

## Update on Urgent Wildlife Act 1953 amendments

Office of the Minister of Conservation

Cabinet Update 24 March 2025

### ***Background***

1. On 17 March 2025, I gave Cabinet an oral update on the impacts of a recent High Court decision. The Court decided it was unlawful for the Department of Conservation (**DOC**) to authorise the killing of protected species under s 53 of the Wildlife Act 1953 (**the Act**) unless there is a direct connection between that killing and protecting wildlife.
2. Public and private sector developers and infrastructure providers are concerned they could be prosecuted if their projects kill any protected wildlife despite having previous authorisation under s 53 of the Act. This may lead them to delay or stop projects spanning a huge range of activities – including subdivisions, construction work, solar and wind farms, powerline maintenance, and road infrastructure. This would harm our economy.
3. The Court's decision also means that DOC carries more risk in making authorisations needed for the TBfree programme, which aims to control and eradicate bovine tuberculosis.

### ***We urgently need to fix this***

4. DOC estimates there are over 100 active/current authorisations under s 53. A further 315 applications are in train, with about half of these likely to be for development and infrastructure projects.
5. DOC is continuing to process applications, but the Director-General of Conservation will not make any decisions involving incidental killing of wildlife until this legal issue is resolved. This could lead to project delays.
6. The government could challenge the High Court's decision, but this would not deliver certainty or a speedy result. There is no guarantee that a challenge would be successful.

### ***I propose to fix this issue quickly by making targeted and narrow amendments to the Act***

7. I propose that amendments be targeted and narrow to provide certainty to developers at speed to enable continuation of activities under current and future authorisations. The amendments proposed involve:
  - ***For existing authorities***—enabling previously authorised activities to continue with certainty by retrospectively validating them.
  - ***For new authorities***—enabling the government to keep authorising the kinds of activities and approaches it has previously authorised.
  - Potentially amending the defence provisions in the Act to provide further certainty.
8. I propose that Parliament amend s53 of the Act to enable the Director-General of Conservation to authorise activities that are otherwise prohibited by the Act, including harming and killing wildlife, if this is incidental. That will ensure that the Act continues to

be interpreted and applied as it has to date, effectively enabling what was understood to be the 'status quo' to continue. This approach will give businesses and developers the certainty they need to continue authorised activities while still aligning with the Act's purpose to protect wildlife.

9. Taking a broader scope, rather than a targeted response, would take more time and would not meet the need for certainty that developers and infrastructure providers are asking of us. They need a rapid response.
10. I have considered alternative approaches, including broadening s71 and strengthening s68AB of the Wildlife Act to apply to incidental as well as accidental killing. Section 71 only applies to projects and activities covered by Acts listed in Schedule 9 of the Wildlife Act, which is a small and outdated list, but enables New Zealand Transport Agency projects. Using this section of the Act is an onerous process, requiring joint Ministerial (or delegated) sign off for every application. I will explore s68AB amendments further through the drafting process and report back to Cabinet.

***We have options for how quickly we could fix this***

11. I initially considered progressing a Bill to enable it to be introduced to the House before the Easter recess. However, this would limit opportunities for ministerial engagement and could impact on the quality of the fix, with very limited time for the Parliamentary Counsel Office to draft the Bill.
12. I propose to take a draft Bill to the Cabinet Business Committee for approval ahead of the first sitting week, to enable it to be introduced the week of 5 May, ahead of Budget legislation. Engagement with the Attorney General, Leader of the House, and the Parliamentary Counsel Office suggests these timeframes are achievable.
13. To further reassure developers and infrastructure providers I would like to announce the Government's intention to make targeted changes. This could be done this week.

***I am seeking your support to quickly press on with this targeted approach and recommend that Cabinet:***

- a) **Invite** the Minister of Conservation to bring a paper direct to Cabinet on 31 March seeking policy decisions to make targeted changes to s53 of the Wildlife Act to ensure the Act can continue to be interpreted and applied as it has to date, including retrospective validation of existing s53 authorisations.
- b) **Note** the Minister of Conservation will report back on the possibility of strengthening s68AB of the Wildlife Act to apply to incidental as well as accidental killing.
- c) **Agree** that the Minister of Conservation will introduce a Bill in the week of 5 May, following the draft Bill's approval by Cabinet Business Committee during our Easter recess.
- d) **Note** that more substantial changes to the Wildlife Act are being considered for a future review of the Wildlife Act.
- e) **Agree** that the Minister of Conservation will announce the Government's intention to quickly make closely targeted amendments to the Wildlife Act to provide certainty to developers and infrastructure providers, and for other public benefit uses of the Act, including those with current s53 authorisations.