matters to be considered and that reasons must be given for refusal or conditions.

Clause 40 provides the right of appeal to the Administrative Appeals Tribunal against a prohibition or requirement of an approved Interim Conservation Order, against a decision or lack of decision of the Director-General under an approved Interim Conservation Order, against the amount of compensation awarded by the Director-General and against the suspension of a licence permit or other authority.

Clause 41 provides the power for an authorised officer to ensure compliance with an Interim Conservation Order.

Clause 42 establishes the right of persons who have received a notice of an Interim Conservation Order or whose licence, permit or authority has been suspended, to compensation from the Director-General; it requires the Director-General to consider specific matters and to consult with any relevant person or body.

Clause 43 requires the Minister and Director-General to ensure the conservation of flora, fauna and critical habitat before an Interim Conservation Order expires.

Division 2—The Handling of Flora

Clause 44 provides that controls in this Division apply to non-indigenous flora as well as indigenous flora.

Clause 45 establishes that the Governor in Council may declare any flora to be protected.

Clause 46 establishes the controls available over protected flora and the exceptions to those controls.

Clause 47 provides the Director-General's power to issue a licence and the ability for a general authorisation by the Governor in Council to be issued with respect to protected flora.

Clause 48 provides for controls over the moving, processing, abandoning or releasing of flora.

Clause 49 provides for royalties to be prescribed for the taking of wild flora.

Clause 50 provides that protected flora may be destroyed (controlled).

Clause 51 establishes the relationship between authorities issued under this Division and authorities issued under other Acts.

Division 3—The Handling of Fish

Clause 52 establishes the controls available over listed fish.

Clause 53 provides the Director-General's power to issue a licence and the ability for a general authorisation by the Governor in Council to be issued with respect to listed fish.

PART 6—GENERAL

Division 1—General Provisions about Licences and Permits

Clause 54 requires applications to be made to the Director-General.

Clause 55 provides the powers and limitations upon the Director-General's ability to issue a licence or permit.

Clause 56 establishes the offence and penalty for not complying with a licence or permit.

Division 2—Enforcement and Powers of Authorised Officers

Clause 57 establishes the powers of authorised officers.

Clause 58 establishes the offence and penalty for obstruction of an authorised officer.

Division 3—Matters Relating to Offences

Clause 59 establishes the offence and penalty for interference with notices, marks and equipment.

Clause 60 provides for cancellation of a permit or licence upon conviction.

Clause 61 provides for the requirement to carry out restoration work by a person convicted of specific offences.

Clause 62 provides for payment of compensation to the Director-General by a person convicted of specific offences.

Division 4—Simplification of Proof

Clause 63 establishes the reverse onus of proof.

Clause 64 provides for an authorised officer to establish the identity of flora.

Clause 65 provides for the Director-General to issue a certificate with respect to the existence of an ICO on land.

Clause 66 enables the Minister to declare that some information be considered confidential.

Clause 67 provides for certain documents to be available for inspection at Departmental offices.

Clause 68 lists matters to be included in the Department's annual report.

Clause 69 lists regulation making powers.

PART 7—TRANSITIONAL PROVISIONS AND REPEALS

Clause 70 repeals the *Wild Flowers and Native Plants Protection Act 1958* and contains savings provisions for licences issued under that Act.

Clause 71 amends or repeals Act referred to in Schedule 4 to the extent expressed in the Schedule.

SCHEDULES

Schedule 1 contains a list of flora and fauna which are not to be conserved.

Schedule 2 is to contain a list of threatened taxa or communities.

Schedule 3 is to contain a list of potentially threatening processes.

Schedule 4 makes amendments to related Acts.

